

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.667 of 2019

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Kuber Sah, S/o Motilal Sah, resident of Village Khaira Azam, P.S. Baikunthpur, District- Gopalganj.

... .. Opposite party- Appellant/s

Versus

Ram Bilash Sah, S/o Banshi Sah, resident of Village- Khaira Azam, Turhi Tola, P.S. Baikunthpur, District- Gopalganj.

... .. Claimant- Applicant- Respondent/s

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Appearance :

For the Appellant/s : Mr. Mukesh Prasad Singh, Advocate

For the Respondent/s : Mr. Nagendra Rai, Advocate

Mr. Navin Nikunj, Advocate

M. Koshalendra Rai, Advocate

Mr. Soshalendra Rai, Advocate

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CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

17 20-06-2025 This appeal is directed against the judgment dated 29.06.2019 passed by the learned Presiding Officer, Labour Court, Chapra (for short, 'the Labour Court'), in W.C. Case No. 1 of 2002, whereby the Labour Court awarded compensation of Rs. 95,102/- (ninety-five thousand one hundred and two) along with interest at the rate of 12% per annum with effect from the date of the accident.

2. According to the claim case, the applicant-respondent was employed as a labourer by the opposite party-



appellant. While operating a straw cutting machine belonging to the appellant, the left hand of the applicant-respondent became got stuck during the course of his work/ employment on 15.02.2001. It was asserted that there existed a relationship of employer and employee between the opposite party-appellant and the applicant-respondent. As a result of the said accident, the respondent's left hand was severely crushed and injured, leading to amputation below the wrist at the level of the carpal bones due to the injuries caused by the heavy, sharp cutting machinery and has become completely disabled permanently.

3. It is further pleaded that that the applicant-respondent was 35 years old at the time of the accident and was earning a monthly salary of Rs. 3,000/- (three thousand). The accident took place during and in the course of his employment under the opposite party-appellant.

4. On service of summons, the opposite party-appellant appeared and filed a show cause, denying the existence of an employer-employee relationship between himself and the applicant-respondent. It was further pleaded that both the applicant-respondent and the opposite party-appellant were labourers, and that the straw cutting machine did not belong to him.



5. Subsequently, the opposite party-appellant filed an amendment petition, stating therein that the straw cutting machine, in fact, belonged to the applicant-respondent, who had taken a loan of Rs. 30,000 (thirty thousand) from him. He further alleged that the applicant-respondent had filed a false claim to evade repayment of the loan.

6. After hearing the parties and scrutinizing the materials on record as well as the evidence adduced by them, the learned Labour Court held that the applicant-respondent and the witnesses examined on his behalf had supported the applicant-respondent's case. The plea of the opposite party-appellant that the applicant-respondent was operating his own machine does not appear to be reliable. In the show cause filed by the opposite party-appellant, it was stated that the accident occurred while operating the straw cutting machine on which both he and the applicant-respondent were working, and that after the accident, Rambilash Sah (respondent) was taken to the hospital. However, in his evidence, he (appellant) claimed that he was not present at the place of occurrence and only heard later that the applicant-respondent's hand had been severely crushed and injured and subsequently amputated. This contradiction between the pleadings and the evidence adduced by the opposite party-



appellant could cast doubt on his version of occurrence. Further, Exhibit A, filed by the opposite party-appellant and purported to be a '*Sanha*' lodged by the applicant-respondent, appears to be inauthentic, as it does not appear to bear the signature or thumb impression of the applicant-respondent. The document was brought on record without any forwarding or certificate attesting to its genuineness. Consequently, Exhibit A could not be relied upon. The Court further observed that the accident in which the applicant-respondent became injured occurred during and in the course of his employment under the opposite party-appellant, and the Labour Court also considered the injury report dated 15.02.2001 (Exhibit 3), issued by the Civil Assistant Surgeon, Sadar Hospital, Gopalganj, along with Exhibit 2, report of the Medical Board for Handicaps issued by the office of the Civil Surgeon-cum-Chief Medical Officer, and held that the injury sustained by the applicant-respondent falls under Serial No. 4, Part II of Schedule I of the Employee's Compensation Act, 1923 (for short '*the Act*'). Accordingly, the injury amounts to permanent partial disablement carrying a relevant percentage of loss of earning capacity assessed at 60%. It was further held that the monthly salary claimed by the applicant-respondent appeared to be exaggerated.



