

(2013) 04 AHC CK 0177

In the Allahabad High Court

Case No : First Appeal From Order No. 706 of 2006

Bharat Bhusan Dhawan

APPELLANT

Vs

Commissioner, Workmen Compensation and Deputy Labour
Commissioner

RESPONDENT

Date of Decision : 25-04-2013

Acts Referred:

Workmens Compensation Act, 1923 — Section 23

Citation : (2013) 04 AHC CK 0177

Hon'ble Judges : Brijesh Kumar Srivastava-II, J

Final Decision : Dismissed

Judgement

Brijesh Kumar SrivastavaII, J.

The present appeal has been preferred under section 30 of the Workmen's Compensation Act, 1923 against the order and award dated 26.5.2005 and 22.8.2005 passed by Deputy Labour Commissioner, Lucknow in W.C. Case No. 27 of 2002 (Sanjeev Kumar Trivedi vs. Sri Bharat Bhushan Dhawan).

I have heard learned counsel for the appellant, learned counsel for the opposite parties and perused the entire record.

Submission is that the court below failed to appreciate that there was no relationship of employer and employee between the appellant and opposite party no. 2 hence the case was not covered under the Workmen's Compensation Act, 1923 and the impugned order was passed without any jurisdiction.

Submission was also made that appellant's establishment came into existence in August, 2002. So, there was no question of occurrence of any accident at the appellant's establishment on 25.6.2002.

Last submission was that the impugned order was ex parte. So, the matter should be remanded for a fresh consideration.

Learned counsel for respondent no. 2 submitted that impugned order has been

passed considering all the facts and the sole purpose is to just to linger the award of compensation.

It is also submitted that the first appeal is devoid of merit because there is no substantial question of law and it should be dismissed.

There is no controversy regarding the factum of accident but it was alleged that when the accident took place, the respondent no. 2 was not working in the establishment. The respondent's claim was that he was working in the establishment on 25.6.2002 when the accident took place. Admittedly, inspection report along with annexures was prepared which was signed by the appellant though it was alleged to be plain at that time. Appellant is literate as admitted by him and this plea cannot be accepted and was rightly not accepted by the court below. Annexures along with inspection report bear the signature of appellant and reportedly it contains the name of labours, designation, period of working and the salary. Objection dated 12.3.2003 does not contain mention of the documents Ex.1 to Ex.4 and no convincing reason has been assigned. The establishment was registered at the time of accident and inspection report was voluntarily signed. So, the appellant cannot resile from his own admission.

Respondent no. 2 was got treated in Ranjana Nursing and Maternity Home by the appellant and so contention that respondent no. 2 was not working in the establishment at the time of accident, cannot be accepted.

It appears that the review was also filed against the order dated 26.5.2005, which was rejected vide order dated 22.8.2005 on the ground that reasonable opportunity was granted to the present appellant. It appears that on 10.3.2005 authority was withdrawn and the intimation was given to the appellant in that regard. On 22.3.2005, appellant was present in the court below and moved an application with the request to grant the time which was allowed and 18.4.2005 was fixed and subsequently 29.4.2005 was fixed. On that date appellant was again absent and subsequently 3.5.2005 was fixed, appellant was again absent on that date and the matter was listed for order after hearing the concerned party. Thereafter appellant again appeared and requested for time which was granted. On 10.5.2005 again appellant was absent resulting into the order dated 26.5.2005 on merit. Therefore, withdrawing of authority by the appellant does not come to the rescue of the appellant.

As far as section 30 of the Workmen's Compensation Act 1923 is concerned, it provides for appeals. In appeal under section 30, the High Court can interfere, if a party is able to prove that the findings are perverse in the sense that either of the findings are without any material on record or it is totally opposed to the material on record. The appellate court has no jurisdiction to entertain an appeal unless the same involves a substantial question of law. Admittedly scope of section 30 of Workmen's Compensation Act for entertaining the appeal against the order passed by the Commissioner is very limited. The mere difficulty of applying the facts to the law will not amount to a substantial question of law.

It will appear from above discussion that every effort was made to delay the passing of impugned orders. The documents like electricity connection, Lucknow Nagar Nigam, Pollution Board cannot be the sole basis for drawing the conclusion that respondent no. 2 was not employed in the establishment on the date of accident. A letter from Directorate of Industries Annexure1 dated 31.5.2002 with validity upto 30.5.2007 as per endorsement on it, the working place was changed to be B5, Talkatora Industrial Area, Lucknow from 10.6.2002 and accident is alleged to have taken place on 25.6.2002. The impugned order dated 26.5.2005 was passed on the basis of available documents and the convincing reasons and the review was rightly rejected by the court below also.

The amount has already been deposited. The matter is quite old. More than ten years have gone after the accident. Therefore, the present appeal is devoid of merit and is liable to be dismissed with costs.

The first appeal is dismissed with costs.

The statutory amount deposited by the appellant shall be adjusted by calculating the amount deposited by the appellant.

Interim order, if any, stands discharged.