



2024:DHC:2803



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of order : 28th March, 2024**
+ **W.P.(C) 4582/2024 & CM APPL. 18790/2024**

CHANDRASHEKHAR CHOUHAN Petitioner

Through: **Mr. Bharat Bhushan, Advocate.**

versus

STATE OF NCT OF DELHI AND ANR Respondents

Through: **Mr. Nipun Katyal and Ms. Kismat Chauhan, Advocates.**

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Article 226 of the Constitution of India has been filed on behalf of the petitioner seeking the following reliefs:

“(i) Issue a writ of certiorari or any other appropriate writ or order in the nature thereof, directing the Ld Commissioner under the Employee's Compensation Act 1923 to recall the impugned order dated 17.02.2023 whereby the Ld Commissioner was pleased to proceed ex-parte award passed against the petitioner and direct the Ld Labour Commissioner under the Employee's Compensation Act 1923 to hear the present matter on merits.

(ii) Issue such other writ or pass such other order or direction as may be deemed just and proper in the facts and



circumstances of the case.”

2. The relevant facts for the adjudication of the instant petition are reproduced herein below:

- a. The petitioner engaged an electrician to carry out electrical work in the construction of his house who subsequently engaged additional labourers to work under him including respondent no. 2.
- b. On 28th March, 2019, an accident was caused due to which the respondent no. 2 sustained burn injuries on his hand. Thereafter, respondent no. 2 and the petitioner entered into an agreement on 12th April, 2019, thereby, settling all the claims against the petitioner for Rs.1,80,000/-.
- c. Subsequently, the respondent no. 2 lodged an FIR bearing no.487/2019 registered under Sections 288/338 of Indian Penal Code, 1860 at Aman Vihar Police Station against the petitioner. He also filed an application before the learned Labour Commissioner under the Employee's Compensation Act, 1923 for compensation of injuries sustained by him due to the accident. Moreover, in August, 2021, respondent no. 2 initiated a civil suit titled "***Ashish v. Chandra Shekhar & Anr.***" before the learned Trial Court seeking damages of Rs.20,00,000/- along with interest.
- d. On 17th February, 2023, the learned Labour Commissioner passed an *ex-parte* order against the petitioner awarding respondent no. 2 a compensation of Rs.10,33,344/- on account of injuries sustained



by respondent no. 2, pursuant to which, the Office of Commissioner, Employee's Compensation, District North West, Delhi issued a recovery notice dated 27th September, 2023 to the petitioner.

- e. Upon receipt of the aforesaid recovery notice on 15th October, 2023, the petitioner learnt about the above said *ex-parte* order.
- f. Aggrieved by the impugned *ex-parte* award dated 17th February, 2023, the petitioner has filed the instant petition.

3. Learned counsel appearing on behalf of the petitioner submitted that respondent no. 2 concealed the fact from the learned Labour Commissioner that he was not directly employed by the petitioner, instead, he was engaged for additional work by an electrician who was working at the petitioner's house. He also concealed the fact that respondent no. 2 had approached two distinct forums i.e., the learned Labour Commissioner and the learned Trial Court, seeking similar relief i.e., compensation for the injuries sustained by him due to the accident.

4. It is further submitted that respondent no. 2 had already settled all his claims with the petitioner vide an agreement dated 12th April, 2019 wherein he was paid Rs.1,80,000/- and he undertook not to initiate any legal proceedings against the petitioner in the future.

5. It is submitted that there was no verbal or written agreement between respondent no. 2 and the petitioner. Therefore, respondent no. 2 was working under the control and supervision of the electrician only.

6. It is submitted that the learned Labour Commissioner failed to



appreciate the fact that the liability to compensate under the Employee's Compensation Act, 1923 lies solely with the principal employer and the petitioner is not the principal employer of respondent no. 2.

7. It is submitted that the petitioner never received any notice, summons or communication regarding the proceedings before the learned Labour Commissioner and the petitioner was never given an opportunity to defend himself. Hence, the learned Labour Commissioner has wrongly passed the impugned award *ex-parte*.

