



*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment reserved on: 01.07.2024

Judgment delivered on: 22.07.2024

+ FAO 279/2023
RAJESH RAI

..... Appellant

versus

KHAJAN SINGH@ DURVEEN SINGH & ANR.

..... Respondents

Memo of Appearance

For the Appellant: Mr. Kushagra Bansal, Advocate.

For the Respondents: Mr. R.K. Nain with Mr. Chandan
Prajapati, Advocates for R-1.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

MANOJ JAIN, J

CM APPL. 56964/2023 (condonation of delay)

1. There is a delay of 346 days in filing the present appeal.
2. The appellant is employer of respondent No. 1. It is contended that the appellant belongs to low-income strata of the society and though, the impugned order had been passed on 09.09.2022, but he received the copy only on 17.05.2023. Immediately, thereafter, he contacted his counsel to inquire about the further legal recourse. According to him, the delay in the aforesaid background is not intentional or *mala fide*.
3. Though, the application has been opposed by the respondent No. 1, keeping in mind the fact that the endeavour of the Court should



be to decide the matter on merits in order to do substantial justice and the technicalities should not be permitted to govern the outcome of any such appeal, the delay is, hereby, condoned.

FAO 279/2023

1. This appeal is filed at the instance of one Sh. Rajesh Rai, assailing the order dated 09.09.2022 passed by Ld. Commissioner, Employee's Compensation, District North-West, Delhi under Section 30 of the Employee's Compensation Act, 1923 ("EC Act") in case bearing no. ECI/117/NW/19/4066-68 whereby the claim of the Respondent No. 1 herein was allowed.

FACTUAL BACKGROUND

2. Briefly stating, Respondent No. 1 ("claimant") was employed with the Appellant ("Employer") on vehicle bearing No. DL 1 M 6643 ("Truck") admittedly insured with Respondent No. 2 ("Insurance Company") vide Policy No. 101047/31/19/012721 for the period from 27.10.2018 to 26.10.2019. On the fateful day i.e., midnight of 12.09.2019, the said truck driven by claimant met with an accident. The truck loaded with bananas was going from Barabanki to Budh Vihar, Delhi. A tyre of the truck got punctured. The claimant, therefore, parked the truck aside to change the tyre. While in the process of changing the tyre, the claimant was hit by a car due to which he sustained grievous injuries. He was admitted in AIIMS Hospital, Delhi where he received treatment for his injuries.



3. It was in the above background that the claimant filed a claim petition under Section 22 of the EC Act against the Employer and the Insurance Company seeking compensation.

PROCEEDINGS BEFORE THE COMMISSIONER

4. As per the statutory mandate, a notice under Section 10 of EC Act was served upon the Employer and a claim application was filed before Learned Commissioner for compensation to the extent of 100% disability and as per Sections 4(1) (c) & 4(1) (d) of the Act along with interest @ 12% p.a. from the date of accident till its realization and penalty to the extent of 50%, as the accident had occurred during the course of the employment.

5. Claim application filed by the claimant was contested both by the Employer and Insurance Company. Learned Commissioner framed following issues:-

- i. Whether the accident leading to disablement to the claimant has occurred in the course out of employment with Respondent No.1? And is so, what amount of compensation the claimant is entitled to?*
- ii. Any other relief?*
- iii. Whether the Respondents are liable for penalty and if so, to what extent and what amount?*

6. During the course of the proceedings before learned Commissioner, claimant filed his evidence affidavit (Ex.AW1/A) and was cross-examined by the Insurance Company. No contradiction or



infirmary could be brought forth during such cross-examination. Despite opportunity to the employer to cross-examine the claimant or lead his evidence, he neither led any evidence nor cross-examined the claimant.

7. Initially, when the employer appeared before the learned Commissioner, he admitted that the claimant was his driver for last 5-6 months. It is pertinent to mention here that in the written statement filed by the employer, he improved upon such version by baldly contending that the claimant was not his “permanent employee”. Rather, he used to work on “casual basis”. He also contended that the expenditure towards the treatment of the claimant was borne by him. Lastly, it was stated that the injuries of the claimant were not of the nature which could make him permanently disabled.

8. Suffice is to say, employer placed nothing before the learned Commissioner to contradict the claims of the claimant. As noticed, he did not even lead any evidence

9. Claimant summoned Dr. B. Kanhar, Consultant Orthopaedics from the Disability Boards, Aruna Asaf Ali Govt. Hospital, Delhi and his statement was recorded and cross-examination was done by the counsel of the Insurance Company. Further, on assessment of disability, the Medical Board assessed his disability as 20% permanent physical impairment in relation to left upper limb and his case was diagnosed as #Clavicle (L).