7. The applicant-respondent was engaged by the opposite party-appellant on daily wages as an unskilled labourer. The Labour Court assessed the applicant-respondent's wages on the basis of the prevailing rates and the Government's notified minimum wages at the time of the accident. The daily wage of applicant comes to Rs. 54/- per day and Rs. $(54 \times 30) =$ Rs. 1620/- monthly and, accordingly, held that the applicant-respondent is entitled to be compensated by opposite party-appellant under the Act. The opposite party-appellant was directed to pay compensation of Rs. 60% of Rs. 1620 (60% of $1620 \times 163.07 =$ Rs 95,102/- (Ninty five thousand one hundred two) along with simple interest at the rate of 12% from the date of accident.

8. While challenging the validity of the impugned judgment, learned counsel for the opposite party- appellant contends that the applicant-respondent had filed a fabricated case before the learned Court below. It is further submitted that the learned Labour Court failed to consider Exhibit-A (*Sada Sanha*), which is the *Fardbeyan* of the claimant-respondent recorded at Sadar Hospital, Gopalganj, where the claimant was receiving treatment immediately after the accident, and on the basis of the said *Fardbeyan*, *Sidhwalia* P.S. Case No. 340 of



2001 was registered. In the said 'fardbeyan'/'sanha', the claimant himself admitted that the straw cutting machine fitted in the cart belonged to him, and further stated that no other person was responsible for the injuries he sustained while cutting fodder. However, contrary to the earlier statement, the claimant-respondent concocted a false story in the claim case in order to take compensation. The learned Labour court wrongly disbelieved Ext. A without any rhyme and reason. It is pertinent to note that the statement recorded in Sidhwalia P.S. Case No. 340 of 2001 is the claimant-respondent's first statement regarding the incident. It is well settled that the first statement made by a person prevails over any subsequent statements given by the same person. In support of this principle, the opposite party-appellant has placed reliance on the order dated 16.02.2004 passed by a Co-ordinate Bench of this Court in ***M.A. No. 30 of 2001 (Branch Manager, the Oriental Insurance Company Limited, Bhagalpur vs. Yogendra Thakur and Another)***. It is further submitted that the learned Labour Court failed to exercise its jurisdiction to summon the records of Sidhwalia P.S. Case No. 340 of 2001 from the concerned police station.

9. On the contrary, learned counsel for the applicant-



respondent submitted that the applicant-respondent has categorically denied having made any statement before the Sub-Inspector at the Government hospital, and has asserted that Exhibit A was prepared by Kuber Sah (the appellant) and is a forged and fabricated document. The said alleged statement (*fardbeyan*) is claimed to have been recorded at 6:30 a.m. on 16.02.2001, without bearing any signature or thumb impression of the applicant-respondent. Moreover, as the applicant-respondent remained unconscious for 24 hours in the hospital and this circumstance belies the authenticity of the *fardbeyan*, which is apparently a forged document.

10. It is further submitted that at the time of the occurrence, the owner of the straw cutting machine was sitting on a chair in front of him. This statement has been mentioned in paragraph 7 of his cross-examination. The applicant-respondent, in paragraph 14 of his cross-examination, has stated that the opposite party-appellant charges Rs. 70/- per hour from customers for cutting straw on his machine by engaging labourers. P.W.4 Umesh Ram has also supported the case of the applicant-respondent. It is submitted that Exhibits i.e., Ext. 1/a, Ext. 2, and Ext. 3 fully prove the factum of the accident and the injury. These Exhibits have been marked as Exhibits without



any objection from the opposite party-appellant. It is further submitted that the witnesses, who have proved the exhibits were not cross-examined by the opposite party-appellant. Therefore, the documents marked as Exhibits on behalf of the applicant-respondent fully prove the existence of the employer-employee relationship, the factum of the accident, the nature of the injury, and the amputation of the left hand. It is further submitted that the opposite party-appellant has given contradictory statements in oral evidence compared to what was stated in the written statement. In paragraph 2 of the written statement, he claimed that he and the applicant used to cut straw together. However, opposite party as O.P. witness no. 1, in paragraph 13 of his cross-examination, gave a completely contradictory statement regarding the accident. He vehemently stated that he was not present at the time of the accident. The entire statement of opposite party-appellant, in his cross-examination, is entirely contradictory to the statements where he admits having worked with applicant-respondent on the day of the accident and he carried the injured applicant-respondent along with other co-villagers to the Government hospital and, therefore, his oral evidence cannot be relied upon, whereby the factum of employment and the accident during the course of employment