8. In view of the aforesaid submissions, the learned counsel for the petitioner submitted that the instant petition may be allowed and the reliefs as sought by the petitioner be granted by this Court.

9. *Per Contra*, learned counsel appearing on behalf of the respondents vehemently opposed the instant petition submitting to the effect that there is no legal infirmity or perversity in the impugned award which merits interference of this Court.

10. It is submitted that ample opportunities were provided to the petitioner to appear and file a written statement, however, the petitioner chose to abstain himself from appearing before the learned Labour Commissioner.

11. It is further submitted that the petitioner assured respondent no. 2 that he will pay him the injury compensation, however, the petitioner eventually did not pay any injury compensation to the petitioner.

12. It is submitted that respondent no. 2's both hands below the elbow and two fingers of the left foot have been amputated. Hence, respondent no. 2 has become totally disabled and not able to perform any work which he was



capable of performing before the accident.

13. It is further submitted that respondent no. 2 sent a demand notice dated 13th July, 2021 however, the petitioner did not reply to the same.

14. In view of the aforesaid submissions, the learned counsel for the respondent submitted that the instant petition is without any merit and may be dismissed by this Court.

15. Heard learned counsel for the parties as well as perused the material on record.

16. It is the case of the petitioner that the liability to compensate under the Employee's Compensation Act, 1923 is with the principal employer and the petitioner is not the principal employer of respondent no. 2 since respondent no. 2 was not directly employed by the petitioner instead, he was employed by the electrician engaged by the petitioner. Therefore, the petitioner is not liable to compensate respondent no.2. It is further submitted that the respondent no. 2 has approached two distinct forums seeking similar relief despite settling all his claims vide an agreement and giving an undertaking that he would not initiate any legal proceedings against the petitioner.

17. It is contended that the impugned award suffers from illegality since, the petitioner never received any notice pertaining to the proceedings before the learned Labour Commissioner and hence, the impugned award was passed without giving an opportunity to the petitioner to defend himself.

18. In rival submissions, it is submitted that ample opportunities were provided to the petitioner to appear before the learned Labour Commissioner and hence, the learned Labour Commissioner had no option but to proceed



ex-parte. It is further submitted that after the accident, respondent no. 2 became totally disabled and is not able to perform any work which he was capable of performing prior to the accident.

19. Before advertng to the merits of the case, this Court deems it germane to reiterate the settled principle of law pertaining to issuance of writ of certiorari. A writ of certiorari may be issued only in those cases where there is an order of the lower Court which is to be quashed on the ground that there has been a wrongful exercise of powers by the lower Court. The Court does not sit as an appellate authority perusing the entire record, re-appreciating the evidence, etc. The writ of certiorari can be issued if an error of law is apparent on the face of the record and in such cases, the Court has to take into account the circumstances and pass an order in equity and not as an appellate authority.

20. The petitioner has approached this Court seeking to set aside the findings of the learned Labour Commissioner as passed *vide* the impugned Award dated 17th February, 2023 therefore, before delving into the averments advanced by the learned counsel appearing on behalf of the parties, in order to adjudicate upon the present matter, this Court deems it imperative to analyse the findings of the impugned Award dated 17th February, 2023 and ascertain the reasoning afforded by the learned Labour Commissioner. The relevant paragraphs of the impugned Award are reproduced herein below for reference:

