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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO 120/2023, CM APPL. 25280/2023 & CM APPL. 25282/2023**

SHRI MANOJ BALIA

.....Appellant

Through: Mr. Saurabh Munjal with Mr. Gyan Prakash, Mr. Vivek Gupta and Mr. Vaibhav Munjal, Advs.

versus

MOHD AFTAB

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

% **24.03.2025**

CM APPL. 25281/2023 – EXMP.

1. Allowed, subject to all just exceptions.
2. Application stand disposed of.

FAO 120/2023, CM APPL. 25280/2023 & CM APPL. 25282/2023

3. The appellant is preferring this appeal under Section 30(1)(a) of the Employee's Compensation Act, 1923 [EC Act] for quashing/setting aside the order dated 24.01.2023, passed by the Commissioner Employee's Compensation, South District, New Delhi.
4. In short, a claim petition was filed on behalf of the respondent/claimant seeking compensation for the injuries sustained by him on 03.11.2020 when he was performing duty as a painter at the house of the appellant and fell down from the ladder, as a result of which his right hand got fractured.
5. It was the defence of the appellant that he had not engaged the respondent/claimant, and rather, the appellant had approached for



work on behalf of his mother-in-law namely Smt. Rajinder Kaur Lamba W/o late Sh. Uttam Singh Lamba.

6. On consideration of the pleadings by the parties, the following issues were framed by the trial Court:

- “(i) Whether there exist employer-employee relationship between the respondent and the claimant?
- (ii) Whether the claimant sustained injuries out of and during the course of employment?
- (iii) And if yes, to what amount the claimant is entitled to and what directions are necessary in this regard?
- (iv) Relief?”

7. The learned Commissioner gave the following finding on issues No. 1 and 2:

“(i) The claimant in his claim has stated that he was working as a painter with the respondent at the resident of the respondent i.e. H.No. 7/11, Masjid Wali Gully, Near Double Storey, Bhogal, New Delhi- 110014 and he has given a contract of Rs. 40,000/-. That on 03.11.2020 he was performing his duty whitewash and painting the house of respondent. While working on the ladder he suddenly fell from the ladder, resulting his right hand got fractured. He was taken to the AIIMS Trauma Center, New Delhi. He was treated there by the doctors. The claimant in his evidence has filed photo of the claimant as Ex.CW-1/1 & 1/2.

(ii) The respondent in his written statement that the claimant was not employed and or engaged by the respondent for his own work rather the respondent approached the complainant on behalf of his mother-in-law namely Smt. Rajender Kaur Lamba W/o Late Sh. Uttam 'Singh Lamba, residing at H. No. 7/11, Masjid Wali Gali, Near Double Storey, Bhogal, New Delhi- 110014 to get above said house white washed. On 03.11.2020 the complainant due to his negligence, slipped down on the stair of the house and got some minor bruise on his hand. Thereafter the respondent on call of his mother in law immediately took the claimant to the nearby doctor who treated the claimant and did x-ray of his hand which clearly manifests that no fracture was there. The respondent paid entire medical bills and doctor's fee of the claimant. That the claimant has not suffered any partial and or permanent disablement which reduced his earning capacity on account of the said incident. There is no total disablement whether of a temporary or permanent nature, which incapacitates the



claimant for all work which he was capable of performing at the time of the accident. The respondent is residing separately at his residence i.e. H. No. 130/8, Krishna Nagar, Safdurjung Enclave, New Delhi- 110029 with his family. The respondent on 03.11.2020 immediately took the claimant to the doctor who treated the claimant and done x-ray which clearly manifests that no fracture was there. The respondent paid entire medical bills and doctor's fee of the claimant. The respondent has submitted that police did not register FIR on the statement of, the claimant because after investing to the police came to know that the claimant habitually makes such-demand.

(iii) It is not necessary that in each and every case a FIR has to be filed to prove the case. As in the present case, the respondent stated in his reply that he approached the claimant for whitewash and painting work. On the basis oral understanding contract made with claimant and also made advance payment of Rs. 4,000/-. It is admitted fact by the respondent that the claimant was working on 03.11.2020 at house no. 7/11, Masjid Wali Gali, Near Double Storey, Bhogal, New Delhi- 110014, where claimant has fell from the ladder which caused injury to him. Further, the respondent has not filed any application regarding implead his mother in law i.e., Rajender Kaur Lamba a necessary party in the case.

The definition of employer as per section 2 (e) of Employee's compensation Act, 1923 is as under:-

"employer" includes anybody of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer, and, when the services of a [employee] are temporarily lent or let on hire to another person by the person with whom the [employee] has entered into a contract of service or apprenticeship, means such other person while the [employee] is working for him;"

In the light of definition of employer under the Employee's compensation Act, 1923 and reply of respondent I hold that Respondent is employer of claimant and claimant has sustained injuries out of and during the course of employment with the respondent."

8. In view of the aforesaid finding the compensation was worked out as under:

"The wages of the purpose of calculation of compensation as per section 4 (1) (B) is taken as-

60% of Rs. 15000/- i.e. Rs.. 9000/-.

Age of the claimant is 32 years (as per aadhar card).

Age factor is 203.85



Disability is 14%
(vide F.14/59/13412/Pt.MMMH)
Compensation Amount: Rs. 2,56,851/-.”

9. Accordingly, the claimant/respondent has been awarded a total compensation of Rs.2,56,851/- with interest @ 12% p.a. with effect from 03.11.2020 till realization, besides reimbursement of medical expenditure which amounts to Rs.2,556/-. The appellant was also made liable to deposit a penalty of amount of Rs.1,02,740/- (40% of the amount awarded) as well.

10. On a bare perusal of the aforesaid order, this Court is unable to find any substantial question of law raised by the appellant in the present case. Though it was the case of the appellant that the respondent/claimant had been engaged at the behest of his mother-in-law, it is apparent that she was not examined in the course of inquiry before the Commissioner, and therefore, it is not proven that there was no relationship of employer and employee between the parties.

11. The present appeal is, accordingly, bereft of any merits. The same is hereby dismissed. Pending applications also stand disposed of.

12. The interim order dated 27.05.2024 is hereby vacated. The amount of compensation deposited with the learned Commissioner, Employees Compensation be released to the respondent forthwith, if not released, in accordance with law.

13. A copy of this order be sent to the learned Commissioner, Employee's Compensation for necessary information and compliance.

DHARMESH SHARMA, J.

MARCH 24, 2025/gunn/Sa