

(1971) 10 P&H CK 0022

In the Punjab And Haryana At Chandigarh

Case No : First Appeal From Order No. 40 of 1969

Shri Joginder Singh

APPELLANT

Vs

Shri Dev Singh

RESPONDENT

Date of Decision : 06-10-1971

Acts Referred:

Workmens Compensation Act, 1923 — Section 30

Citation : (1971) 10 P&H CK 0022

Hon'ble Judges : Gopal Singh, J

Bench : Single Bench

Advocate : Dalip Singh Kang, for the Appellant; Sukhdev Khanna, for the Respondent

Final Decision : Dismissed

Judgement

Gopal Singh, J.—This is appeal by Joginder Singh against Dev Singh. It is directed against the judgment of Shri Radha Krishan Battas, Commissioner for Workman's Compensation, Patiala dated January 16, 1969 awarding compensation of Rs. 5040 u/s 30 of the Workmen's Compensation Act, 1923, hereinafter called "the Act" to the respondent against the appellant for the injury caused to the hand of the respondent while working a chaff-cutter of the appellant.

2. According to the case of the respondent, he was working on a chaff-cutter of the appellant and it was in course of employment that his hand was injured and had to be imputed later in the hospital. The appellant in defence stated that the respondent had never employed by him and it was denied that any injury to the hand of the respondent had been caused in course of his employment with the appellant. The pleadings of the parties gave rise to the following issues:-

(1) Whether the injury was caused by an accident in the course of employment of the respondent?

(2) If issue No. 1 is proved, to how much compensation is the petitioner entitled?

(3) Whether notice of injury had not been served within the prescribed period for a sufficient cause.

3. The present appeal from the order of the Commissioner dated January 18, 1939 was filed in the High Court on March 10, 1969. The memorandum of appeal was not accompanied by a certificate of the Commissioner to the effect that the appellant had deposited with him the amount payable under the order sought to be appealed from. The appellant however, filed an application along with the memorandum of appeal praying for grant of period of two months to enable him to deposit that amount with the Commissioner and to obtain the requisite certificate. Taking into consideration the period of limitation of 60 days as provided in sub-section (2) of Section 30 of the Act and seven days spent on obtaining certified copy of the order appealed from the last date for filing the appeal would be March 24, 1969. A notice was issued to the respondent in that application by a Division Bench of the Court on March 26, 1969. By order dated April 28, 1969 it was held that considering the language of the third proviso to sub-section (1) of Section 30 of the Act, no appeal was competent unless the requisite certificate accompanied the memorandum of appeal. In the order of the Division Bench, it was observed that it would be open to the appellant after he had deposited the amount of compensation awarded against him to apply for condonation of delay u/s 5 of the Limitation Act in case the period for filing the appeal had expired. The amount was deposited in the State Bank of Patiala by the appellant under the order of the Commissioner on May 15, 1969 and an application u/s 5 of the Limitation Act supported by an affidavit and accompanied by one of the triplicates of the deposit challan showing deposit of the amount was filed in the High Court on May 17, 1969. In that application it is pleaded by the appellant that he could not deposit the amount earlier than May 15, 1969 as he had no money to deposit it. There has occurred delay from March 24, 1969 to May 17, 1969, when the deposit challan had for the first time been filed on May 17, 1969. Thus, there has been delay of (sic) days in filing the deposit challan. Even, upto today no certificate, apart from the deposit challan, issued by the Commissioner testifying to the fact of deposit of the amount awarded by way of compensation against the appellant has been filed.

4. Shri Sukhdev Khanna appearing on behalf of the respondent has raised the following two preliminary objections:-

(1) In the absence of certificate accompanying memorandum of appeal as enjoined by the third proviso to sub-section (1) of Section 30 of the Act, no appeal can lie.

(2) Under the first proviso to sub-section (1) of Section 30 of the Act, appeal from the order of Commissioner cannot lie unless a substantial question of law is involved in the appeal and none arising in the case, the appeal deserves dismissal.

5. Both the preliminary objections urged on behalf of the respondent prevail. The

language of third proviso to sub-section (1) of Section 30 is imperative. There could be no appeal before the High Court unless the memorandum of appeal is accompanied by a certificate issued by the Commissioner to the effect that the appellant had deposited with him the amount payable under the order appealed from. No such certificate having been filed, the appeal is incompetent and deserves dismissal. The deposit challan was filed in the High Court on May 17, 1969, when there was filed an application supported by an affidavit to the effect that the said sum of Rs. 5,040 had been deposited on May 15, 1969. The certificate having not accompanied the memorandum of appeal within the period of limitation within which the appeal could be filed and even the deposit challan having been filed 34 days after the expiry of period of limitation for the appeal no appeal, even if filed earlier than the date of filing the challan was competent and could be held to have been filed within time. Even in the application u/s 5 of the Limitation Act filed to condone delay, the appellant has miserably failed to make out any ground of sufficient cause for condonation of delay. The only reason assigned in that application is that the appellant had no money with him prior to the date, when he made deposit of the amount in the Bank. The plea of want of money with the appellant is a broad and vague plea. It cannot be held to constitute sufficient cause to condone delay. On this point alone, the appeal fails and deserves dismissal.

6. Now I advert to the second preliminary objection. While considering issue No. 1, the Commissioner had considered the evidence of Tara Singh A.W. 1, Charan Singh A.W. 2, Chanan Singh A.W. 3, Puran Singh A.W. 4 and Dr. J.S. Sethi A.W. 5, who appeared on behalf of the respondent and also the evidence of Satinder Singh R.W. 1, and Kapur Singh R.W. 2 who were produced in defence by the appellant. On appreciation of their evidence, the Commissioner has come to the conclusion under issue No. 1 that the injury had been caused by an accident to the respondent in course of employment of the appellant. That finding is a finding of fact. It cannot be re-agitated or reconsidered in the face of first proviso to sub-section (1) of Section 30 of the Act. It is only on substantial question of law that an appeal u/s 30 from the order of a Commissioner is competent. The finding under issue No. 1 being one of fact and the same not involving any question of law, the decision given under issue No. 1 cannot be reconsidered. The counsel for the appellant conceded that the findings given by the Commissioner under issues Nos. 2 and 3 were correct and he did not want to challenge them.

7. For the foregoing reasons, the appeal is disallowed. There will, however, be no order as to costs.