is completely negated. The statement of opposite party-appellant regarding advance of Rs. 30,000/- to the opposite party-appellant is also not supported by any document. Further, the O.P.W.3, namely Satya Narain Prasad, in his evidence along with the other witnesses examined on behalf of the opposite party-appellant, denied the existence of an employer-employee relationship in their examination-in-chief. The testimony of O.P.W. No. 3, produced by the opposite party-appellant has, in fact, corroborated the case of the applicant-respondent, establishing that while cutting straw on the machine, the applicant-respondent's hand was cut and injured. It is further submitted that Exhibit A is a forged document. It is neither a certified copy nor the original, nor even a photocopy of the original. It is merely a photocopy of a handwritten paper that bears no thumb impression of the applicant-respondent. Accordingly, the learned Labour Court has rightly passed the impugned judgment based on the materials available on record.

11. Considering the materials on record and the submissions advanced by learned counsel for both the opposite party-appellant and the applicant-respondent, it is apparent that the fact of the accident related to the straw cutting machine is undisputed. It is also established on the basis of the evidence



and materials produced by the parties that Kuber Sah owned a straw cutting machine and that the applicant-respondent was engaged for cutting straw on that machine. The opposite party-appellant has stated in his show cause that the accident occurred while operating on straw cutting machine on which both he and the applicant-respondent were working. It is further pleaded in his show cause that after the accident the injured Rambilas Sah (respondent-applicant) was taken to the hospital by him and other co-villagers on 16.02.2001, and that statement of the injured respondent was recorded on the basis of which Sidhwalia P.S. *Sanha* Case No. 340 of 2001 was registered on 20.02.2001. However, from his show cause filed on 16.01.2002 and the subsequent show cause filed on 30.09.2002, as well as from his oral evidence, it is apparent that the opposite party-appellant was not present at the place of the accident. Thus, the pleadings and the oral evidence are contradictory to each other.

12. So far as Ext. A, namely '*Sanha*' of Sidhwalia P.S. Case No. 340 of 2001 is concerned, on perusal of the said alleged document, it appears that it was recorded by S.I. P.N. Pathak of Gopalganj P.S. on 16.02.2001 at 06:30 hours at Sadar Hospital, Gopalganj, and that the '*Sanha*' was accordingly recorded on 20.02.2001. The said document does not bear the



signature or thumb impression of the claimant-respondent, although the accident occurred on 15.02.2001. It appears to this Court that to support the occurrence of the accident, the applicant-respondent has filed the injury report dated 15.02.2001 (Ext. 3) issued by the Civil Assistant Surgeon, Sadar Hospital, Gopalganj. In light of this, the alleged '*fardbeyan*'/'*Sanha*' appears to be fabricated. The said Exhibit A, filed on behalf of the opposite party-appellant, is a plain photocopy of the statement of the applicant-respondent recorded in connection with '*Sanha*' of Sidhwalia P.S. Case No. 340 of 2001, the authenticity of which has been categorically denied by the applicant-respondent. Ext. 3, which is the report of the Medical Board for Handicaps issued by the office of the Civil Surgeon-cum-Chief Medical Officer, records the nature and category of the disability as moderate. Relying on this report, the learned Labour Court calculated the compensation under the Act, which is found to be correct.

13. Having considered the facts and circumstances of the case and findings of the learned Labour Court, this Court finds no reason to interfere with the impugned judgment dated 29.06.2019 passed by the Presiding Officer, Labour Court, Chapra in W.C. Case No. 01 of 2002. The issues have been



correctly decided, and the findings are proper and well-reasoned. Accordingly, the impugned judgment is affirmed.

14. The appeal being devoid of merit is dismissed.

15. Pending interlocutory applications, if any, shall stand disposed of.

(Khatim Reza, J)

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