

**HIGH COURT OF JAMMU AND KASHMIR  
AT JAMMU**

MA No. 60/2005

Pronounced on:- 23<sup>rd</sup> .06.2020

Ghulam Mustaffa Lone

....Appellant(s)

Through: Mr. M. P. Gupta, Advocate

**vs.**

Divisional Manager,  
State Forest Corporation

....Respondent(s)

Through: Mr. Vipin Gandotra, Advocate

**CORAM: HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE**

**JUDGMENT**

**01.** This appeal is filed against the award dated 23.02.2005 passed by the Commissioner Workmen's Compensation Act (Assistant Labour Commissioner), Doda (hereinafter to be referred to as Commissioner) in case titled, 'Ghulam Mustafa Lone v/s Divisional Manager, J&K SFC'.

**02.** Briefly stated facts which arise for consideration in this appeal are, that appellant(Claimant) was working in compartment No. 19, Keshwan Jungle, Kishtwar as Chirani Mistri. On 30.08.1997, during chiran work in the compartment 19, Keshwan Jungle, Kishtwar, he met with an accident, as a Galli hit him. This accident resulted in fracture of his leg, suffered injuries to his foot and others multiple injuries. As a result of grievous injuries received by him, he suffered permanent disability, therefore, affected his earning capacity.

**03.** The appellant, thus, filed a claim petition before the Assistant

Labour Commissioner, Doda against the employer for compensation. As per the claim of the appellant, he received injuries as a result of the accident while on work and suffered permanent disability from 25% to 30%. Since he suffered permanent disability and was unable to do the same work, he approached the Commissioner by filing a claim petition for grant of lumpsum compensation of Rs. 2,46,000/-.

**04.** Heard learned counsel for the parties and also perused the record.

**05.** The respondent has categorically denied that any accident took place in the Month of August, 1997 in compartment No. 19, Keshwan Jungle, Kishtwar and, therefore, he sought dismissal of the claim petition.

**06.** In support of his claim, appellant produced Jamal Din and Mohd. Sheikh, who have supported the claim of the appellant regarding accident. Appellant has also produced an undated certificate from District Hospital Doda, which does not reflect any date of the examination nor the name of doctor, who examined him. The respondent's witness Ghulam Hassan Banday has denied that any accident took place in compartment No. 19, Keshwan Jungle, Kishtwar

**07.** On the basis of the pleadings and evidence, the Commissioner dismissed the claim petition on the ground that appellant was unable to prove the accident or the injuries occurred during the course of his employment.

**08.** Learned counsel for the appellant submits that the Commissioner has arrived at erroneous conclusion and dismissed the claim

of the appellant. The only ground for rejecting the claim of the appellant was that the appellant has failed to prove that he was employed in the compartment No. 19, Keshwan Jungle, Kishtwar and met with an accident which resulted in injuries during the course of his employment on 30.08.1997. The finding of the Commissioner regarding non-submission of medical record as regards receiving injuries at the time of accident are also erroneous and this required to be set aside..

**09.** The appellant had failed to produce any evidence regarding his employment or the alleged accident. There is also no medical record of his immediate treatment i.e., admission or checkup in any dispensary, any hospital or District Hospital to show that the injuries occurred to the appellant on the date of accident and where the subsequent treatment was undertaken. The certificate of the doctor indicating his injuries is undated and does not reflect when he was examined. In the absence of which, the statement of doctor who appeared as witness stating that the appellant has lost working capacity has no relevance. Thus, the appellant has failed to prove that the accident occurred during the course of his employment and the injuries suffered by him caused permanent disability.

**10.** This apart, the workman has not made the contractor as party with whom he was working, who could give the evidence regarding whether he was actually engaged by him and was working on the day when the accident had occurred.

**11.** It is admitted position of law that the Court of Commissioner is a final Court of facts. The finding of the Commissioner with regard to the fact that there was no report of the accident or statement of the supervisor-

Ghulam Hassan Banday alongwith the letter that no accident took place on the said date coupled with the fact that no medical record was placed on the file to substantiate the injuries suffered by the appellant on the date of accident and occurred in the course of his employment could not be proved. In these circumstances, the finding of the Commissioner cannot be interfered with.

**12.** The Apex Court in *'(2019) 11 Supreme Court Cases 514'*, *'North East Karnataka Road Transport Corporation v. Sujatha'* has held as under:

“9. At the outset, we may take note of the fact, being a settled principle, that the question as to whether the employee met with an accident, whether the accident occurred during the course of employment, whether it arose out of an employment, how and in what manner the accident occurred, who was negligent in causing the accident, whether there existed any relationship of employee and employer, what was the age and monthly salary of the employee, how many are the dependents of the deceased employee, the extent of disability caused to the employee due to injuries suffered in an accident, whether there was any insurance coverage obtained by the employer to cover the incident etc. are some of the material issues which arise for the just decision of the Commissioner in a claim petition when an employee suffers any bodily injury or dies during the course of his employment and he/his LRs sue/s his employer to claim compensation under the Act.

10. The aforementioned questions are essentially the questions of fact and, therefore, they are required to be proved with the aid of evidence. Once they are proved either way, the findings recorded thereon are regarded as the findings of fact.”

**13.** In view of the aforesaid discussions, there is no substantial

question of law which arises for determination in this case. Since the Commissioner is the final authority of fact and the appeal lies only if there is any substantial question of law. Since there is no substantial question of law which arises in this appeal, therefore, there is no merit in this appeal and the same is, accordingly, **dismissed**.

**14.** Original record of the court below be remitted back forthwith.

**(Sindhu Sharma)**  
**Judge**

**JAMMU**  
23.06.2020  
SUNIL-II

Whether the order is speaking	:	Yes
Whether the order is reportable	:	Yes/No