IMPUGNED JUDGEMENT

10. Learned Commissioner decided all the issues in favour of the claimant observing that the employer had admitted the factum of employment and the accident. The stand of the insurance company was also discarded.

11. It was held that the evidence led by the claimant was sufficient to hold that he was working as an employee and met with an accident while discharging his duties on the midnight of 12.09.2019 leading to his disablement.

12. Learned Commissioner, considering the loss of earning capacity as 100%, when no counter evidence was led or proved by the employer and the Insurance Company, assessed the compensation payable to the claimant of Rs. 7,34,832/-. In addition to this Rs. 71,912/- was computed as per Section 4 (2A) of the EC Act for the actual medical expenses incurred by the claimant.

13. Considering the mandate of the EC Act, Learned Commissioner further granted a simple interest on the amount of compensation @12% p.a. w.e.f. 13.09.2019 till the date of realization of the compensation amount by the claimant.

14. As the authorized representative of the Insurance Company admitted that the vehicle in question was duly insured at the time of the accident, Insurance Company was made liable to pay the compensation, interest and the medical reimbursement to the claimant.

15. On the issue of the penalty as per Section 4A of the EC Act and failure to give any justification for causing the delay, a penalty to the



extent of 30% was imposed which comes to be Rs. 2,20,450/- and was directed to be paid by the Employer to the claimant.

16. This is how the appellant is before us seeking to set aside said order dated 09.09.2022 passed by learned Commissioner.

ANALYSIS AND DECISION

17. The Employees' Compensation Act, 1923 is a social welfare legislation. It mandates compensation to employees for work-related injuries, disabilities, or death. The Act outlines the responsibilities of employers to provide timely compensation and details the procedures for determining and disbursing such compensation. It aims to mitigate the financial hardships faced by employees and their dependents due to workplace accidents, thus promoting a safer working environment and fostering employer accountability.

18. The sole question posed to us in the present appeal is to the effect whether the employer is able to prove that the claimant was his casual employee or bailee, and if yes, the impact thereof.

19. Prior to addressing the above, it is imperative to elucidate the scope of appeal under Section 30 of the EC Act. In this context, it is pertinent to refer to “*North East Karnataka Road Transport Corporation v. Sujatha* (2019) 11 SCC 514” wherein the Hon'ble Supreme Court reiterated the scope of interference in an appeal and held: -

“11. The appeal provided under Section 30 of the Act to the High



Court against the order of the Commissioner lies only against the specific orders set out in clauses (a) to (e) of Section 30 of the Act with a further rider contained in the first proviso to the section that the appeal must involve substantial questions of law.

12. In other words, the appeal provided under Section 30 of the Act to the High Court against the order of the Commissioner is not like a regular first appeal akin to Section 96 of the Civil Procedure Code, 1908 which can be heard both on facts and law. The appellate jurisdiction of the High Court to decide the appeal is confined only to examine the substantial questions of law arising in the case.”

20. In Fulmati Dhramdev Yadav & Anr. Vs. New Indian Assurance Co. Ltd. & Anr. 2023 SCC OnLine SC 1105 it has been enunciated as under:-

“15. What this Court must consider is whether the impugned judgement is sustainable in law? On merits, the consideration would be whether the order of the Commissioner, in light of the materials on record, can stand or not? In other words, the impugned judgement must stand true on two grounds, (i) statutory text; and (ii) whether the materials on record support the conclusion drawn therein or not?”

21. Keeping in mind the limited scope as delineated in *North East Karnataka Road Transport Corporation v. Sujatha* (supra), this court would endeavour to restrict itself within the above parameters.

EMPLOYER- EMPLOYEE RELATION

22. In the present case, learned counsel for the Employer has tried to distinguish the relationship between him and claimant to that of a bailor-bailee instead of an employer-employee.

23. In this regard, it is noted that during the proceedings before the learned Commissioner, the claimant had examined himself as AW1 and exhibited various documents viz. copy of disability certificate, certified copies of police record (MLC, GD Entry and DD Entries),



copy of medical treatment documents, copy of medical bill, copy of driving licence, copy of Aadhar card, copy of insurance policy & copy of traffic challan.

24. It is pertinent to mention here that in the written statement filed by the employer, he baldly asserted that the claimant was not his permanent employee. He labelled him as worker on casual basis but fact remains that the employer has not placed anything before the Learned Commissioner to corroborate his such assertion or to contradict the claim of the claimant. In the cross-examination by the insurance company, the claimant deposed as under: -

“I have worked for about 8 months with Respondent No. 1. I do not remember the exact date of my joining. I left my job when my accident occurred on 12.09.2019. I was working as driver with Respondent No. 1.”

