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**(2010) 09 SHI CK 0075**  
**In the High Court Of Himachal Pradesh**  
**Case No : FAO No. 423 of 2005**

Giri Raj

APPELLANT

Vs

Sham Mahajan and Another

RESPONDENT

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**Date of Decision :** 22-09-2010

**Acts Referred:**

**Citation :** (2011) 1 TAC 322

**Hon'ble Judges :** Surjit Singh, J

**Bench :** Single Bench

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## Judgement

Surjit Singh, J.—This appeal by Shri Giri Raj, who claims to be a workman, employed by the respondents, is directed against the order dated 19.7.2005 of Commissioner, under Workmen's Compensation Act, whereby his petition for compensation, on account of injuries sustained by him, allegedly in the course of employment, has been dismissed, on the ground that relationship of workman and employer between the appellant and the respondents has not been proved.

2. Appellant, claiming himself to be a workman, employed for drilling rocks, filed a petition, seeking compensation for the injuries sustained by him, while doing the drilling job. It was alleged that appellant had been employed on payment of daily wages @ Rs. 105/- per day, by respondent Sham Mahajan, in connection with construction of a road from Jai Nagar to Ukhu in Tehsil Nalagarh. It was also stated that on 19.7.2001, when the appellant was doing drilling job, a rock slipped from the mountain side and fell upon him, as a result of which he sustained fracture of legs and the injuries caused permanent disability to the extent of 100%.

3. Respondent No. 1 denied that appellant was employed in connection with the construction of the aforesaid road. Commissioner, under the Workmen's Compensation Act, after recording evidence of the parties, has returned finding that the appellant had not been employed by the respondents and consequently dismissed the claim petition, vide impugned order.

4. I have heard learned Counsel for the parties and gone through the record.
5. Appellant had been removed to District Hospital at Bilaspur on the very day of the alleged accident, i.e. 19.7.2001. He was admitted to that hospital. Matter was reported to the police. HC Jasbir Singh from Police Station, Ram Shahr in Nalagarh Sub Division, went to hospital at Bilaspur, and after making inquiries with the Medical Officer, Incharge of District Hospital, Bilaspur, entered a report in the diary, copy Ext. PW2/A, per which appellant alongwith one Keshav Ram, sustained injuries while working as drill man for respondent No. 1 Sham Mahajan. This report was entered in the Rojnamcha on 20.7.2010 or say the day, next following the day of incident.
6. Commissioner, under Workmen's Compensation Act, while passing the impugned order, has not even noticed this report, which had duly been proved by PW-2 Mohan Lal, MHC, Police Station, Ram Shahr, leave alone considering it. This report, when seen in the light of the testimony of appellant, who appeared as PW-3 as also the testimony of other witnesses examined by him, namely Ram Dittu and Sees Ram, examined in rebuttal, shows that the appellant sustained injuries, while working in connection with the construction of road, contract of which had been awarded to Sham Mahajan, per his own statement, which he made while appearing as DW-2.
7. Though DW-2 Sham Mahajan and DW-1 Praveen Kumar Munshi of DW2 Sham Mahajan stated that appellant had not been employed in connection with construction of the aforesaid road, they did not produce the attendance register and the muster roll, though both of them stated that such record had been maintained by them to show that name of the appellant did not figure in these registers.
8. Learned Senior Counsel, representing respondent Sham Mahajan, submits that appellant should have summoned the record from the office of Executive Engineer or from the office of Sham Mahajan. Praveen Kumar, while appearing in the witness box as DW-1, stated that no intimation, regarding employment of workmen, had been sent to the office of Executive Engineer and therefore, no record was supposed to be available with the Executive Engineer, with respect to the plea of the appellant that he had been employed as workman.
9. As regards the non-summoning of record from the office of Sham Mahajan, he (Sham Mahajan) himself, while appearing in the witness box, was supposed to have produced the record in support of his testimony that appellant was not shown as workman, in his record.
10. In view of the above stated position, appeal is accepted. Finding given by the Commissioner that the appellant was not employed as a workman by the respondents is set aside and it is held that there was relationship of workman and employer between the appellant and respondent Sham Mahajan. Matter is remitted to the Commissioner, under Workmen's Compensation Act, with a direction to assess the amount of compensation, payable to the appellant, and to

pass appropriate order in that regard. Commissioner shall finally dispose of the matter on or before 31.3.2011. Parties are directed to appear before the said Commissioner on 26.10.2010.

Appeal stands disposed of accordingly.