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**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 12<sup>TH</sup> DAY OF DECEMBER, 2025**

**BEFORE**

**THE HON'BLE MR. JUSTICE UMESH M ADIGA**

**MISCELLANEOUS FIRST APPEAL NO.755 OF 2022 (ECA)**

**BETWEEN:**

GANESHA  
AGED ABOUT 48 YEARS,  
S/O NARAYANAPPA,  
PROP. GANESHA ENGINEERING WORKS  
B.M. BYE PASS ROAD,  
HUNSUR,  
MYSURU DISTRICT - 571 105.

...APPELLANT

(BY SRI. MOHANA CHANDRA P., ADVOCATE)

**AND:**

RAHAMATHULLA  
AGED ABOUT 36 YEARS,  
S/O EQBAL PASHA,  
R/AT NO.213,  
BEHIND KANNADA HBS SCHOOL,  
SETHUVE MOHALLA, BRIDGE ROAD,  
HUNSUR,  
MYSURU DISTRICT-571 105.

...RESPONDENT

(BY SRI. ABUBACKER SHAJI, ADVOCATE)

THIS MFA IS FILED UNDER SECTION 30(1) EMPLOYEE  
COMPENSATION ACT, AGAINST THE JUDGMENT AND AWARD  
DATED 29.11.2021 PASSED IN ECA NO.1/2019 ON THE FILE OF  
THE SENIOR CIVIL JUDGE AND JMFC, MACT, HUNSUR,  
AWARDING COMPENSATION OF RS.7,49,056/- WITH INTEREST  
AT 12 PERCENT P.A. FROM THE DATE OF OCCURRENCE OF THE  
ALLEGED ACCIDENT TILL DEPOSIT.





THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 05.11.2025, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE UMESH M ADIGA

**CAV JUDGMENT**

This appeal is by the respondent in ECA.No.1/2019 on the file of Additional Senior Civil Judge & JMFC, Hunsur being aggrieved by the judgment and award dated 29.11.2021, passed by the Court of Senior Civil Judge and Commissioner under the Employee's Compensation Act, 1929 (for short 'Commissioner').

2. The parties are referred to as per their ranking before the Commissioner.

3. The brief facts of the case are that, the appellant (respondent before 'Commissioner') is the owner of a workshop by name 'Ganesha Engineering Works', situated at B.M.bypass road, Hunsur. The petitioner, was an employee of respondent and was working as welder on wages of Rs.400/- per day. The



petitioner was discharging his duty as a welder on the instructions and directions of respondent. The respondent had taken contract of house roofing work of one Mr.Madhu S/o Shivalingappa at Halagere, Hunsuru. On 04.11.2017 as directed by the respondent the petitioner was working as a welder, in the house of Madhu along with one Nawaz and Sudeep. While petitioner was discharging his duty, a welding machine fell on his left arm from the roof and he sustained grievous injuries to his left arm. Immediately, the co-worker Nawaz and Sudeep took him to KR Hospital for treatment. Due to injuries sustained in the incident, the petitioner has sustained permanent disability of 31%. He had spent about Rs.50,000/- towards medical expenses and Rs.20,000/- towards transportation expenses, special diet and miscellaneous expenses. With these reasons, petitioner prayed to award compensation of Rs.10,00,000/-.

4. The contentions of the respondent were that he denied the petition averments. He has contended that



he was the owner of 'Ganesh Engineering Works' at Hunsur. He further stated that he was a contractor and used to take contract of Government tenders and also private contract work. He used to give the said work to sub-contractors and get the work done. The sub-contractor use to secure manpower and materials and complete contract work on certain terms and conditions. He further contended that he did not engage any employees to do his contract work. He denied his relationship with petitioner as employer and employee. He also denied that he took contract of house roofing work of Madhu S/o Shivalingappa. He has also contended that the petitioner was working under one Mr.Nawaz. The said Nawaz sometimes used to do sub-contract work under respondent. With these reasons, he prayed to dismiss the claim petition.

5. From the rival contentions of the parties, the commissioner framed following issues:



- i. Whether the petitioner proves that he was working under the respondent as an employee at the time of the alleged accident?*
- ii. Whether the petitioner proves that he sustained injuries at the alleged accident during the course of his employment with the respondent?*
- iii. Whether the petitioner is entitled for the compensation? if so, at what rate?*
- iv. What order or award?*

6. The petitioner to prove his case examined two witnesses as PW-1 and PW-2 and got marked Exs-P1 to P63. Respondent examined three witnesses as RW-1 to RW-3 and got marked Exs-R1 and Ex-R2. (However the examination of witnesses on behalf of respondent is mentioned as nil in the annexure of impugned judgment.)

