

(2008) 05 DEL CK 0211
In the Delhi High Court
Case No : F.A.O. No. 15 of 2006

Delhi Jal Board

APPELLANT

Vs

Nayanga Singh

RESPONDENT

Date of Decision : 13-05-2008

Acts Referred:

Citation : (2009) 1 LLJ 74

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : Arvind Nayar, Vikas Kumar and Rashmi Devi, for the Appellant;
Tarun Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Heard learned Counsel for the Parties.

2. Two points are sought to be urged in the appeal. Firstly that the workman was a casual employee and hence would not be entitled to the benefit of the Workmen's Compensation Act, 1923 and secondly that the employee was not on duty as falsely alleged by him and that he did not suffer any injury while performing duties.

3. To appreciate the arguments advance at the hearing today to challenge the impugned order dated July 26, 2005 passed by the Commissioner Workmen's Compensation a peep has to be made into the impugned order.

4. In para 2 of the impugned order it has been recorded that the summons in the claim petition were duly served upon the appellant requiring reply to be filed by July 1,2002. That in spite of service none appeared for the appellant. Matter was thereafter adjourned repeatedly on as many as 10 dates. With great difficulty a reply was elicited because the authorized representative of the respondent who chanced to be present in the office of the Commissioner Workmen's Compensation on July 17,2003 was reminded about the case. He assured that a reply would be filed latest by August 26, 2003. None was filed. Notwithstanding

that over 1 year had elapsed the Commissioner, Workmen's Compensation gave two further dates and ultimately a reply came on record on November 27, 2003. The reply stated that log sheets were being enclosed. The log sheets are documents showing the working of the booster pumps. Probably, it was intended to establish therefrom that the workmen was not present when the booster pumps were operated.

5. Though mentioned in the reply that log sheets were being enclosed, none were enclosed. Thereafter, rejoinder was filed by the workmen on February 10, 2004. The appellant chose to abstain from further hearing resulting in the Commissioner, Workmen's Compensation recording the statement of the workman. Needless to state a statement which was in the nature of affirmative evidence remained un-rebutted. No rebuttal evidence was led by the appellant.

6. Thus, any plea predicated on an unproved defence cannot be considered much less to find fault with the impugned order.

7. Even from the reply filed it has to be noted that no challenge was raised to the Commissioner, Workmen's Compensation predicated a plea on the status of the workman.

8. Under the circumstances, I do not find any fault with the impugned order which has recompensed the workman compensation on account of the disability suffered by the workman with respect to the disability certificate issued by Lok Nayak Jaya Prakash Hospital. I note that Compensation assessed to the workman is Rs. 97,335 with interest @ 12% per annum with effect from the date of the accident.

9. The appeal is dismissed.

10. Since the workman has received the compensation after furnishing surety/ security, the same stands discharged.

11. No costs.