



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Judgment reserved on : 19 December 2023**
Judgment pronounced on : 13 February 2024

+ **FAO 119/2017 & CM APPL. 9580/2017, CM APPL. 28069/2018**

M/S MADRAS TRADING CO Appellant
Through: **Mr. Sanjay Ghose, Sr. Advocate with Ms. Urvi Mohan, Advocate.**

versus

RAMJEET @ RAMAJEET & ANR Respondents
Through: **Mr. Sunil Kumar Jha, Mr. O.P. Singh, Mr. Sunil Sharma & Mr. M.S. Akhtar, Advocates.**

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. This judgement shall decide the present appeal instituted under Section 30 of the Employees Compensation Act, 1923 read with Order XLI of the Code of Civil Procedure, 1908 assailing the impugned order dated 24.01.2017 passed by the Commissioner, Employees Compensation in Claim No. CWC/D/60/15/WD/4219 in favour of the claimants, awarding compensation in the sum of Rs. 8,67,640/- along with interest @ 12% p.a. payable from 29.07.2015, the date when the Claim Petition was preferred till realisation.

2. The appellant herein is a proprietorship concern run by Mr. Sukhpreet Singh, and it is engaged in a small business of sale of air conditioners and spare parts. On the other hand, the respondents



herein were the claimants before the Employee Commissioner and are the legal heirs/parents of the deceased

FACTUAL BACKGROUND:

3. Briefly stated, the claimants instituted the Statement of Claims before the Commissioner on 27.07.2015, which has been incorrectly recorded in the impugned order as 29.07.2015, stating that their deceased son Tata, was employed with the appellant as an AC Mechanic at a monthly wage of Rs. 15,000/-. It has been averred that on 30.04.2014, Sh. Tata was sent by the appellant to do certain AC repair work at H. No. 1-B/66, 3rd Floor, Single Story, Ramesh Nagar, New Delhi and during the course of doing the repair work, the AC compressor burst resulting in fatal injuries to him and he died at the age of 25 years.

4. As a necessary corollary an FIR bearing No. 287/2014 was registered on 01.05.2014 at P.S. Kirti Nagar, on statement of his co-worker Sh. Sanjay Kumar that he along with the deceased had gone to the above-noted address at around 4:00 PM on 30.04.2014, to carry out work pertaining to filling of gas in the Air Conditioner on the third floor of the building when the accident occurred and he made a statement that both of them were employed with the appellant firm. The claimants sought compensation to the tune of Rs. 20,00,000/- (Rupees 20 Lacs) along with penalty of 50% of the amount of compensation sought and interest @12% per annum, payable from the date of the incident till realization. The claim of compensation was filed before the Commissioner by the respondents/claimants on 27.07.2015, being the legal heirs of the deceased,



5. The appellant filed its reply to the claim of compensation on 09.12.2015, vehemently denying the ‘employer-employee’ relation with the deceased, and further placing its objection on the record as to the non-enclosure of any documents/proofs substantiating on such employer-employee relationship at the behest of the claimants. Thereafter, a rejoinder was filed by the respondents on 10.02.2016.

6. On behalf of the claimants, evidence was led by way of filing an affidavit of Respondent No.1, who was subsequently cross-examined on 23.05.2016. On the other hand, the appellant led its evidence through an affidavit of Sh. Sukhpreet Singh, the proprietor of Madras Trading Corporation, who was thereafter cross examined on 03.06.2016.

7. Following issues were framed by the learned Commissioner:

- “(i) Whether the employee - employer relationship exists between the parties? -
- (ii) Whether accident resulting into death of the deceased is caused out of and during the course of employment and if so, to what amount of death compensation, the dependents of the deceased are entitled to?
- (iii) Relief, if any?”

8. With regard to Issues No 1 & 2, the learned Commissioner decided in favor of the claimants/respondents. It was the finding of the Commissioner that the evidence led by the claimants, in specific the FIR bearing No. 287/2014, was reliable and sufficient in proving the events as claimed. Furthermore, it was the view of the learned Commissioner that the respondent firm (appellant herein), failed to make good the averment that no employer-employee relation existed between it and the deceased and was unable to produce any evidence



or document in this respect, which suggested that the deceased was not employed with it on the day of the accident.