7. After hearing the arguments the Commissioner answered issue Nos.1 to 3 in the affirmative and directed respondent to pay compensation of Rs.7,49,056/- with interest @ 12% per annum from the date of occurrence till deposit of the amount by the



impugned judgment and award dated 29.11.2021. The same is challenged in the present appeal.

8. This appeal was admitted to consider the following substantial question of law that was framed as per order dated 21.10.2024:

- i. Whether non-compliance of Section 10 of the Employees Compensation Act vitiates entire proceedings?*
- ii. Whether there exists employer and employee relationship between the appellant and the respondent herein?*
- iii. Whether there exists any infirmity in the impugned order which ultimately requires the interference of this Court exercising appellate jurisdiction?*

9. I have heard the arguments of learned advocate appearing for both sides.

1<sup>st</sup> Substantial Question of Law:

10. The main contention of the appellant was that prior to filing of petition under Section 21 of the Employees Compensation Act (for short 'EC Act') notice under Section 10 of the EC Act was not issued.



Therefore, taking cognizance of the case by the Commissioner is erroneous. To consider the said point it is necessary to consider Section 10 of the EC Act.

11. For the sake of discussion it is necessary to refer Section 10 of the EC Act.

Section 10 of Employee's Compensation Act, 1923, reads as under:

*"10. Notice and claim.- (1) No claim for compensation shall be entertained by a Commissioner unless notice of the accident has been given in the manner hereinafter provided as soon as practicable after the happening thereof and unless the claim is preferred before him within two years of the occurrence of the accident or in case of death within two years from the date of death:*

*xxx...*

*xxx...*

*xxx...*

*xxx...*

*Provided further that the want of or any defect or irregularity in a notice shall not be a bar to the entertainment of a claim—*



*(a) if the claim is preferred in respect of the death of an employee resulting from an accident which occurred on the premises of the employer, or at any place where the employee at the time of the accident was working under the control of the employer or of any person employed by him, and the employee died on such premises or at such work place, or on any premises belonging to the employer, or died without having left the vicinity of the premises or place where the accident occurred, or*

*(b) If the employer or any one of several employers or any person responsible to the employer for the management of any branch of the trade or business in which the injured employee was employed had knowledge of the accident from any other source at or about the time when it occurred.*

*(emphasis supplied)*

12. Object of enactment of Section 10 of Employees Compensation Act is to protect the interest of the employer from payment of penalty and interest under Section 4(A)(2)(3) of the Employees Compensation Act.

13. Section 4(A)(2)(3) of the Employees Compensation act, reads as under:

*"4A. Compensation to be paid when due and penalty for default.- (1) Compensation under section 4 shall be paid as soon as it falls due.*

*(2) In cases where the employer does not accept the liability for compensation to the extent claimed, he*



*shall be bound to make provisional payment based on the extent of liability which he accepts, and, such payment shall be deposited with the Commissioner or made to the employee, as the case may be, without prejudice to the right of the employee to make any further claim.*

*(3) Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner shall-*

*(a) direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve per cent. per annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government, by notification in the Official Gazette, on the amount due; and*

*(b) if, in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears and interest thereon, pay a further sum not exceeding fifty per cent, of such amount by way of penalty.*

*Provided that an order for the payment of penalty shall not be passed under clause(b) without giving a reasonable opportunity to the employer to show cause why it should not be passed."*

14. After employer receives notice of accident and injury to an employee or death of an employee it is the duty of employer to assess the compensation and pay the same to the employee or deposit the amount before the commissioner, failing which, employer is



liable to pay penalty as well as interest at the rate of 12% per annum. In some cases, employer may be unaware about the incident, under such circumstances he has to bear the penalty as well as interest. To avoid such situation Section 10 of the EC Act, was enacted. It also enables the employer to ascertain or enquire about such incident and its nexus with the course of his employment. But reading above proviso to Section 10 of EC Act indicates that it is not mandatory.

15. In this case, employer was aware about the accident. He went along with one Nawaz (DW-2) to the hospital as well as police station. According to his contention, the police tried to settle the matter, and one of the petitioner's sisters, who is an advocate, propsoed a settlement between the parties. It is stated that Nawaz had paid an amount of Rs.40,000/- to the petitioner's sister as final settlement.