“2. In the claim petition, it has been stated by the claimant that he was working as 'Electrician' with R-2 for the last 03 years on



the last drawn salary Rs.15,000/- per month with full honesty and devotion. The claimant submitted that R-2 deployed him in the house of R-1 for the fitting of electric work where the construction work was going on and on 2nd floor, on lentor, the work of electricity was going on. On 28.03.2019 at about 02.00 p.m. R-2 Sh. Chandrashekar Chouhan directed him to keep the iron roads where the work of frame work for lentor was going on. R-1 and 2 directed the claimant to take the iron roads on top floor. On this the claimant told the respondents that he is an electrician not a labour hence the work of carrying the roads on top floor does not belong to him. R-1 and 2 forced him to carry the iron roads. R-1 Sh. Subhash started giving roads on 2nd floor and from 2nd floor the claimant was asked to give the same to R-2. When R-2 did not hold the iron roads properly resulting the iron roads came in contact with the electricity wires and the claimant goat electrocuted due to electricity current. The claimant further stated that immediately after the accident the respondents took his mobile phone and purse and took him to BSA Hospital, Rohini, from where the claimant was referred to Safdarjung Hospital. The claimant has also mentioned that the respondent did not give intimation to his family also did not allow him to meet his family. The claimant requested the respondents that he may be allowed to talk on telephone of to his friend Sh. Kallu. The respondents allowed the claimant and his friend further informed to the family of claimant. His family members came to the hospital to meet him and by the time the respondents ran away from the hospital. The family members of the claimant called police on 100 number and they were advised by the police to file written complaint in the P.S Aman Vihar. On this FIR No. 0487 dated 17.09.2019 was registered against the respondents. The claimant further mentioned that the respondents paid Rs.1,80,000/- vide DD No. 746971 dated 11.04.2019 to his family and assured the claimant that when he recover from the injury they will pay him the injury compensation. The



respondents thereafter failed to pay the injury compensation to the claimant. The claimant has further mentioned that his both hands below elbow have been amputated also the doctors during treatment cut 02 fingers of his left foot. The claimant has stated that he has sent demand notice dated 13.07.2021 through speed post to the respondents but the respondents did not pay any heed to this. The claimant has stated that he has become 100% disable and unable to perform any work due to employment Injury and requested to award injury compensation alongwith interest and penalty as per the provisions of the Employee's Compensation Act, 1923.

3. Summon dated 07.09.2021 alongwith copy of claim was sent to the respondent with direction to appear and file written statement. As per tracking report summon had been duly delivered upon R-2 but despite that R-2-failed to appear and file written statement hence was proceeded ex-parte by the then Commissioner. R-1 also did not appear despite having knowledge of the matter as FIR criminal case has been registered against him which sees that R-1 deliberately not interested to defend itself hence he was proceeded ex-parte.

4. The claimant filed evidence by way of affidavit exbt. WW1/A along with documents i.e. copy of Aadhar card exbt. WW1/I, copy of FIR No. 0487 dated 17.09.2019 registered with P.S Rohini exbt. WW1/2, copy of demand notice dated 13.07.2021 exbt. WW1/3 and postal receipt of the same exbt. WW1/4 Statement of claimant was also recorded.

5. In view of the documents filed by the claimant he has proved that he met with an accident during the course and out of his employment under the respondents.

6. Despite providing ample opportunities, respondents failed to appear and file written statement and opted to remain absent which seems that respondents are not interested to defend themselves, hence, I have no alternative but to believe the un rebutted, unchallenged and unopposed evidence filed by the



claimant and hold that the claimant is entitled to receive injury compensation from the respondents.

7. Now comes as to what amount of compensation the claimant is entitled to. According to his age the date of birth of the claimant as per Aadhar Card is 01.01.1993 therefore he was 26 years old at the time of accident. The relevant factor as per schedule IV corresponding to the age of the injured workman at the time of accident is 215.28.

Hence I hold that the claimant has sustained injury and has suffered loss of earning capacity @ 100%. As per section 2(1) and (4) of schedule I part 1 of the Act, the claimant sustained injury i.e. loss of both hands and amputation at higher sites. In view of the above facts and circumstances and on the basis of 26 years of age, the relevant applicable factor and Rs.8,000/- per month wages, payable amount of compensation is calculated as under:

<i>Relevant factor of 26 years:</i>	<i>215.28</i>
<i>60% of wages @ Rs.8000/- pm:</i>	<i>Rs. 4,800/-</i>
<i>Amount of compensation:</i>	<i>215.28 X 4800</i>
	<i>= Rs.10,33,344/-</i>

