

(2009) 05 DEL CK 0450

Delhi High Court

Case No: Regular First Appeal 218 of 2005

Fire Ball Securities and
Consultants

APPELLANT

Vs

O.P. Rawat

RESPONDENT

Date of Decision: May 27, 2009

Hon'ble Judges: P.K. Bhasin, J

Bench: Single Bench

Advocate: A.K. Dhatwalia, for the Appellant; None, for the Respondent

Judgement

P.K. Bhasin, J.

This appeal is directed against judgment and decree dated 02-02-2005 passed by the learned Additional District Judge in suit No. 211/03 whereby a decree for a sum of Rs. 62,900/- has been passed in favour of the respondent-plaintiff and against the appellant-defendant and the counter claim of the appellant-defendant for a sum of Rs. 5,00,000/- was rejected. The respondent-plaintiff has also filed cross-appeal praying for passing of a decree for Rs. 2,00,000/- as compensation which has been rejected by the trial Court. The appellant-defendant has, however, restricted its challenge only to that part of the impugned judgment whereby suit of the respondent-plaintiff has been partly decreed and has not challenged rejection of its counter claim by the trial Court.

2. The relevant facts are that the respondent(herein referred to as "the plaintiff") was employed with the appellant-company(hereinafter referred to as "the defendant"), which provides security services, as Manager Operations vide appointment letter dated 13th November, 2002. His total monthly remuneration including basic salary of Rs. 4,000/- was Rs. 10,456/- He was also entitled to personal accident insurance for Rs. 1,00,000/-. The plaintiff was deputed to supervise security operations in the factory of M/s Daewoo Motors in NOIDA on 19/05/03 when there was some violent demonstration in the factory by the employees of M/s Daewoo Motors and during that demonstration the plaintiff sustained serious injuries and

had to be hospitalized. As per the further case of the plaintiff the defendant did not fulfill its obligations in the matter of reimbursement of his medical expenses etc. except the payment of Rs. 25,600/- which was paid directly by the defendant to Prayag Hospital In Noida where he was admitted on the day of the incident. Medical insurance policy was also not taken for him and so, as per the case of the plaintiff set out in the plaint, the defendant was liable to reimburse to the plaintiff all the medical expenses upto Rs. 1,00,000/- but the defendant did not pay him the amount incurred by him on his medical treatment and not only that he was also not paid his salary from July, 2003 onwards and instead he was asked to resign which he did not do. The defendant was then served with a legal notice dated 23rd August, 2003(Ex.P-5) requiring it to make the payment of Rs. 6,500/- on account money spent on medical treatment, back wages for the months of July and August, 2003 and Rs. 1,00,000/- on account of compensation for mental agony. But instead of making that payment the defendant got sent a reply dated 3rd September, 2003(Ex.P-6) informing the plaintiff that he was remaining absent from duty unauthorisedly w.e.f. 01/07/03 and so was not entitled to salary from July, 2003 onwards and also requiring the plaintiff to withdraw his notice and to resume his duty by 10th September, 2003. Thereafter the defendant sent a letter dated 25th September, 2003(Ex.P-9) to the plaintiff informing him that since he had failed to report for duty w.e.f. 10th September, 2003 as he was required to do vide its advocate's reply dated 3rd September, 2003(Ex.P-6) his services had stood terminated automatically w.e.f. 01/7/03 as per clause No. 8 of his appointment letter(Ex.P-7). The plaintiff then filed a suit for recovery of Rs. 3,06,500/- on account of compensation for permanent disability and physical suffering, medical treatment expenses, salary for the months of July to October, 2003 etc.

3. The defendant had contested the suit claim and had also raised a counter claim for Rs. 5,00,000/- as damages on the allegations that in view of the cowardice of the plaintiff shown at the time of the employees' demonstration in the factory of M/s Daewoo Motors on 19/05/03 by running away from the scene of demonstration instead of showing the courage in controlling the situation with the help of other security guards the reputation of the defendant Company had been tarnished. On the merits of the claim of the plaintiff the stand of the defendant was that even though the plaintiff was not entitled to any amount because of his cowardice yet on humanitarian grounds his entire medical expenses during his hospitalization in Prayag Hospital were borne by the defendant Company and he was also paid salary for the months of May and June, 2003 on humanitarian grounds only even though he had not applied for leave. It was further pleaded that during the period of hospitalization of the plaintiff the officials of the defendant Company as well as its Chairman had been visiting him in the hospital. It was also pleaded that the plaintiff was not paid salary after June, 2003 since despite his having assured that he shall be reporting for duty w.e.f. 01/07/03 he did not report for duty and even after service of notice dated 03/09/03 requiring him to report for duty w.e.f. 10/09/03 he did not join

duty even though he was fully fit and in a position to attend the office. It was also pleaded by the defendant that because of the failure of the plaintiff to report for duty he was deemed to have lost the lien on his employment as per clause 8 of the contract of employment and so he was not entitled to any salary from July, 2003 onwards.

4. The trial Court framed certain issues arising out of the pleadings of the parties and thereafter both the parties adduced the evidence in support of their respective stands. The learned trial Judge examined the evidence adduced by the parties as also the written submissions submitted on their behalf. The plaintiff in his written submissions had invoked the provisions of the Employers' Liability Act, 1938. The learned trial Judge then passed the impugned decree in favour of the plaintiff for a sum of Rs. 62,900/- which included a sum of Rs. 25,000/- on account of compensation for pain and sufferings because of the injuries sustained by him, Rs. 6,500/- for medical treatment and Rs. 31,368/- on account of salary for the months of July, 2003 to September, 2003 @ Rs. 10,456/- p.m. Interest was also awarded on the decretal amount @ 6% p.a. from 01/10/03 till realization. The counter claim of the defendant was, however, rejected.