16. According to the evidence of PW-1 he lodged the complaint about accident to the police against



respondent and respondent contends that police enquired him about the said complaint during investigation. The said complaint was lodged within 25 days from the date of incident and at that time employer came to know about the incident. Thereafter, this petition was filed before the Commissioner on 06.01.2021. Therefore, there was notice of the incident to respondent-owner, prior to institution of proceedings under Section 21 of EC Act.

17. Under Section 10 of EC Act, 4<sup>th</sup> proviso (referred supra) if incident occurred at work place then notice is not mandatory. In this case, the place of incident was the work place. Hence, the employee's failure to issue notice is not a bar to filing a claim petition. The said contention of the appellant is not tenable. Accordingly, 1<sup>st</sup> substantial question of law is answered against the appellant.



2<sup>nd</sup> Substantial Question of Law:

18. It is vehemently contended by learned counsel for the appellant/respondent that the petitioner was not at all an employee working under respondent and there exists no relationship of an employer and employee between them. This fact was not at all considered by the Commissioner. Without much appreciation of the materials, the Commissioner erroneously held that there exists an employer and employee relationship, between them.

19. Learned counsel for the petitioner contended that it is undisputed fact that the respondent claimed to be a contractor and that the name of his workshop was 'Ganesh Engineering Works.' He further contended that the respondent was accepting government tenders for contract work and was also undertaking private contracts. It is further argued that Hunsur is a small town in Mysore District. The petitioner is an unorganised labour, who was totally unaware about the labour laws. He was working under respondent for few years. Since



he was an unorganised and manual labour, there was no question of appointment order, wages paid, records, etc. Even there are no records to prove that he was receiving daily wages of Rs.400/- per day. Except his oral testimony, he had no other materials to prove his contention. Respondent who was a contractor has not placed any materials in respect of his business. Immediately, after recovering, the petitioner filed this claim petition seeking for compensation. He also filed a complaint against respondent for causing injury. One Nawaz and Sudeep were also working under the respondent. They were also daily wage employees working under respondent. To defeat the claim of petitioner and by taking undue advantage of his illiteracy, lack of legal awareness, and absence of materials, the respondent contends that the petitioner was not working with him but was instead working under the said Nawaz. In fact, the petitioner never worked under Nawaz and never received any wages from him for doing work. The said Nawaz as well as Madhu, who gave



contract to the respondent, have given statement before the police about the said fact and they were examined by the respondent to prove his contention. These facts prove that respondent had won over them to defeat the claim of petitioner.

20. It was further argued by learned counsel for the petitioner that petitioner is suffering from kidney problems and everyday he had to undergo dialysis. Since this Court stayed the operation and execution of the award, the petitioner is unable to get the compensation. Therefore, prayed to dismiss the appeal.

21. The learned advocate for appellant/respondent during his argument read over complete evidence of both side witnesses and documents.

22. There is some substance in the submission of learned counsel for the petitioner. Undisputedly, the petitioner was a manual labour, who was working as a welder. It is also not in dispute that on the day of



incident, he was working in the house of one Madhu-RW-3 and at that time, the welding machine fell on his left hand and caused the injuries. It is also not in dispute that one Nawaz and Sudeep were present at the spot of the incident. The said Nawaz shifted the petitioner to the hospital for treatment. In the evidence, PW-1 has narrated these facts and in his cross-examination nothing was brought out to disbelieve his evidence. He denied several suggestions made in the cross-examination. The Commissioner has discussed the evidence of witnesses thoroughly. This being an appeal under Section 30 of the EC Act, there is no need to re-appreciate the evidence. It is also pertinent to note that a police complaint was given against respondent. Concerned police investigated the case and respondent has been charge sheeted. Said materials are placed on record by the petitioner. RW-2 and RW-3 are witnesses in the said criminal case. RW-2 before police stated that he was also an employee of respondent and on the day of incident worked along with claimant and Sudeep.



During his cross-examination also he admitted the same. RW-3 stated before police that respondent took contract of roofing. Respondent did not challenge the said charge sheet before competent forum on this ground that it was a false case.

23. The respondent himself was examined as RW-1 and in his evidence (examination-in-chief), he has stated that petitioner was not at all known to him and he saw him for the first time before the Court at the time of his evidence. In further evidence RW-1 has stated about lodging of police complaint by PW-1's wife and registration of criminal case.

24. In his cross-examination, RW-1 stated that in the year 2017 the petitioner had lodged a complaint against him with the police, pursuant to which the police called him for an enquiry. He further stated that he went to the police station along with Nawaz. RW-1 denied the suggestion put to him by the petitioner that the



petitioner was working under him and that he was paying wages to the petitioner.

