



\$~43

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

Date of decision: 09th SEPTEMBER, 2025

IN THE MATTER OF:

+ **LPA 322/2024 & CM APPL. 23806/2024, CM APPL. 23807/2024**

SH RAJ KUMAR

.....Appellant

Through: Mr. Sanjay Kumar Chadha, Advocate

versus

GOVT. OF NCT OF DELHI & ORS.

.....Respondents

Through: Mr. Anubhav Gupta, Panel Counsel
(Civil), GNCTD for R-1 & R-2

Ms. Pratima N. Lakra, Mr. Chandan
Prajapati, Mr. Shailendra Kumar
Mishra, Ms. Falguni Rai, Advs. for
R-3 to R-7

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

HON'BLE MR. JUSTICE VIMAL KUMAR YADAV

JUDGMENT (ORAL)

SUBRAMONIUM PRASAD, J.

1. The challenge in this appeal is to the Judgment and Order dated 20.12.2023, passed by the learned Single Judge of this Court in W.P.(C).5099/2019, dismissing the Writ Petition filed by the Appellant herein challenging the Recovery Notice dated 02.08.2013 issued by the Respondent No.1 under the Employees' Compensation Act, 1932, (*hereinafter referred to as the 'Act'*) for recovery of Rs.7,88,240/- from the Appellant herein.



2. Shorn of unnecessary details, the facts, in brief, leading to the present Appeal are as under:

- a. An Application seeking compensation was filed under Section 22 of the Act by the Legal Heirs (Respondents No.3, 4, 5, 6 & 7 herein) of one Mr. Akbar Ali. Respondent No.3 is the wife of deceased Mr. Akbar Ali, Respondents No.4 & 5 are the sons of the deceased and Respondents No.6 & 7 are the daughters of the deceased.
- b. In the Application, it is stated that Mr. Akbar Ali was employed as a loader for loading and unloading on the vehicle owned by M/s. Patliputra Transport Agency (*hereinafter referred to as the “Transporting Agency”*). The Appellant herein is the sole proprietor of the Transporting Agency.
- c. In the Application, it is further stated that on 11.08.2008, the deceased was injured in an accident during the course of his employment, when he was mowed down by a vehicle. It is further stated that the injured (now deceased) was taken to Guru Teg Bahadur Hospital by a PCR but he succumbed to his injuries by the time he reached the hospital.
- d. It is stated that an FIR, being FIR No.194/2008 was registered on 12.08.2008 at Police Station Gandhi Nagar, Delhi.
- e. It is stated that at the time of death, the deceased was about 30 years of age and was drawing wages of Rs.6,500/- per month.



- f. After conclusion of the investigation, a Report under Section 173 of the Cr.P.C was filed by the Investigating Officer stating that the offending vehicle was not traced and therefore, no compensation could be recovered either from the driver or the insurance company.
- g. In the Order dated 14.06.2013 of the Commissioner, it is noted a Notice dated 13.02.2013 was issued by the Commissioner under the Employees' Compensation Act, 1932, (*hereinafter referred to as the 'Commissioner'*) to the Transport Agency, of which the Appellant herein, is the Sole Proprietor. The initial Notice was received but signatures on receipt of the same were refused to be given. The second summons were issued on 21.03.2013 through speed post and *dasti* and a Report was filed with an affidavit stating that when the representative went to the address of the Transport Agency, they met one Mr. Sushil, who gave his introduction as brother of the owner of the Transport Agency but refused to receive the summons. It is stated that the third summons were issued on 15.04.2013 through a process server who reported that one Mr. Sanjay Kumar, who introduced himself as the worker in the Transport Agency was present at that time and he received the summons but did not give his signatures. Since summons were issued from time to time but the same were not received/accepted by the Appellant herein, the Commissioner proceeded *ex-parte* and decided the case on merits. *Vide* Order dated 14.06.2013, the Commissioner



held that since the Management of the Transport Agency did not defend their case despite various opportunities and there is nothing to show that the deceased did not die in the course of his employment, the family of the deceased is entitled to compensation. The amount of compensation was calculated by taking the age of the workman as 35 years and the wage of the workman was taken as Rs.4,000/- per month to calculate the amount of compensation. The Commissioner, therefore, directed the Appellant herein to pay Rs.7,88,240/- as compensation to the Respondents No.3 to 7 along with the interest @ 12% per annum from the date of the accident till the date of realisation.

