

Joomun N. v Parmira Construction Ltd

2024 IND 63

Cause Number 112/24

IN THE INDUSTRIAL COURT OF MAURITIUS
(Civil side)

In the matter of:

Mr. Nawaaz Joomun

Plaintiff

v.

Parmira Construction Ltd

Defendant

Judgment

The averments of Plaintiff in this plaint are given below: -

- (i) *Plaintiff was in the continuous employment of Defendant as "Driver/Technicien" since 11.7.2017. He was employed on a 6-day week basis. He was remunerated at monthly intervals at the terminal basic rate of Rs 19,075 per month. His last yearly remuneration amounted to Rs 298,812.10 and his average monthly remuneration amounted to Rs 24,901.*
- (ii) *His earnings for period January 2022 to November 2022 amounted to Rs 271,022.31. On 25.11.2022, Defendant's propose, one Sabia Ackburally, verbally terminated his employment following a clash on the issue of diesel. On 31.11.2022, he registered a complaint at the Labour office and Mr. Parwez Nunnoo, Director, informed him over*

the phone that his employment had not been terminated but he was on suspension until further notice. As at 4.1.2023, he had not received any correspondence. He reported anew to the Labour Office and Mr. Nunnoo over the phone informed him that his employment had already been terminated with effect from 25.12.2022.

(iii) He, therefore, considers that Defendant has terminated his employment on 25.12.2022 without notice and without any justification inasmuch as he was not afforded any opportunity to answer any charge levelled against him.

(iv) Defendant has failed to pay him 25 days' wages for period 26.11.2022 to 25.12.2022 during his suspension period. \Defendant has failed to pay him an end of year bonus for year 2022.

Therefore, Plaintiff is claiming from Defendant the sum of Rs.464,243 allegedly made up as follows:

- (a) One month's wages as indemnity in lieu of notice: Rs 24,901.
- (b) Severance allowance for 64 months' continuous service (Rs 24,901 x 3 months x (64/12) years: Rs 398,416.
- (c) 25 days' outstanding wages for period 26.11.2022 to 25.12.2022 (Rs 19,075/26 x 25 days): Rs 18,341.
- (d) End of year bonus for year 2022 (Rs 271,022/12): Rs 22,585.

Defendant did not file any plea and has also left default on the trial day in spite of the fact that it was duly summoned to appear.

It is opportune to reproduce Section 16 (1) of the District and Intermediate Courts (Civil Jurisdiction) Act in line with Section 7(1) of the Industrial Court Act 1973 as regards default judgments:

"Where on the day so fixed in the summons, or at any continuation or adjournment of the Court or cause in which the summons was issued, the defendant does not appear, or does not sufficiently excuse his absence, the Court, upon proof of the service of the summons, may give

judgment in terms of the plaint or, where the cause includes a claim for substantial damages, proceed to the hearing of the witnesses and trial of the cause on the part of the plaintiff only, and in either case, the judgment shall, subject to subsection (2), be as if both parties had attended.”(emphasis added)

Plaintiff testified in Court as per his averments above. He produced a copy of his pay slip for the month of July 2017 as per Doc. P1.

I have duly considered all the evidence put forward before me. The wholesale unrebutted and uncontested testimony of Plaintiff in its form and tenor in the absence of Defendant is compatible with the documentary evidence produced viz. his pay slip as per Doc. P1. Thus, the evidence led by the Plaintiff is not only soundly grounded in law (*vide - Hurnam D. v. Bholah K. B. & Anor. [2009 SCJ 265]*) but it has also convinced me as being reliable and plausible.

For the reasons given above, I find that the case for the Plaintiff has been proved on a balance of probabilities. I, accordingly, order Defendant to pay to Plaintiff the sum of Rs.464,243 representing one month's wages as indemnity in lieu of notice: Rs 24,901, Severance allowance for 64 months' continuous service (Rs 24,901 x 3 months x (64/12) years: Rs 398,416 with interest at the rate of 12% per annum on the amount of severance allowance payable from the date of termination of employment to the date of payment, [25 days' outstanding wages for period 26.11.2022 to 25.12.2022 (Rs 19,075/26 x 25 days): Rs 18,341, and end of year bonus for year 2022 (Rs 271,022/12): Rs 22,585] with interest at the rate of 12% per annum on the amount of remuneration due from the date of non-payment to the date of payment.

S.D. Bonomally (Mrs.) (Vice President)

29.10.24.

