

Murari Vs. Shankar Lal and Sh. Suresh Bharadwaj (Prop./Partne

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Court : Delhi

Decided On : Nov-12-2014

Judge : A. K. Pathak

Appellant : Murari

Respondent : Shankar Lal and Sh. Suresh Bharadwaj (Prop./Partne

Advocate for Def. : Mr. Awadhesh Kumar

Advocate for Pet/Ap. : Mr. D.K. Pandey

Judgement :

\$~6 * IN THE HIGH COURT OF DELHI AT NEW DELHI + FAO1952013 Decided on 12th November, 2014 MURARI Appellant Through : Mr. D.K. Pandey, Adv. versus SHANKAR LAL AND SH. SURESH BHARADWAJ (PROP./PARTNER) Respondent Through : Mr. Awadhesh Kumar, Adv. CORAM: HON'BLE MR. JUSTICE A.K. PATHAK A.K.PATHAK, J.(ORAL) 1. Arguments heard. Trial court record perused.

2. Appellant filed a petition under Section 10 of the Workmens Compensation Act, 1923 (the Act, for short) before the Commissioner, seeking compensation from the respondent in respect of the permanent disability suffered by him in his eye on account of the alleged injuries suffered at the work place in an accident. The claim petition has been dismissed by the Commissioner by the order impugned in this appeal.

3. Appellant alleged that he was employed with the respondent as a Karigar with effect from 2009 on a monthly wages of `6,500/-. Appellant was not provided various legal facilities, such as, appointment letter, leave encashment, ESI etc. Respondent was not even maintaining service record of the appellant. defective. The machine, on which appellant used to work, was Despite complaints of the appellant, machine was not got repaired by the respondent. On 21st November, 2009 appellant was working on the said machine when at about 12:30 pm some splinters flew from the machine and fell in the left eye of appellant, resulting in grievous injuries to him. Appellant was treated at Dr. D.R. Maternity and Nursing Home, Ashok Vihar, Delhi. However, he lost 100% vision in his left eye resulting in permanent disability to him. At the time of accident, appellant was 36 years of age. Accordingly, appellant claimed `6,00,000/- as compensation.

4. Respondent denied that appellant was its employee. A categorical stand was taken that appellant was not the employee of respondent. It was denied that appellant had been working with the respondent from 2009 onwards on the monthly wages of `6,500/-. It was denied that appellant was working on the machine on 21st November, 2009 and sustained injuries in his left eye, resulting in 100% loss of vision in one eye. Respondent alleged that appellant was not entitled to any compensation.

5. In the rejoinder, appellant denied the averments made in the reply and reiterated what was stated in the claim petition. Disability Certificate was filed, according to which appellant had sustained 30% visual disability.

6. Following issues were framed by the Commissioner on 18 th May, 2011:(i) Whether there exist employee - employer relationship between the claimant and management, if so?. (ii) Whether claimant sustained injuries during and out of the course of employment?. If so, to what amount of injury compensation claimant is entitle to and what directions are necessary in this respect?. (iii) 7. Relief if any?. Parties were afforded opportunity to lead evidence. Upon scrutiny of evidence adduced by the parties, Commissioner has returned a categorical finding that appellant was not the employee of respondent. It is held that appellant had failed to place on record and prove any documentary evidence to indicate that he was

employed with the respondent as a Karigar on the monthly wages of `6,500/-. Bald statement of appellant was not sufficient to prove employer-employee relationship between the parties. Commissioner has further noted that appellant was not taken to Dr. D.R. Maternity and Nursing Home, Ashok Vihar, Delhi by any of his fellow colleague. Commissioner has concluded that since appellant was not the employee of respondent, question of happening of the alleged accident did not arise. It appears that appellant filed an appointment letter Ex. CW1/11 at the evidence, which has been disbelieved by the Commissioner. It is held that same was a fabricated document. The said appointment letter was not addressed to the appellant, inasmuch as was addressed to one M/s. Steel Works. Commissioner has held that in the claim petition as well as in the complaint made to Assistant Labour Commissioner and demand notice and affidavit of evidence appellant had categorically stated that the appointment letter was never issued. Thus, Ex.CW1/11, which surfaced much later was suspicious.

8. Section 30 of the Act provides that an appeal can be entertained only if a substantial question of law is involved in the appeal. In this case, no such substantial question of law could be raised. Findings of facts recorded by the Commissioner on the issue of employer - employee relationship cannot be assailed on merits. This court cannot sift and weigh the evidence adduced before the Commissioner in detail on the findings of facts on this point and substitute its own finding.

9. Be that as it may, admittedly no documentary evidence was led before the Commissioner by the appellant to show that he was employed by the respondent. Appellant has failed to produce any documents, such as, salary slip, identity card, gate pass etc. No salary slip was placed on record. No appointment letter was annexed with the statement of claim. Alleged appointment letter, produced at the evidence stage, appears to be a fabricated document, more so, when a categorical statement was made in the statement of claim that respondent was not providing various legal facilities such as appointment letter, leave encashment, ESI etc. Even in the complaint made to Assistant Labour Commissioner and the demand notice, it was alleged that no appointment letter was issued. If that is so, then how Ex.CW1/11 surfaced at the evidence stage, has remained unexplained.

It may further be noted that appellant had also raised an industrial dispute before the Labour Court - IX, Karkardooma Courts, Delhi being ID No.447/11, wherein Award has been passed on 9th January, 2013. Labour Court has held that appellant had failed to prove that he had ever been an employee of management (respondent) or his services were terminated by the management illegally.

10. For the foregoing reasons, appeal is dismissed. A.K. PATHAK, J.

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