9. The findings of the learned Commissioner are produced hereinbelow:

“8. As per evidence filed by the claimant by way of affidavit with documents exhibited as CW-1/1 to CW-1/15, the claimant has clearly stated that the deceased workman Mr. Tata was son of claimant and he was working as AC Mechanic with the respondent and his monthly wages were Rs. 15,000/-. On 30.04.2014 he was sent by the respondent to repair AC at H. No. 1-8/66, 3rd Floor, Single Story, Ramesh Nagar, New Delhi and he met with an accident due to blast of AC Compressor and he died. At the time of accident his ages was 25 years and the compensation of Rs.20 Lakhs with interest & penalty has been claimed. In his cross examination he has stated that his son was working with the respondent firm and he met with an accident which was out of and in course of his employment. The evidence & documents specially FIR No-287 dated-01.05.2014 full support the claim of the claimant and proved the claim of events as such the evidence of the claimant is reliable & accepted.

9. In his evidence, the respondent denied the employment of the deceased and also denied the accident. However, the respondent failed to produce any document to show that the deceased was not employed on the date of accident with them. They, have also not filed any attendance register, salary register etc. and in absence of the documents an adverse inference is drawn that there was employee-employer relationship between the deceased and the respondent which also supported by the contents of the FIR, in which the chain of events leading to death of the deceased workman clearly mentions that he was working at the accident site on the direction of the respondent to fill the gas in the compressor of the AC at H. No. 1-B/66, 3rd Floor, Single Story, Ramesh Nagar, New Delhi, when there was compressor blast as a result he died. The above evidence proves beyond the doubt that they was employee-employer relationship between the deceased and respondent and he met with an accident leading to his death which was out of and in course of his employment with respondent and accordingly, the Issue no. 1 & 2 are decided in favor of claimants and against the respondent.”



10. In view of these findings, with respect to Issue No. 3, the learned Commissioner held the claimants entitled to a compensation to the tune of Rs. 8,67,640/- along with simple interest @12% per annum w.e.f. 29.07.2015. Hence, this appeal.

SUBMISSIONS:

11. It has been submitted on behalf of the appellant that the learned Commissioner has rendered a perverse finding that there was an ‘employer-employee’ relation between the deceased and the appellant firm, based solely on the FIR bearing No. 2867/2014 and has completely ignored the contradictions in the testimony of the claimants during cross-examination. It has been submitted that an FIR is not a piece of substantive evidence and that the same must be corroborated by material and evidence, documentary, circumstantial or oral. In this regard, reliance has been placed on the judgements in **Ram Kumar v. State of M.P.**¹; **Bishan Das v. State of Punjab**²; **Podda Narayana v. State of A.P.**³; **Gurnam Kaur v. Bakshish Singh**⁴, **State of Haryana v. Sher Singh**⁵; **State of U.P. v. Ballabh Das & Ors.**⁶; **Joginder Singh v. State of Punjab**⁷; and **Baldev Singh v. State of Punjab**⁸.

12. With respect to ‘employer-employee’ relationship between the deceased and the appellant firm, it has been submitted that apart from

¹ (AIR 1975 SC 126)

² (AIR 1975 SC 573)

³ (AIR 1975 SC 1252)

⁴ (AIR 1981 SC 631)

⁵ (AIR 1981 SC 1021)

⁶ (AIR 1985 SC 1384)

⁷ (AIR 1988 SC 628)

⁸ (1990 4 SCC 692).