25. To rebut the claim of the petitioner, respondent examined two witnesses i.e. Nawaz and Madhu, the owner of the building wherein the incident had occurred. Both of them in their cross-examination have stated that they had no documents to show that Nawaz was paying wages to petitioner. RW-2 had no document to show that he paid Rs.40,000/- as compensation to elder sister of the petitioner. He also stated that in the criminal case, he gave evidence as PW-3 and has stated that he was working as an employee under respondent for about eight years. He has also stated in the criminal case that petitioner was working under 'Ganesh Engineering Works' and stated about the incident.

26. RW-3 is Madhu S/o Shivalingappa, he stated that said Nawaz entered into a contract with him to do roofing work. He also stated about the incident that



occurred in his house. He has not produced any scrape of paper to prove his contention. As rightly submitted by the learned counsel for the petitioner, both RW-2 and RW-3 were witnesses in the criminal case registered against the respondent. The respondent examined them to support his contention. It is worth to note that both RW2 and RW-3 in their respective statements before police have stated that claimant was an employee of respondent. Contrary to the same, they deposed before this Court stating that claimant was employee of Nawaz(DW-2). It leads to an inference that they were won over by the respondent and their evidence is not reliable.

27. If RW-2 is honestly accepting that he was the employer of the claimant, then he ought to have deposited the compensation before the Commissioner or paid it to the claimant. Even at the time of enquiry in a criminal case registered against respondent, he would have informed to the police that claimant was his employee. On the contrary, before the police as well as



the Court in a criminal case he has stated that claimant was working under respondent, the said conduct also indicates that just to deny the rights of the claimant, respondent had examined them before the Commissioner.

28. The respondent did not even hesitate to take the assistance of witnesses who had earlier given statements against him before the police and had also deposed against him before the Court in the criminal case filed against the respondent. Therefore, the contention of the respondent is not reliable. Respondent Nos.1 to 3 are not credit worthy witnesses. Therefore, their evidence was rightly disbelieved by the trial Court.

29. Respondent/appellant did not produce any materials to prove his contentions. The submission of learned advocate for claimant as mentioned in the above para is acceptable. Respondent taking undue advantage of claimant stated that there are no records with the claimant and tried to deny his liability.



30. The commissioner on the basis of materials available on record rightly held that there existed a relationship of employer and employee between respondent and petitioner respectively. The Commissioner also held that the petitioner sustained injury in the course of employment. There is nothing to interfere in the finding of the Commissioner. For the aforesaid discussion, 2<sup>nd</sup> substantial question of law is answered against the appellant.

3<sup>rd</sup> Substantial question of law:

31. The Commissioner has properly appreciated the materials available on record and calculated the compensation in accordance with provisions of Employees Compensation Act. There is no need for a detailed re-appreciation of materials by this Court while considering an appeal under Section 30 of the EC Act.

32. Upon reconsideration, the amount of compensation awarded is just, reasonable, and in



accordance with law, and therefore does not call for any interference. Accordingly, substantial question of law No. 3 is answered against the appellant.

33. The claim petition was filed during the year 2019. After serious fight, the petitioner was able to get an award for the injuries sustained in the accident. It is pertinent to note that the Commissioner had earlier decided the claim petition and awarded compensation by its judgment and award dated 16.12.2019. At that point in time, summons were duly served on the respondent; however, he did not appear to prosecute the matter. Therefore, the commissioner decided the matter *ex parte*.

34. Respondent filed Misc.Case.No.3/2020 and got set aside the award dated 16.12.2019; thereafter respondent took his own time to file the objections and lead evidence. After considering all the facts, the commissioner decided the case by impugned judgment and award dated 29.11.2021. The appellant deposited the amount but did not allow the petitioner to withdraw



the amount, which is nothing but abuse of process of court. Therefore, petitioner is entitled for compensation along with compensatory cost.

35. Accordingly, this Court passed the following:

**ORDER**

- i. The appeal is ***dismissed*** with compensatory cost of Rs.10,000/-.
  
- ii. The impugned judgment and award dated 29.11.2021 in E.C.No.1/2019 passed by the Senior Civil Judge and Commissioner under the Employee Compensation Act, 1929 is confirmed.

Registry to send trial Court record along with the copy of the judgment to the concerned Court.

**Sd/-**  
**(UMESH M ADIGA)**  
**JUDGE**