
(2011) 05 DEL CK 0330
In the Delhi High Court
Case No : Writ Petition (C) No. 1290 of 2011

Gobind Gupta

APPELLANT

Vs

Commissioner Under Workman Compensation Act and Others

RESPONDENT

Date of Decision : 04-05-2011

Acts Referred:

Employees State Insurance Act, 1948 — Section 53

Citation : (2011) 05 DEL CK 0330

Hon'ble Judges : Rekha Sharma, J

Bench : Single Bench

Advocate : Vinay Sabharwal, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Rekha Sharma, J.—The challenge in this writ-petition is to an order of the Commissioner, Workmen's Compensation Act, 1923, passed about 14 years ago on April 23, 1997 awarding compensation of ` 89,600/- to Respondent No. 2 and ` 44,800/- by way of penalty. The challenge has also been raised to a further order of the Commissioner dated March 30, 1998, directing the concerned SDM to effect recovery of the compensation amount from M/s Bharat Agro Plastic Factory and from the Petitioner in his personal capacity. The Petitioner has prayed for quashing of both the aforementioned orders.

2. It is contended that the deceased husband of Respondent No. 2, namely, Shri Krishan Kumar on account of whose death she has been awarded compensation, was employed with M/s Bharat Agro Plastic Factory with which the Petitioner had no concern and as such, he could not be fastened with the liability to pay the compensation or the penalty amount. As per the Petitioner, he is one of the Directors in a company, named, Bharat Polychem Ltd. which has no connection with M/s Bharat Agro Plastic Factory. It is also contended that late Shri Krishan Kumar was insured under the Employees' State Insurance Act, 1948 and that in view of Section 53 of the said Act which provides that an insured person or his dependants shall not be entitled to receive or recover, whether from the

employer of the insured person or from any other person, any compensation or damages under the Workmen's Compensation Act, 1923, the impugned orders passed under the Workmen's Compensation Act were a nullity.

3. One fact which needs to be highlighted is that the aforementioned orders of April 23, 1997 and March 30, 1998 which are the subject matter of challenge in this writ-petition, were also challenged by the Petitioner in the year 2001 by way of writ-petition No. 2551/2001. In that writ-petition, it was held that an appeal and not a writ lay against the order in question. Nonetheless, instead of dismissing the writ-petition, it was treated as an appeal (FAO) which was taken up for hearing on May 03, 2006. None, however, appeared before the Court on that date and consequently, the FAO was dismissed in default. The Petitioner filed an application for restoration of the FAO along with an application for condonation of delay but by order dated February 18, 2008, both the applications were dismissed. Against the order so passed, he filed an LPA, but on October 28, 2010, he withdrew the same with liberty to seek an appropriate remedy as permissible in law. It is in this background that the present writ-petition has been filed.

4. Having heard learned Counsel for the Petitioner, I feel that the present writ-petition is a total abuse of the process of law. The relief's prayed for in the writ-petition are the same as were sought in writ-petition No. 2551/2001. I fail to understand, how the present petition is maintainable when against the same impugned orders, WP(C) No. 2551/2001 was filed and it was held to be not maintainable.

5. In so far as the appeal against the impugned orders is concerned, as noticed above, it was dismissed in default. The application for restoration was also dismissed. Hence, the orders attained finality.

6. For the fore-going reasons, I hold that the writ-petition is wholly misconceived and is dismissed as such.