the ‘Control Test’, the ‘Integration Test’ also has to be considered along with other considerations such as the power of the firm to select and dismiss, to pay remuneration, deduct insurance contributions as well as the terms of ‘mutual obligations’ between the employer and the employee. Further, it has been submitted on behalf of the appellant that a claim for compensation cannot be maintained in case no material has been produced by the claimant which establishes an ‘employer-employee’ relation. Moreover, a mere self-serving testimony is not sufficient to discharge the onus of proving the existence of an ‘employer-employee’ relationship. In this regard, reliance has been placed on the judgements in **Shantabai Ananda Jagtap & Anr. v. Jayram Ganpati Jagtap & Anr.**⁹ and **Shanti Sales Corporation v. Mohammad Hassan**¹⁰. Further, reliance has also been placed on a decision of this Court in **United India Insurance Co. Ltd. v. Rajender Singh & Anr.**¹¹

13. It is further submitted that the only evidence put forth by the respondents/claimants is a photocopy of the visiting card of the appellant. Further, the testimony of respondent No.1 as well as his cross-examination are contradictory and inconsistent. Even the testimony of Sh. Sanjay Kumar (colleague of the deceased) is fraught with inconsistencies, wherein he categorically stated that he did not know the proprietor of the appellant firm, namely Sh. Sukhpreet Singh and that he was not told by Sh. Sukhpreet Singh to go and carry out repairs in the AC at the concerned premises where the incident took

⁹ (Civil Appeal No. 5786/2012)

¹⁰ (177 2011 DLT 586)



place. Finally, it has been submitted by the appellant, that the appellant firm is not engaged in the business of AC repair but is merely a small proprietorship concern engaged in the sale of Air Conditioners and that the firm has not employed any persons, and lacks the ability to maintain several documents and registers.

14. A reply dated 07.08.2018 was received on behalf of the respondents wherein it has been stated that the order passed by the learned Commissioner is well reasoned and has been passed after a thorough consideration of the pleadings of the parties and the materials placed on the record. It has further been stated that the grounds taken by the appellant in the present appeal are misconceived and baseless, and that no substantial questions of law arise in the present matter.

15. It is also apposite to note that although an *amicus curiae* was appointed in the present matter, an application was moved on behalf of the counsel bearing No. 28069/2018 seeking to be relieved from the matter.

ANALYSIS & DECISION:

16. I have given my thoughtful consideration to the submissions advanced by learned counsels for the rival parties at the Bar. I have also perused the relevant records of the case including the digitized Trial Court Record and the case-law cited at the Bar.

17. First things first, it is a well settled proposition in law that an appeal provided under Section 30 of the EC Act lies to the High Court from the following orders of a Commissioner, illustrated as under:-

¹¹ (2017/DHC/6497)



“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 half-monthly 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 4-

(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”

18. It is further provided by way of a *proviso* that no appeal lies against any order unless a ‘substantial question of law’ is involved in the appeal. In the case of **North East Karnataka Road Transport Corporation vs. Sujatha**,¹² the Supreme Court had an occasion to consider the entire scope and ambit of Section 30 of the EC Act. In the context of what would constitute a ‘substantial question of law’, it was held as under:-

“9. At the outset, we may take note of the fact, being a settled principle, that the question as to whether the employee met with an accident, whether the accident occurred during the course of employment, whether it arose out of an employment, how and in what manner the accident occurred, who was negligent in causing the accident, whether there existed any relationship of employee and employer, what was the age and monthly salary of the employee, how many are the dependants of the deceased employee, the extent of disability caused to the employee due to injuries suffered in an accident, whether there was any insurance coverage obtained by the employer to cover the incident, etc. are some of the material issues which arise for the just decision of the Commissioner in a claim petition when an employee suffers any bodily injury or dies during the course of his employment and

¹² (2019) 11 SCC 514



he/his LRs sue(s) his employer to claim compensation under the Act.

10. The aforementioned questions are essentially the questions of fact and, therefore, they are required to be proved with the aid of evidence. Once they are proved either way, the findings recorded thereon are regarded as the findings of fact."