25. Considering that nothing was there to contradict the statement made by the claimant in his cross-examination, it was but obvious on the part of the learned Commissioner to have held that the claimant was employed as a driver with employer.

26. Moreover, the appellant did not even bother to put a single question to claimant when he was being examined.

27. As noted already, he did not even enter into witness box himself to substantiate his own version.

28. Therefore, there was no reason to have presumed that claimant was either a casual employee or a bailee.



29. Be that as it may, even assuming for a moment that the Claimant was only employed as a casual labour, it is insufficient to deny the lawful claim of the claimant. The said contention, even otherwise, is not tenable in view of the law laid down by this Court in “*Govind Goenka v. Dayawati*: 2012 SCC OnLine Del 1723” wherein a Co-ordinate Bench of this Court analysed the change in the scope of definition of ‘workman’ under the EC Act, post its amendment in the year 2000 and held as under: -

“8. So far as the definition of workman envisaged in Section 2(n) of the said Act is concerned, there has been a drastic change in the definition of the “Workman” as it stood prior to the amendment and after the amendment. Prior to the amendment, certainly the workman whose employment was of a casual nature and who was employed otherwise than for the purpose of trade or Business of the employer would not fall in the said definition. However, after the amendment of the said definition through the Amending Act 46 of 2000, the Parliament had removed the said mischief which was then prevailing and coming in the way of such casual Workmen who met with an accident during the course of the employment unconnected with the employer's trade or Business. With the amendment of the said definition, now certainly the workman whose employment is of casual nature and who is employed otherwise than for the purpose of employer's trade or business would also be covered within the definition of workman.....”.

30. Said observation was followed by coordinate Bench of this court in “*Brijesh Kumar Verma v. Aurangjeb*: 2017 SCC OnLine Del 12513”.

31. Upon careful consideration of the foregoing, this Court concludes that the learned Commissioner correctly determined the



existence of an employer-employee relationship between the parties. Consequently, the argument presented by the appellant/ employer in this case is liable to be dismissed outrightly.

IMPOSITION OF PENALTY

32. Though not agitated, this Court must consider whether the facts and circumstances of the present case justify imposition of penalty upon employer. This has to be seen in the backdrop of relevant statutory provisions and judicial precedents.

33. To evaluate this issue, it is necessary to first examine the statutory framework laid down which is as under: -

“4A. Compensation to be paid when due and penalty for default.-

(1) Compensation under section 4 shall be paid as soon as it falls due.

*(2) In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts, and, such payment shall be deposited with the Commissioner or made to the *[employee], as the case may be, without prejudice to the right of the*[employee] to make any further claim.*

(3) Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner shall—

(a) direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve per cent. per annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government, by notification in the Official Gazette, on the amount due; and

(b) if, in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears and interest thereon, pay a further sum not exceeding fifty per cent, of such amount by way of penalty:

Provided that an order for the payment of penalty shall not be passed under clause (b) without giving a reasonable opportunity to the employer to show cause why it should not be passed.

Explanation.--For the purposes of this sub-section, "scheduled



*bank" means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934). (3A) The interest and the penalty payable under sub-section (3) shall be paid to the *[employee] or his dependant, as the case may be."*

34. Considering the legal principles established in the EC Act, the learned Commissioner, in the present case, provided the employer with a reasonable opportunity to show cause for the unjustified delay in the payment of compensation. It is crucial to note that this Court finds no evidence on record indicating that any explanation was ever submitted by the employer before the learned Commissioner or that any *bona fide* was shown on his part suggesting that he was putting in efforts for the payment of the compensation in coordination with the insurance company. Per contra, the employer was shying away from the liability by even denying the relationship of employer- employee to that of a bailor-bailee or his being only a casual worker, which manifestly caused unjust delay. It is relevant to refer *Ved Prakash Garg v. Premi Devi*: AIR 1997 SC 3854, wherein the Apex Court has held that insurance companies are liable to pay not only the principal amount of compensation but also the interest on such compensation if ordered by the Commissioner. This liability arises automatically upon the employer's default in payment beyond one month from the due date, and it is considered a part of the statutory liability covered by the insurance policy. However, penalties imposed on the employer for unjustified delays under Section 4A(3)(b) of EC Act, do not fall within the insurance coverage and must be borne solely by the employer.