- h. Since the money was not paid, a Recovery Notice dated 02.08.2013 was issued by the Respondent No.1.
- i. Writ Petition, being W.P.(C).5099/2019 was filed by the Appellant herein, challenging the Recovery Notice. Vide Order dated 20.12.2023, the learned Single Judge dismissed the Writ Petition by holding that the Petition is not maintainable under Section 30 of the Act. The learned Single Judge also rejected the argument of the Appellant herein that there was no employer-employee relationship between the deceased and the Appellant herein. The learned Single Judge upheld the Order dated 14.06.2013 passed by the Commissioner by holding that in the absence of any material to prove the contrary, it cannot be said that there was no employer-employee relationship



between the Appellant herein and the deceased and that the deceased had died during the course of employment.

j. It is this Order which is under challenge in the present Appeal.

3. Learned Counsel appearing for the Appellant vehemently contends that a perusal of the material on record indicates that the workman has passed away in an accident which is not connected with his employment. He has taken this Court through the Final Report under Section 173 of the Cr.P.C in FIR No.194/2008, which was registered on 12.08.2008 at Police Station Gandhi Nagar, Delhi, to state that when the Police reached the spot they were informed that a person has met with an accident and that a PCR has taken the victim to the Hospital. He contends that the investigation reveals that despite efforts, the offending vehicle has not been found. He states that the Final Report does not show that the accident has occurred during loading/unloading of the vehicle at the Transport Agency and there is nothing to substantiate the same. He states that on the contrary, the investigation reveals that the deceased lost his life in an accident unconnected to the work or workplace. Learned Counsel for the Appellant places reliance on certain statements given under Section 161 CrPC wherein it can be inferred that the said Akbar Ali had passed away in a road accident but not while loading/unloading the goods. Learned Counsel for the Appellant states that there has been no proper service of summons on the Appellant and, therefore, the Order dated 14.06.2013, passed by the Commissioner, awarding compensation to the Respondents No.3 to 7 is not maintainable.



4. *Per contra*, learned Counsel appearing for the State contends that the Appellant herein has only challenged the Recovery Notice and not the Order dated 14.06.2013, passed by the Commissioner, awarding compensation to the Respondents No.3 to 7. He states that the challenge to the Recovery Notice dated 02.08.2013 alone would not be maintainable till the Order directing payment of compensation is challenged. He states that it was for the Appellant to challenge the Order dated 14.06.2013, by filing an Appeal under Section 30 of the Act which is maintainable only on a substantial question of law. He, therefore, states that it is not open for the Appellant to go on the merits of the case without there being any substantial challenge to the Order dated 14.06.2013.

5. Heard the learned Counsels for the Appellant and the Respondents and perused the material on record.

6. Section 30 of the Employees' Compensation Act, 1932, which provides for an Appeal against the Order of the Commissioner, reads as under:

“Section 30. Appeals.

(1) An appeal shall lie to the High Court from the following orders of a Commissioner, namely:--

(a) an order awarding as compensation a lump sum whether by way of redemption of a halfmonthly payment or otherwise or disallowing a claim in full or in part for a lump sum;

(aa) an order awarding interest or penalty under section 4A;]



(b) an order refusing to allow redemption of a half-monthly payment;

(c) an order providing for the distribution of compensation among the dependants of a deceased employee, or disallowing any claim of a person alleging himself to be such dependant;

(d) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of sub-section (2) of section 12; or

(e) an order refusing to register a memorandum of agreement or registering the same or providing for the registration of the same subject to conditions:

Provided that no appeal shall lie against any order unless a substantial question of law is involved in the appeal and, in the case of an order other than an order such as is referred to in clause (b), unless the amount in dispute in the appeal is not less than ten thousand rupees or such higher amount as the Central Government may, by notification in the Official Gazette, specify:

Provided, further, that no appeal shall lie in any case in which the parties have agreed to abide by the decision of the Commissioner, or in which the order of the Commissioner gives effect to an agreement come to by the parties:

Provided further that no appeal by an employer under clause (a) shall lie unless the memorandum of appeal is accompanied by a certificate by the Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against.

