

Moonish Ahmed Vs. Halima

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Court : Delhi

Decided On : May-21-2014

Judge : Valmiki J. Mehta

Appellant : Moonish Ahmed

Respondent : Halima

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + FAO1122013 & CM No.3571/2013 (stay) 21st May, 2014 % MOONISH AHMED Through:Appellant Dr. M.Y.Khan, Adv. VERSUS HALIMA Through: Respondent Mr. Arvind Kumar, Adv. for R-1 CORAM: HONBLE MR. JUSTICE VALMIKI J.MEHTA To be referred to the Reporter or not?. VALMIKI J.

MEHTA, J (ORAL) 1. Arguments in this case were concluded on 19.5.2014 when counsel for the appellant sought time to take instructions if the matter can be settled. Counsel for the appellant states that appellant is willing only to pay the compensation amount and not the interest under Section 4-A of the Employees Compensation Act, 1923 as directed in the impugned judgment. The case was adjourned because if the impugned judgment is sustained, appellant will also in addition to the total amount as directed by the impugned judgment may have to pay 50% penalty amount in view of Section 4-A. Since the appellant is not agreeable to pay the total amount under the impugned judgment, this appeal is being decided on merits.

2. This first appeal is filed under Section 30 of the Employees Compensation Act, 1923 by the employer impugning the judgment of the Commissioner by which the claim petition filed by the respondent no.1 herein was allowed.

3. The facts of the case are that the respondent no.1 was working as a helper and was employed by the appellant-herein w.e.f November, 2005. Appellant is stated to be a contractor engaged in construction work. Respondent no.1 was being paid a salary of Rs.3,900/- per month. The case of the respondent was that on 24.11.2006 when she went to work at the site, there was a fear among the workers as the old wall could fall down, however, the respondent at the direction of the appellant had to work at the site otherwise there was a threat of her employment being terminated. During the course of work, the wall collapsed and the respondent got injured and went into coma. Respondent was admitted to hospital and she could gain consciousness only after about 8-9 days and for which period she remained in I.C.U. As result of the accident, the respondent became blind. Appellant towards compensation. This compensation paid is pleaded to be much less than the legal entitlement of the respondent. Respondent pleaded that she was 30 years at the time of the accident. A legal notice was sent to the appellant on 12.9.2007 claiming compensation, but since the same failed to yield result, the subject claim petition was filed.

4. The appellant filed his written statement denying the relationship of employer and employee. He also denied that any construction activities were being carried out by him in the site in question where respondent met with an accident being at Imam Ale Hadiz Masjid, Jamia Nagar, New Delhi. Appellant states that actually the husband of the respondent used to work with the appellant on occasions as mason and used to be paid the wages accordingly. It was pleaded that the husband of the respondent Sh. Usman approached him for a loan as he was in need of money and therefore, the appellant paid a sum of Rs.30,000/- as loan on 8.4.2007, and therefore, the respondent was not correct in stating that the amount of Rs.30,000/- was given as compensation towards her injuries.

5. The Commissioner by the impugned judgment has allowed the claim petition and has held that there was a relationship of employer and employee.

Commissioner notes that the appellant is admittedly carrying on business as a builder under the name of M/s Azmi Builder and the appellant is the proprietor of the same. Appellant in his cross-examination further admitted that he does building work and employs labour for the construction work. Appellant further admitted that he was doing the construction work of Jamate Islami Hind, Abul Fazal Enclave, Okhla, New Delhi in December, 2006. Appellant also admitted that he knew the respondent through her husband though the factum of employment of the respondent was denied.

6. The Commissioner also notes in the impugned judgment that the case of the appellant that he gave a loan of Rs.30,000/- to the husband of the respondent is clearly false because the appellant admitted in his cross-examination that he had not filed any income tax return showing giving loan to Usman husband of the respondent and that this amount was paid within six months of the accident. The Commissioner also notes that Holy Family Hospital is a costly hospital and a poor workman could not have afforded the treatment in such a luxurious hospital on her own and consequently, it would be the appellant who would have got the respondent admitted in the hospital. Commissioner has also believed the stand of the respondent that it is the appellant who would have paid her medical bills. Commissioner also notes that there is no reason why loan would be given to husband of the respondent and in fact the amount of Rs.30,000/- paid would be on account of compensation. The relevant paras of the impugned order of the Commissioner are paras 7 and 8 and the same are reproduced herein.