35. Further, in *K Sivaraman & Ors. Vs P Sathishkumar & Ors.*:2020 4 SCC 594, the Apex Court, while placing reliance on



Pratap Narain Singh Deo vs Srinivas Sabata, 1976 AIR 222, observed that:-

“16. In terms of Section 4-A(1), compensation under Section 4 is payable “as soon as it falls due”. Section 4-A(2) contemplates a situation wherein the employer, though accepting the liability to pay compensation to the injured employee, disputes the quantum of compensation payable. In such cases, sub-section (2) enjoins the employer to make a provisional payment based on the extent of accepted liability by depositing it with the Commissioner or by paying it directly to the employee. Section 4-A(3) stipulates that where an employer defaults in paying compensation within one month from the date on which it falls due, the Commissioner is empowered to direct the payment of interest as well as an additional amount as arrears for an unjustifiable delay in making the payment. Section 19 of the Act reads:

“19. Reference to Commissioners.—(1) If any question arises in any proceedings under this Act as to the liability of any person to pay compensation (including any question as to whether a person injured is or is not an employee) or as to the amount or duration of compensation (including any question as to the nature or extent of disablement), the question shall, in default of agreement, be settled by a Commissioner.”

17. Section 19 stipulates that any question arising in any proceeding under the Act shall, in the default of an agreement, be settled by the Commissioner. A four-Judge Bench of this Court rejected the contention urged by the appellant and held that compensation “falls due” on the date of the accident. Consequently, the Commissioner was empowered to impose interest or penalty for the duration prior to the settling of the claim or where there was unjustified delay in making good the payment of compensation. The Court held : (Pratap Narain Singh case [Pratap Narain Singh Deo v. Srinivas Sabata, (1976) 1 SCC 289 : 1976 SCC (L&S) 52] , SCC pp. 291-92, paras 7-8)

“7. ... The employer therefore became liable to pay the compensation as soon as the aforesaid personal injury was caused to the workman by the accident which admittedly arose out of and in the course of the employment. It is therefore futile to contend that the



compensation did not fall due until after the Commissioner's order dated 6-5-1969 under Section 19. What the section provides is that if any question arises in any proceeding under the Act as to the liability of any person to pay compensation or as to the amount or duration of the compensation it shall, in default of an agreement, be settled by the Commissioner. There is therefore nothing to justify the argument that the employer's liability to pay compensation under Section 3, in respect of the injury, was suspended until after the settlement contemplated by Section 19. The appellant was thus liable to pay compensation as soon as the aforesaid personal injury was caused to the appellant, and there is no justification for the argument to the contrary.

8. It was the duty of the appellant, under Section 4-A(1) of the Act, to pay the compensation at the rate provided by Section 4 as soon as the personal injury was caused to the respondent. He failed to do so. What is worse, he did not even make a provisional payment under sub-section (2) of Section 4 for, as has been stated, he went to the extent of taking the false pleas that the respondent was a casual contractor and that the accident occurred solely because of his negligence. Then there is the further fact that he paid no heed to the respondent's personal approach for obtaining the compensation. It will be recalled that the respondent was driven to the necessity of making an application to the Commissioner for settling the claim, and even there the appellant raised a frivolous objection as to the jurisdiction of the Commissioner and prevailed on the respondent to file a memorandum of agreement settling the claim for a sum which was so grossly inadequate that it was rejected by the Commissioner. In these facts and circumstances, we have no doubt that the Commissioner was fully justified in making an order for the payment of interest and the penalty."

36. In the instant case, the Petitioner has challenged the employer-employee relationship, which he failed to establish in any manner whatsoever.

37. It is pertinent to note that the employer has been subjected to a penalty, fixed at 30%, to be borne by the employer for failing to make



any payment before the learned Commissioner. The penalty imposed under Section 4(A)(2) and (3) of the EC Act has been rightly determined by the learned Commissioner.

38. In light of the cumulative evidence establishing the employment of the claimant with the employer, and considering the legislative intent aimed at social welfare and employee protection, it is apparent that the learned Commissioner, acting as the final arbiter of factual matters, has appropriately exercised his jurisdiction.

39. The appellate scope of this Court is, though, confined strictly to substantial questions of law which in the present context, do not even seem to exist, the court has though gone deeper into the evaluation of evidence yet it has not been able to find any perversity in the impugned order.

40. Consequently, the appeal is hereby dismissed.

41. No order as to costs.

CM APPL. 56962/2023(stay)

In view of the fact that the appeal has been dismissed, the stay granted by this Court on 20.03.2024 stands vacated.

(MANOJ JAIN)
JUDGE

JULY 22, 2024/sw