(2) The period of limitation for an appeal under this section shall be sixty days.



(3) The provisions of section 5 of the Indian Limitation Act, 1963 (36 of 1963) shall be applicable to appeals under this section.”

7. A perusal of the said provision shows that the Order dated 14.06.2013, passed by the Commissioner could have been challenged only by way of an Appeal and that appeal ought to have been filed within 60 days by the Appellant herein as per Section 30(2) of the Act. Further, the Appeal under Section 30(2) of the Act could be filed only on a substantial question of law. Instead of filing an Appeal under the said provision, the Appellant herein has chosen to by-pass the entire procedure by filing the Writ Petition. The learned Single Judge has rejected the writ petition. The existence of an alternate remedy is also one of the grounds for rejection of the writ petition. The impugned Order does not call for any interference by this Court.

8. As far as the service of summons on the Appellant is concerned, this Court has gone through the records which shows that the summons were issued in the name of M/s. Patliputra Transport Agency at 9/23 Union Bank ATM wali gali, Shyam Block, Kailash Nagar, Delhi-110031. The initial Notice dated 13.02.2013 was received but signatures on receipt were refused to be given by the person who received the summons. It is pertinent to mention here that in the affidavit dated 14.02.2013, filed by the process server, it is stated that at that address, one Mr. Sajjan was found who gave his introduction as the employee of the Appellant herein and after speaking to the Appellant herein on the phone, he refused to receive the summons. The second summons were issued on 21.03.2013 through speed post and *dasti* and a Report was filed on affidavit stating that when the representative



went to the address of the Transport Agency, they met one Mr. Sushil, who gave his introduction as brother of one owner of the Transport Agency but refused to receive the summons. It is stated that the third summons were issued on 15.04.2013, through a process server who reported that one Mr. Sanjay Kumar, who introduced himself as the worker in the Transport Agency was present at that time and he received the summons but did not put his signatures on the receipt. In view of the findings of the Commissioner and the learned Single Judge, this Court is of the opinion that the Appellant herein, has been properly served and the Appellant has not given any reason as to why he had not appeared before the Commissioner.

9. Further, nothing has been placed on record by the Appellant to show that no employer-employee relationship existed between the deceased and the Appellant. Despite opportunities provided by the learned Single Judge, no documents had been filed by the Appellant to show that no employer-employee relationship existed between the deceased and the Appellant. Further, the learned Single Judge has noted that the Respondents' contention that the deceased was employed with the Appellant is clearly established and corroborated by statements of co-workers Mr. Surender Kumar and Mr. Shanker stating that Mr. Akbar Ali, the deceased, worked as a loader at M/s. B R Parcel Movers at Gandhi Nagar, Pushta, Delhi, at the godown of the Appellant herein. The learned Single Judge has also noted that the Appellant has himself stated that he has the godowns in the name and style of M/s. B R Parcel Movers and amongst those who were engaged for the purpose of loading and unloading in the godown and that the deceased was employed with the Appellant since 2008. The learned Single Judge has meticulously



gone into the facts of the case to establish that employer-employee relationship existed between the deceased and the Appellant herein.

10. In any event, the Appellant ought to have filed an Appeal under Section 30(2) of the Act as the challenge herein is not only to the Recovery Notice dated 02.08.2013 but to the Order dated 14.06.2013 passed by the Commissioner.

11. The Appellant has tried to bypass the statutory appeal which is limited only to pure question of law by filing a writ petition. This Court after going through the material on record agrees with the findings of the Commissioner and the learned Single Judge that despite service having been effected, the Appellant has chosen not to participate in the proceedings. The writ petition itself was not maintainable.

12. In view of the above, this Court is not inclined to interfere with the findings of the learned Single Judge.

13. Accordingly, the Appeal is dismissed, along with the pending applications, if any.

SUBRAMONIUM PRASAD, J

VIMAL KUMAR YADAV, J

SEPTEMBER 09, 2025

Rahul