7. The Respondent No.1, Sh. Moonish Ahmed filed evidence by way of affidavit in which averments of his written statement have been incorporated. He was cross examined by the authorized representative of claimant. He admitted that his address is E-238/3, Shaheen Bagh, Jamia Nagar, new Delhi- 110025 and the name of his firm is M/s Azami Builder and also that he is the proprietor of the same. He has further admitted that he does building construction work and was employing mason and labour for construction work. He has further admitted that he was having construction work of Jamate Islami Hind, Abul Fazal Enclave, Okhla, New Delhi in December 2006. He further admitted that he knows the claimant i.e. Smt. Halima, through his husband Sh. Usman but denied having

employed her at any point of time. He has further admitted that he used to provide attendance card to the labourers employed by him and the said cards were in the name of the firm. He further admitted that he files income tax return since the last 3-4 years but could not remember as to whether he had mentioned the cheque of Rs. 30,000/- paid to Sh. Usman as loan through cheque dated 08.04.2007, in his income tax return for the concerned year.

8. I have carefully gone the material available in the file and after having examined the same carefully, I give my findings on the issues in the matter as under: Issue No.1& 2 (i) FAO1122013 The claimant has stated that she was employed as labour with Sh. Moonish Ahmed, Respondent no.1 and on 24.11.2006 she suffered head injury in the course and out of her employment Page 5 of 8 (ii) (iii) FAO1122013 with Respondent No.1 and was thereafter taken by respondent No.1 to Holi Family Hospital, New Delhi, where she was treated of her injuries and subsequently referred to Safdarjung Hospital for further treatment. She has further stated that she sustained 100% disability on account of loss of her eye sight of both eyes due to employment injuries under the Respondent no.1 she also claimed that the bill amounting to Rs. 23,883/- for her treatment in Holi Family Hospital was paid by Respondent no.1 and he further paid an amount of Rs.30,000/- through cheque as compensation on account of employment injuries. The respondents have denied of any incidence as claimed by the claimant and stated that the claimant was never employed by them. The claimant filed her evidence by way of affidavit incorporating therein the contents of her claim and she was cross examined by the counsel of Respondent No.1 & 2 but nothing adverse was extracted. The Respondent No.1 also filed evidence by way of affidavit incorporating the contents of the written statement. He was cross examined by the authorized representative of the claimant. During cross examination, he has admitted that he is the proprietor of the firm M/s Azmi Builders and he is engages in construction activities. He further admitted that he knows the claimant through her husband Sh. Usman to whom he used to employ as Mason. He has further stated that on the request of Sh. Usman, he had given an amount of Rs. 30,000/- as loan. Admittedly, the Respondent No.1 is engaged in construction of building work and employed labour and Mason for construction activities. The claimant has claimed that she was in the employment of

Respondent No.1 as helper and sustained head injuries due to accident in the course and out of her employment with Respondent No.1 and thereafter she was taken to Holy Family Hospital by the Respondent no.1 and her bills were also paid by him. The contention of clamant seems to be correct as why the poor workman should unnecessary drag Page 6 of 8 in litigation any unknown person. The documents available on record show that she was admitted on 24.11.2006, as claimed by her, in Holi Family Hospital. The poor workman cannot afford treatment in such a luxurious hospital on her own and therefore the contention of the claimant that she was admitted in the Holi Family Hospital by Respondent also seems to be correct. (iv) The contention of the claimant that an amount of Rs.30,000/was paid to her through cheque dated 08.04.2007 in the name of her husband on account of injury compensation seems to be correct as the amount was admittedly paid by the Respondent no.1 and the said amount was paid within 6 months of the injuries sustained by the claimant. If the contention of Respondent no.1 that he had given loan on request of the husband of claimant is taken to be correct then why a person being obliged by Respondent no.1 by giving loan should drag him in litigation. Moreover, the Respondent no.1 could not place on record any request from the husband of the claimant seeking loan from him. During cross examination, the Respondent no.1 has admitted that he was filing income tax return since last 3-4 years but he could not place on record, copy of the return for the relevant year as proof that he had given loan of Rs.30,000/- to Sh. Usman. Therefore, the contention of claimant that she was employed by Respondent no.1 as labourer and sustained employment injuries in the course of her employment with him seems to be correct. I, therefore, hold that employer-employee relationship existed between the Respondent no.1 and Smt. Halima and she sustained the employment injuries on 24.11.2006 in course and out of her employment with the Respondent no.1. (underlining added) 7. An appeal under Section 30 lies if there is a substantial question of law. Appreciation of evidence does not result in a substantial question of law. If appropriate conclusions which are plausible and possible are drawn by the Commissioner, this Court cannot interfere in exercise of powers under Section 30 of the Act.

8. In view of the above the appeal is without any merit, and is therefore dismissed with costs of Rs.25,000/-. Costs be paid within a period of six weeks from today.

9. The amount which is already deposited by the appellant in this Court alongwith accrued interest be paid to the respondent and the Commissioner will pay the balance amount of compensation to the respondent after recovering the same from the appellant, and if the same has already been recovered, by releasing the payment to the respondent within six weeks from today. MAY21 2014 ib FAO1122013

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