5. Feeling aggrieved, the defendant filed the present appeal challenging the passing of decree passed in favour of the plaintiff but it did not challenge the rejection of its counter-claim. The plaintiff also filed cross-appeal against the rejection of part of his claim on account of compensation for permanent injury sustained by him and prayed for passing of a decree in his favour for Rs. 2,00,000/- on account of compensation for permanent injury sustained by him.

6. I have heard the learned Counsel for the appellant only since none appeared for the respondent today as well as yesterday when the appeal was taken up for hearing.

7. Learned Counsel for the appellant has submitted that he was not disputing that the appellant was liable to get the respondent treated because of his having suffered injuries while performing his duties as the employee of the appellant. However, two points have been raised by the learned Counsel for getting the judgment of the trial Court reversed. Firstly, it has been contended that there was no basis whatsoever for the learned trial Court for awarding Rs. 25,000/- as compensation for pain and sufferings and similarly the amount of Rs. 6,500/- on account of medical expenses was also wrongly granted since the defendant had already made the payment to the hospital concerned and there was no further claim ever raised by the plaintiff nor any sanction for that amount was taken for getting treatment from a hospital of his choice after his discharge from Prayag Hospital where he was taken on the date of the incident by the employees of the defendant Company and had remained hospitalized for four days and all the medical expenses incurred there were borne by the defendant Company. Regarding the decree for three months' salary it has been submitted that the plaintiff had been remaining

absent from duty without any intimation from July, 2003 onwards and so as per clause 8 of his appointment letter his services stood automatically terminated by way of abandonment w.e.f. 10th July, 2003 since under that clause it was clearly provided that in case of continuous unauthorised absence from duty for a period of ten days the services of the plaintiff would be deemed to have come to an end and so the trial Court had wrongly awarded him salary for the months of July, 2003 to September, 2003.

8. In my view, as far as the decree for a sum of Rs. 25,000/- on account of pain and sufferings, as against the amount of Rs. 50,000/- claimed by the plaintiff, is concerned the same cannot be said to be in any way excessive considering the fact that the plaintiff had to remain confined to his house undisputedly from 19th May, 2003 upto at least June, 2003 because of the injuries sustained by him while performing his duties in the course of his employment with the defendant Company. And as far as the grant of decree for Rs. 6,500/- on account of medical expenses is concerned, according to the defendant's counsel, the plaintiff was not entitled to get that amount since he had not obtained prior sanction for incurring that expense. In my view, this submission has also no merit. The defendant has not shown that the plaintiff was required to obtain any prior sanction before purchasing medicines. As far as the medical expenses of Rs. 6,500/- awarded by the trial Court in favour of the plaintiff are concerned it is not disputed that during the trial the plaintiff had proved relevant bills. So, even this claim has also been rightly allowed by the trial Court.

9. As far as the decree on account of salary for three months is concerned I am of the view that the same needs to be modified to some extent. The plaintiff's case was that he had been keeping the defendant Company informed about his physical condition and had also been furnishing medical certificates alongwith his requests for leave on medical grounds and the defendant had been impliedly granting medical leave to him and so he was entitled to his salary for the months of July, 2003 to October, 2003. In this regard the submission of the learned Counsel for the defendant-appellant was that the plaintiff had admitted in his cross-examination that he had not sent any application for leave on medical grounds after his discharge from the hospital and so he was absent without leave and, therefore, not entitled to any salary for the period of his unauthorized absence from duty. Even though the plaintiff has not placed on record any leave applications but it can be accepted that he had been requesting for leave and the defendant had been impliedly granting the same as otherwise the defendant would not have paid the salary to him for the months of May and June, 2003 which admittedly was paid to him although according to the defendant no leave application was submitted by the plaintiff for that period also. It was only when the plaintiff got a legal notice dated 23rd August, 2003 served upon the defendant that the defendant claimed that he was remaining absent unauthorisedly and there is no document placed on record by the plaintiff to show that it had informed that plaintiff before that that he was being

treated as absent from duty because of his having not applied for leave on medical grounds. Vide notice/reply dated 3rd September, 2003, the defendant claimed for the first time that the plaintiff was absenting from duty and he should report for duty by 10th September. So, it can be said that the plaintiff was being treated as on medical leave at least upto August, 2003 and in these circumstances even invocation of clause 8 of the appointment letter by the defendant in opposition to his claim of salary for the months of July and August, 2003 was not justified since by that time the defendant itself had not invoked that clause which it would have done if actually the plaintiff was remaining absent unauthorisedly. However, upon the failure of the plaintiff to resume duties even after receiving this notice/reply dated 3rd September, 2003 from the defendant he was not entitled to his salary for September, 2003 onwards. And since the plaintiff had not joined his duties even after receiving the notice/reply dated 3rd September, 2003 the defendant could then of course invoke clause 8 of the appointment letter and so the plaintiff was not entitled to either three months' notice or salary in lieu thereof for bringing about the automatic termination of his services because of his unauthorised absence of duty for continuous period of ten days. In these circumstances, I am of the view that the plaintiff was entitled to his salary for July, 2003 and August, 2003 amounting to Rs. 20,912/- but not for the month of September, 2003.

10. I have gone through the reasons given by the learned trial Judge for rejecting the plaintiff's claim of Rs. 2,00,000/- on account of compensation for the alleged permanent injury and I am in full agreement with those reasons and so the cross-appeal filed by the respondent- plaintiff is liable to be dismissed.

11. In the result, this appeal is partly allowed and the judgment and decree dated 02-02-2005 stands modified to the extent that now there shall be a decree for a sum of Rs. 52,412/- only with interest thereon @ 6% p.a. as awarded by the trial Court. The cross-appeal filed by the respondent is dismissed.