

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

MA No. 61/2005

Pronounced on:- 23rd.06.2020

Gani AhatuAppellant(s)

Through: Mr. M. P. Gupta, Advocate

vs.

Divisional Manager, J&KSFCRespondent(s)

Through: Mr. Vipin Gandotra, Advocate

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

JUDGMENT

01. This appeal is filed against the award dated 04.03.2005 passed by the Commissioner Workmen's Compensation Act (Assistant Labour Commissioner), Doda (hereinafter to be referred to as Commissioner) in case titled, 'Gani Ahatu v/s Divisional Manager, J&K SFC'.

02. Briefly stated facts which arise for consideration in this appeal are, that the appellant (Claimant) was working in compartment No. 19 Keshwan Jungle, Kishtwar as Chirani Mistri. On 04.08.1997, during chiran work in the compartment 19, Keshwan Jungle, Kishtwar, he met with an accident when a Galli hit and crushed his left foot, thus, injured him seriously for which he was treated in Wanipura Hospital. As a result of grievous injuries received by him, he suffered permanent disability.

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 suffered injuries as a result of the accident

while on work and this has resulted in crushing of his left foot and also he received multiple injuries due to which he suffered permanent disability. 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. 2,50,000/-.

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 Abdul Hamid and Abdul Rashid, as witnesses, who have stated that appellant received injuries on 04.08.1997, while working in compartment No. 19, Keshwan Jungle, Kishtwar, and at that time he was earning Rs.120/- per day. They have stated that Ghulam Hassan Banday (Supervisor) was also present at the time of accident. However, on cross-examination, both the witnesses have stated that the appellant only worked for one month and met with an accident on the last week of SAWAN Month. The doctor, who examined the appellant during the proceedings before Commissioner on 15.02.2002, opined that his weight bearing capacity has been reduced upto 30% and the working capacity of the appellant has also been reduced to about 40%. 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, he met with an accident which allegedly took place on 04.08.1997 and received personal injuries due to the accident, arising out of and in the course of his employment. It was held by the Commissioner that since no FIR of the said accident had been registered, therefore, it cannot be said that accident ever occurred. The commissioner also relied on the non-submission of medical record at the time of receiving injuries by the claimant. The evidence of the doctor as regards injuries and working capacity of the appellant, has also not been appreciated by the Commissioner. The finding of the Commissioner that there is nothing on record to support that either accident actually took place in compartment No. 19, Keshwan Jungle, Kishtwar or any evidence to support that injuries were suffered by appellant on 04.08.1997.

09. Appellant had failed to produce any evidence regarding his employment or the alleged accident. There is nothing on record to substantiate his claim of injuries which as per his own claim was “left foot is crushed and other multiple injuries to the body resulting in permanent disability”. He has not been able to prove where he was immediately treated after the accident and also where subsequent treatment of his injuries was undertaken. In the absence of the same, the statement of doctor stating

that he has loss of working capacity has no relevance. Thus, the appellant has also failed to prove the accident occurred during the course of his employment and resultantly the injuries were sustained by him.

10. This apart, the workman has not made the contractor as party with whom he was working, who could give the evidence regarding whether the appellant 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. Though the doctor has stated about the injuries suffered by him but whether the same were due to accident 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
23rd.06.2020
SUNIL-II

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