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Tirath Ram Ahuja Pvt. Ltd. Vs Government of NCT of Delhi and Others

Writ Petition (C) No. 20379 of 2005

Court: Delhi High Court

Date of Decision: July 15, 2009

Citation: (2009) 6 ILR Delhi 681

Hon'ble Judges: S.N. Aggarwal, J

Bench: Single Bench

Advocate: Rakesh Kumar Garg, for the Appellant; Rama Shankar, for the Respondent

Final Decision: Allowed

Judgement

S.N. Aggarwal, J.
This writ petition filed by the management (petitioner herein) is directed against an order dated 09.08.2004 passed by

the Commissioner, Workmen Compensation under the Workmen Compensation Act, 1923 directing the management to pay penalty of 50% and

interest @ 6% on the ad-hoc payment of Rs. 70,881/- deposited by the management with the Commissioner, Workmen Compensation on

25.03.2003.

2. The brief facts relevant for the disposal of this writ petition are that the petitioner is in the construction business. Respondent No. 3 in whose

favour the impugned order was passed by the Commissioner, Workmen Compensation was employed as a labour by the petitioner. He met with

an accident in the course of his employment with the petitioner on 26.08.1998. On account of injuries sustained by him in the said accident, he

suffered 20% earning loss as certified by the Medical Board of AIIMS. The workman filed an application for payment of compensation on

account of injuries sustained by him in the accident before the Commissioner, Workmen Compensation. The Commissioner, Workmen

Compensation without assessing the compensation to which the workman was entitled, directed the management to deposit ad-hoc compensation

on the basis of self-assessment. The management pursuant to the said direction of the Commissioner, Workmen Compensation deposited an

amount of Rs. 70,881/- with the Commissioner, Workmen Compensation on 25.03.2003. This deposit was made by the management on ad-hoc

basis on the basis of its own self-assessment. The amount so deposited by the management was released by the Commissioner, Workmen

Compensation in favour of the workman on 30.05.2003. However, the Commissioner, Workmen Compensation vide impugned order dated

09.08.2004 without assessing the compensation payable to the workman in terms of provisions of the Workmen Compensation Act, 1923

directed the management to pay 50% penalty and 6% interest on the amount of Rs. 70,881/- within one month. The management aggrieved by this

order filed a review application before the Commissioner, Workmen Compensation which also stood dismissed vide order dated 08.07.2005.

Even in the review order which is at pages 34-35 of the paper book, the Commissioner, Workmen Compensation has not assessed the quantum

of compensation admissible to the workman under the Workmen Compensation Act, 1923.

3. The management, aggrieved by the impugned orders of the Commissioner, Workmen Compensation, has filed this writ petition seeking to set

aside the said orders.

4. I have heard learned Counsel for both the parties and have also gone through the impugned orders and the entire case file.

5. Mr. Rakesh Kumar Garg learned Counsel appearing on behalf of the management has filed a computation containing statement of compensation

payable to the workman on account of injuries sustained by him in the accident that took place in the course of his employment with the petitioner

on 26.08.1998. A copy of this computation is made available to the Counsel appearing on behalf of the workman.

6. It is not disputed by Mr. Rama Shankar learned Counsel appearing on behalf of the workman that the Commissioner, Workmen Compensation

has not assessed the amount of compensation that was payable to the workman on account of the injuries sustained by him in the accident. It is

also not disputed by him that the Commissioner, Workmen Compensation vide impugned order has directed the management to pay penalty and

interest @ 6% on Rs. 70,881/- without quantifying the compensation payable to the workman under the Workmen Compensation Act, 1923. This

approach adopted by the Commissioner, Workmen Compensation is wholly irrational and arbitrary. The penalty and interest could not have been

levied without first assessing the compensation payable to the workman under the Workmen Compensation Act, 1923.

7. Mr. Rama Shankar learned Counsel appearing on behalf of the workman on going through the computation containing statement of

compensation payable to the workman does not dispute that the workman was entitled only to Rs. 54,498.18 paise admissible to him under the

rules and he has already received Rs. 70,881/- from the management way back on 30.05.2003. This admission on the part of the workman clearly

shows that he had received much more than what was actually admissible to him on account of compensation, penalty and interest on account of

injuries sustained by him in the accident that took place in the course of his employment with the petitioner on 26.08.1998. Mr. Rakesh Kumar

Garg learned Counsel appearing on behalf of the management submits that he has instructions from his client to forgo the excess payment already

made by the management to the workman.

8. For the foregoing reasons, the impugned order passed by the Commissioner, Workmen Compensation cannot be sustained either on facts or in

law. The said order suffers from perversity and is therefore set aside. This writ petition is allowed leaving the parties to bear their own costs.

9. All pending misc. applications also stand disposed of in terms of order passed in the main writ petition.

10. The amount deposited by the management pursuant to order by this Court on 24.10.2005 along with interest accrued thereon be returned by

the Registry to the petitioner forthwith.