19. In view of the aforesaid proposition of law, without further ado, reverting to the instant appeal, the learned Commissioner has given a categorical finding that the deceased workman suffered fatal injuries during the course of his employment with the appellant. Indeed, CW-1 Ramjit, who was father of the deceased was not an eye witness to the accident. However, the reliance on the contents of the FIR and statement of co-worker Sanjay Kumar during the course of investigation by the learned Commissioner cannot be faulted in law. It is pertinent to mention that the proceedings under the EC Act are summary in nature and the strict technicalities of the Indian Evidence Act, 1872 cannot be applied in such proceedings.

20. Evidently, the FIR had been recorded soon after the unfortunate accident and there are grounds to presume that the facts were truthfully revealed as regards the circumstances that resulted in the fatal accident and the same were incorporated by the Investigating Officer acting in the ordinary course of his duties. It must also be appreciated that that claimants come from an impoverished background suffering from illiteracy and ignorance. The testimony of respondent No.1 read as a whole would show that his version that his son was working with the appellant as he was in possession of a visiting card, that was placed on the record and unrebutted, is sufficient to connect or show the nexus of the appellant as an



employer of his deceased son. The evidence led by a party coming from a weaker section and suffering from an impoverished background should be appreciated in its totality.

21. In essence, the basic foundation to the claim had been laid forth by the claimants and the onus then shifted upon the appellant to refute the employer-employee relationship between the parties. The appellant was better placed in all respect to lead some evidence in this regard so much so that he could have even summoned and examined the co-worker Sanjay Kumar to disprove the relationship of employer and employee.

22. During the course of arguments, much mileage is sought to be drawn by the learned counsel for the appellant from the testimony of Sanjay Kumar i.e., the co-worker recorded in the criminal proceedings arising out of FIR No. 287/2014. Even a bare perusal of his testimony recorded on 20.07.2022 would show that he categorically testified that he had gone to the site in question along with the deceased, where the fatal accident occurred. He also testified that they had gone to the spot for repairing an Air Conditioner. Merely for the fact that he was treated as a hostile witness by the prosecution does not afford any credence to the defence of the appellant.

23. The plea by the learned counsel for the appellant that respondent No.1 acknowledged that he did not know the proprietor of the appellant hardly cuts any ice given the background of the parties. It does not strike to reason that parents hailing from such a background would be knowing the exact details of the employer. There is no apparent reason for the Investigating Officer to have



fabricated the FIR or for that matter the co-worker Sanjay Kumar to have given a false statement soon after the accident

24. Be that as it may, the finding of fact as to the relationship of employer and employee between the appellant and the deceased is not substantial question of law amenable to being considered in an appeal under Section 30 of the EC Act. In so far as the decision in *Shantabai Ananda Jagtap (supra)* is concerned, it has no application to the matters in issue since it was a case where the legal heirs of the deceased/claimant initially filed a claim petition under Section 166 of the Motors Vehicles Act, 1988 wherein compensation was awarded and thereafter they sought compensation under the EC Act. It is in the said context that it was held that not only was the subsequent claim petition not maintainable, but also that there was no established relationship of employer and employee between the parties. The decision in *Shanti Sales Corporation (supra)* was one where there was a patent discrepancy as regards the date of the accident which the witness stated to have taken place on 05.06.2004, but as per the respondent/claimant it had taken place on 09.06.2004. It was a stark case where the claimant had been unable to even prove a casual employer-employee relationship between him and the management and for that reason the claim was dismissed.

25. Suffice to state that the plethora of case law cited at the Bar to the effect that an FIR is not a substantive piece of evidence emanate from decisions in criminal matters, which by all means have no application in the present summary proceedings.



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26. In view of the foregoing discussion, this Court finds that the impugned order does not suffer from any patent illegality, perversity or incorrect approach adopted in law. The present appeal is dismissed being misconceived and ill-conceived with exemplary costs of Rs. 25,000/- which be paid to the respondents No. 1 and 2 in equal share within one month from today, failing which they shall be entitled to claim the same with interest @ 9% per annum from the date of this order till realization.

27. The pending applications also stand disposed of accordingly.

DHARMESH SHARMA, J.

FEBRUARY 13, 2024

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