

## PUNJAB AND HARYANA HIGH COURT

Bawa Singh

Vs

Jagdish Chand

(B Narain, C.J. I Dua, J.)

26.05.1960

### JUDGMENT

#### **Dua, J.**

(1) The facts giving rise to this Letters Patent appeal are these: The premises, which constitute a flour-mill, were given on lease for a period of one year by Jagdish Chander to Suraj Bhan and Kishori Lal on 9th February, 1955. On 17th July 1955 an accident occurred as a result of which Bawa Singh, petitioner-appellant, sustained curtailed injuries as a result of which his arm had to be amputated above an elbow joint. He applied for compensation under the Workmen's Compensation Act on the 1st October 1955 and the claim was preferred against Jagdish Chander, Suraj Bhan and Kishori Lal. The learned Commissioner by his order dated 30th July 1956 absolved Jagdish Chander from liability but allowed compensation to the extent of Rs. 3,940 against Suraj Bhan and Kishori Lal. Costs of the case incurred after 31st January 1956 were also allowed.

(2) Feeling aggrieved by the order absolving Jagdish Chander the workman Bawa Singh came up in appeal to this Court which was dismissed by the learned Single Judge on 4th April 1958. The question which arose before the learned Single Judge was that by virtue of a term of the lease deed by which the premises in question along with the machinery were let out by Jagdish Chander to Suraj Bhan and Kishori Lal, Bawa Singh workman (the present petitioner-appellant) had to be retained in service by the lessees for maintaining and looking after the flour-mill with the result that he must be deemed to be in the employment of Jagdish Chander. The original lease deed, from the very nature of things, must have been with Jagdish Chander the proprietor lessor; and indeed there is evidence in the record that the original document remained with him after execution by the lessees. Jagdish Chander, though a party to the proceedings, did not choose to appear in the witness-box nor was the lease deed produced. The learned Judge in Single Bench, although feeling dissatisfied with the conduct of Jagdish Chander which was described not to be above-board in withholding the lease deed and in keeping away from the witness-box, as he was in the best position to explain the whole situation, nevertheless gave decision against the

workman on the ground that Bawa Singh's version that Jagdish Chander had to pay his salary could not be accepted. The learned Judge expressed himself, while dealing with this point, in the following words:

"In the first place when the mill is being leased out it is very unlikely that Jagdish Chander should have undertaken to continue to pay the salary of Bawa Singh. It is, understandable that Jagdish Chander insisted on the contractors employing Bawa Singh as the latter was his trusted mechanic. But it seems altogether unbusinesslike to accept that Jagdish Chander would agree to accept only Rs. 125 per mensem as lease money and at the same time pay the same amount and something more in the form of grain and fuel-wood to Bawa Singh. The would have brought him no profit whatsoever and it is not possible to accept on the facts disclosed that any such term as is alleged by Bawa Singh could have been incorporated in the lease deed or could have been agreed to by Jagdish Chander. The result is certainly unfortunate as I understand that Suraj Bhan and Kishori Lal are financially not in a good condition and the order which has been made in favour of Bawa Singh may not really result in any benefit to him. but on the evidence as it stands it is difficult to differ from the conclusion of the commissioner on the point."

(3) The above reproduction of the relevant portion of the judgment of the learned Single Judge clearly shows that he was influenced exclusively by the fact that the lease money which had been fixed at Rs. 125 per mensem was not sufficient to pay the salary of the workman which amounted to Rs. 125 per mensem in cash, plus some grain and fuel wood. The learned Single Judge also seems to have been of the view that it was only Bawa Singh's statement which constituted the sole evidence on this part of the case on the present record. The attention of the learned Judge does not seem to have been drawn to the testimony of Khushi Ram, petitioner-writer, who had himself scribed the lease deed. This witness who has appeared as P.W. 7 stated on oath that at the time of the execution of the lease deed Bawa Singh workman was present and it was expressly incorporated in the deed that Bawa Singh would continue to be a Mistry and that he would be paid by the proprietor; the proprietor being Jagdish Chander. The salary would be paid to the workman on behalf of Jagdish Chander proprietor. It was then stated by the witness that Bawa Singh on behalf of the proprietor would continue in service but he would be paid by the contractor. Suraj Bhan and Kishori Lal have also appeared as witnesses but their testimony on this point is far from illuminating. Kishori Lal has made a statement that within a short time of the commencement of the lease he went away after handing over the mill to Suraj Bhan and that he has practically no knowledge about the details. Suraj Bhan has admitted the execution of a stamped lease deed, the original of which was with Jagdish Chander and a copy with the witness. He has merely stated that Bawa Singh used to work the mill before the lease in question and thereafter he was retained by the lessees. He too has not cared to produce a copy of the lease deed which admittedly had been given to him nor has he produced any account books. Bawa Singh workman has also appeared as P.W. 10 and he has expressly stated that at the time of the execution of the lease deed which was scribed by Munshi Khushi Ram he was present and that Jagdish Chander stated that his own Mistry must remain in service and that the workman (Bawa Singh himself) was selected to be the proprietor's (i.e. Jagdish Chander's) Mistry. He has further

stated that the salary had to be paid by Jagdish Chander and that there was a term to this effect in the lease deed itself. Although the workman had expressly made this statement in his examination-in-chief, in the cross-examination neither the lessor nor the lessees put any question challenging the correctness of this statement. The original lease deed having been withheld by Jagdish Chander against whom the claim for compensation was being made and he himself also having abstained from appearing in the witness-box, in my opinion, a very strong presumption must be raised against Jagdish Chander, who has withheld the best evidence. Withholding of best evidence in the possession of parties has been described by the Supreme Court as "inversion of sound practice": see *Smt. Tara Devi v. Lal Chand*<sup>1</sup>. This aspect was also considered by me sitting in Single Bench in *Bansi Ram v. Padam Sen*, Civil Revn. No. 521 of 1958. As a result of this discussion, I would unhesitatingly draw an inference against Jagdish Chander and accept the version given by Bawa Singh especially when it finds ample support and corroboration from the testimony of Khushi Ram, the scribe.