8. The claimant is also entitled to interest as per Section 4A of the 'Act' @ 12% per annum from the date of accident.

9. Therefore, the respondents i.e. M/s Subhash Electrician, Through its Proprietor Sh. Subhash S/o Sh. Ram Kumar, H No. 51, Pocket-10, Sector- 21 Rohini, Delhi- 110085 also at Sh. Subhash S/o Sh. Ram Kumar, Village Mochwa, P.S Amethi, Block-Bhadar, Distt. Amethi, U.P-227816 and Sh. Chandrashekar Chouhan, H. No. 383-393, Pocket-9, Sector-21, Rohini, Delhi-110085 are jointly and severally liable to pay hence directed to deposit the compensation amount of Rs.10,33,344/- (Rupees Ten Lakh Thirty Three Thousand Three Hundred and Forty Four Only) on account of injury



compensation payable to the claimant alongwith interest @ 12% p.a. w.e.f. 28.03.2019 till its realization, through pay order in favour of "Commissioner Employees Compensation-VII" within a period of 30 days from issue of this order, failing which the same shall be recovered as arrears of land revenue.

10. The respondents are further directed to appear on 15.03.2023 at 10.00 a.m. and to show cause as to why penalty u/s 4(a) (3) (b) of the Employee's Compensation Act, 1923 be not imposed upon them for the default in paying the compensation when it was due as per the Act."

21. Upon perusal of the above, it is observed that the respondent no. 2 filed a claim petition seeking compensation on the ground that he met with an accident while working at the petitioner's house pursuant to which he became totally disabled.

22. The learned Labour Commissioner stated that the summons were served upon the petitioner with directions to appear before it and file written statements. The petitioner failed to appear, hence the learned Labour Commissioner proceeded *ex-parte* and considered the evidence produced on record by the respondent no. 2. Accordingly, it was held that the respondent no. 2 is entitled to receive injury compensation.

23. The learned Labour Commissioner further adjudicated upon the gravity of injury sustained by the respondent no. 2 and the consequential disability caused by it. According to Section 2(1) and (4) of Schedule I Part 1 of the Employees Compensation Act, 1923, the learned Labour Commissioner held that respondent no. 2 has suffered injuries which have caused loss of 100% of his earning capacity. It further opined the quantum



of compensation granted to respondent no. 2, by taking into consideration the relevant factors and circumstances, and arrived at the conclusion that the respondent no. 2 is entitled to the compensation amount of Rs.10,33,344/- and the electrician and the petitioner are jointly and severally liable to pay the same.

24. This Court is of the view that the learned Labour Commissioner has correctly proceeded *ex-parte* since the petitioner despite several opportunities neither appeared nor filed his written statement. Moreover, the learned Labour Commissioner has correctly calculated the quantum of injury compensation payable to the respondent no. 2 by taking into account his age at the time of the accident and the relevant factor as per Schedule IV corresponding to the age of respondent no. 2 at the time of accident and accordingly held that the injuries sustained by respondent no. 2 have caused him full loss of his earning capacity. Hence, respondent no. 2 is rightly entitled to compensation amounting to Rs.10,33,344/-.

25. In light of the factum that the respondent no. 2 was employed by the petitioner through the electrician, learned Labour Commissioner has correctly held petitioner as well as the electrician to be jointly and severally liable to compensate the respondent no. 2.

26. This Court is of the view that the impugned award does not suffer from any illegality and does not warrant any intervention of this Court by way of issuance of writ of certiorari as the petitioner has not been able to make out a case in his favour.

27. In view of the foregoing discussions of facts as well as law, this Court



2024:DHC:2803



upholds the impugned award dated 17th February, 2023 passed by the learned Commissioner under Employee's Compensation Act, 1923.

28. Accordingly, the instant petition is dismissed along with pending applications, if any.

29. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

MARCH 28, 2024
rk/db/ryp