

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

+ **FAO 151/2018, CM APPL. 16011/2018**

Reserved on : 27.02.2023

Pronounced on : 22.03.2023

IN THE MATTER OF:

ANUPAM GULATI

..... Appellant

Through: Mr. D.C. Tripathi, Advocate

versus

MANOJ GUPTA & ANR

..... Respondents

Through: Mr. Daksh Nain, Advocate for
respondent No.1.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J.

1. By way of present appeal filed under Section 30 of the Employees' Compensation Act, 1923 (hereinafter, referred to as the 'EC Act'), the appellant (proprietor of *M/s Nirala Promoters and Developers*) has assailed order dated 23.10.2017 passed in Case No.CWC-I/WD/20/2015/618-619 and rectified on 05.03.2018 by learned Commissioner, Employees' Compensation, District West, Delhi, whereby claim petition filed by respondent No.1 was allowed.

2. The facts, in nutshell, are that respondent No.1/claimant claimed to be in employment of *M/s Nirala Promoters and Developers* as a Pizza Delivery Boy on bike bearing registration No. DL-9-SAA-8014, since 6 months preceding the filing of the claim petition. On 30.10.2014, while

he was going on the aforesaid bike at about 07:20 pm to deliver a cake from “*Slice of Italy*” to a flat in *Connaught Place*, a car came from behind and hit him, leading to a fracture in his right leg.

It was claimed that as a result of the accident, respondent No.1 had become 100% disabled for the purpose of employment as a Pizza Delivery Boy. His last drawn wages were stated to be Rs.9,000/- per month. It was further claimed that the bike was insured with respondent No.2 and additional premium was charged from the employer.

3. Learned counsel for the appellant has contended that respondent No.1 failed to establish that any accident took place on 30.10.2014. It is also contended that the learned Commissioner ought not to have entertained the claim petition as prior notice under Section 10 of the EC Act was not given.

4. Learned counsel for respondent No.1, on the other hand, has supported the impugned order.

5. I have heard learned counsels for the parties and perused the material placed on record.

6. It is noted that during the proceedings before the learned Commissioner, respondent No.1 produced medical documents in support of the claim as well as examined one *Sunil Kumar Yadav*, a co-worker, as AW-2.

7. A reading of the medical documents would show that respondent No.1 was admitted in *Lady Hardinge Medical College* on 30.10.2014 and discharged from the hospital on 15.11.2014.

In his testimony, AW-2-*Sunil Kumar Yadav*, a co-worker, deposed that he knew respondent No.1 as he worked with *M/s Slice of Italy* at the time of the accident. He further deposed that respondent No.1 was

employed with *M/s Slice of Italy* as a delivery boy, and on 30.10.2014, had gone to deliver a pizza in *Connaught Place*. On that day, while respondent No.1 was driving the aforementioned bike, he was hit by some other vehicle resulting in injury in his right leg. A call was received in the office of *M/s Slice of Italy* from a public person at about 07:00 pm informing about the incident, wherefore the witness proceeded towards the place of accident. He denied the suggestion that no accident took place out of or during the course of employment with *M/s Slice of Italy* or that he and respondent No.1 were not employed with *M/s Slice of Italy*.

8. In the written statement filed by the appellant, though the factum of accident taking place was denied, it was admitted that respondent No.1 was employed with the appellant/his firm. It was further stated that *M/s Nirala Promoters and Developers* was a franchise of *M/s Slice of Italy*. It was also admitted that the aforesaid bike was owned by the appellant, that it was insured with respondent No.2 and that additional premium was paid.

9. So far as the appellant's contention that prior notice under Section 10 of the EC Act was not given, suffice it to note that though the appellant filed a written statement, he failed to either cross-examine respondent No.1 or lead his own evidence. Even in the written statement, no such objection was taken.

Moreover, it has come in the testimony of *AW-2-Sunil Kumar Yadav* that a phone call was received in the office of *M/s Slice of Italy* on the date of the accident, pursuant to which he alongwith others had gone to the spot of accident and taken respondent No.1 to the hospital.

10. Under these circumstances, the appellant is misguided in taking a plea at this stage that he was not served with a notice under Section 10 of the EC Act. Although he has disputed the finding of the concerned Commissioner on the issue, this Court deems it expedient to outline the scope of appeal filed under Section 30 of the EC Act as delineated in North East Karnataka Road Transport Corporation v. Sujatha reported as **(2019) 11 SCC 514**. In the captioned case, the Supreme Court has reiterated that the scope of interference in an appeal filed under Section 30 of EC Act is limited to substantial questions of law and findings of facts proved either way, are not to be likely interfered with. Relevant excerpt from the decision is reproduced hereunder:-

“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 dependents 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 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.

11. The appeal provided under Section 30 of the Act to the High Court against the order of the Commissioner lies only against the specific orders set out in clauses (a) to (e) of Section 30 of the Act with a further rider contained in the first proviso to the section that the appeal must involve substantial questions of law.

12. In other words, the appeal provided under Section 30 of the Act to the High Court against the order of the Commissioner is not like a regular first appeal akin to Section 96 of the Code of Civil Procedure, 1908 which can be heard both on facts and law. The appellate jurisdiction of the High Court to decide the appeal is confined only to examine the substantial questions of law arising in the case.”

11. In view of the above discussion; the fact that this is an admitted case of employer-employee relationship, and the further fact that case of respondent No.1 is supported by co-worker-Sunil Kumar Yadav, this Court finds no ground to interfere with the impugned order/Award. Consequently, the appeal is dismissed and the impugned order/Award is upheld. The order dated 24.04.2018 passed by the predecessor Bench stands vacated. Let the compensation amount along with interest stated to have been deposited by the appellant before the learned Commissioner be released to respondent no.1 forthwith. Miscellaneous application is dismissed as infructuous.

12. A copy of this judgment be communicated to the concerned Commissioner for information.

(MANOJ KUMAR OHRI)
JUDGE

MARCH 22, 2023

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