(4) Unfortunately the attention of the learned Single Judge was not drawn to the evidence of the scribe; nor was his attention drawn to the fact that no cross-examination was directed to the statement made by Bawa Singh in his examination-in-chief about Jagdish Chander's insistence that Bawa Singh must be retained in service and that such a term was also included in the lease deed.

(5) The learned Single Judge seems to have concentrated his attention only to the question that the lease money having been fixed at Rs. 125 per mensem, it was most unlikely that Jagdish Chander could reasonably speaking take upon himself the responsibility of paying to the workman a salary of Rs. 125 per mensem, and a certain quantity of flour and fuel-wood in addition. This argument ignores the fact that if retention in service of Bawa Singh, workman, and payment of his remuneration (which includes salary in cash and flour and fuel-wood) was a term of the lease deed and was, therefore, a part of the consideration for which Jagdish Chander had let out the mill in question to Suraj Bhan and Kishori Lal, then obviously payment to Bawa Singh was to be made by the lessees as a part of the consideration of the lease; this payment would obviously amount, in effect, to payment made to Bawa Singh by the lessees for and on behalf of the lessor, namely, Jagdish Chander. This aspect appears to have been completely lost sight of both by the learned Single Judge and by the learned Workmen's Compensation Commissioner.

(6) Mr. Nehra has, however, contended that the finding whether or not Bawa Singh is an employee of Jagdish Chander is a finding of fact and therefore should not be interfered with on an appeal under Clause 10 of the Letters Patent. It is not possible for me to accept this contention. Clause 10 of the Letters Patent is widely worded and it provides an appeal from a judgment of a Single Judge of this Court to a Bench of two Judges without any limitation or restrictions as is found in section 100 Code of Civil Procedure. It is true that as a matter of practice the finding on a question of fact given by a learned single Judge of this Court is usually

treated with respect and is not lightly interfered with but there is no legal impoundment in the ways of the Letters Patent Bench reversing the finding on question of fact by the learned Single Judge, if the same is considered to be erroneous. It is not open to us to read into Clause 10 of the Letters Patent any limitation on the right of appeal, which is not included in it by the Legislature.

(7) In the present case it is obvious that the attention of the learned Single Judge was not drawn to the aspect which I have mentioned above nor was the evidence of the scribe considered when determining the question whether or not Bawa Singh was, at the relevant time, an employee of Jagdish Chander.

(8) Mr. Nehra then contended that in any case the right of appeal from an order of the Commissioner as given by section 30 of the Workmen's Compensation Act (Act No. VIII of 1923) is limited to a substantial question of law, and, therefore, in the present case, no appeal on the question now raised by the appellant can be competent. Here again I find myself unable to sustain this contention. The expression substantial question of law as contemplated by section 30, in my view, must be given a wide construction so as to cover even a case in which the Commissioner has clearly misdirected himself on a question of law. In the present case not only has material evidence not been considered but there has also been an unjustified omission to draw adverse inference from the unexplained non-production of the lease deed and also from similar abstention on the part of Jagdish Chander to appear as a witness in the present proceeding. We asked Mr. Nehra expressly even now to explain the non-production of the lease deed and non-appearance of Jagdish Chander as a witness in the present case but no explanation was forthcoming. The counsel merely contended that there is a likelihood of the lease deed having been either misplaced or lost but this was obviously a conjecture when there is no material on the record supporting this suggestion.

(9) For the reason given above, this appeal succeeds and setting aside the order of the learned Single Judge and modifying the order of the learned Commissioner dated 30th July 1956 we direct that Jagdish Chander would also be liable along with Suraj Bhan and Kishori Lal to pay Rs. 2,940 as compensation to Bawa Singh applicant-appellant.

(10) Mr. Nehra suggested that we should apportion the amount of compensation payable by Jagdish Chander, and Suraj Bhan and Kishori Lal so that in future there may not be any dispute between them inter se. He, however, could not draw our attention to any provision of the Workmen's Compensation Act empowering us to do so. Section 12 of this Act under which the liability has been incurred by Jagdish Chander makes ample provision for indemnifying the principal who is held liable to pay compensation under this section. It would thus be open to Jagdish Chander if his case falls within this section to claim necessary relief by appropriate proceedings, with respect to which we express no opinion at this stage.

(11) For the foregoing reasons this appeal is allowed and Jagdish Chander along with Suraj Bhan

and Kishori Lal is also held liable to pay the sum of Rs. 2,940 to Bawa Singh workman. In the circumstances of the case there will be no order as to costs of this appeal.

**Bishan Narain, J.**

(12) I agree.

(13) Appeal allowed.

Cases Referred.

1Civil Appeal No. 362 of 1957 (SC)