

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO No. 261/2010 & CM No. 12701/2010 (Stay)**
% **21st January, 2014**

UNITED INDIA INSURANCE CO. LTD. Appellant
Through: Mr. Vishwendra Verma and Ms.
Shivali, Advocates.

VERSUS

ASHWANI KUMAR & ORS. Respondents
Through: Ms. Sanjeeda Khurana, Adv. for R-2.
SI Ravinder , P.S.Alipur.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This first appeal has been filed by the insurance company under Section 30 of the Employee's Compensation Act, 1923 impugning the judgment of the Employees Commissioner dated 19.1.2010 which has allowed the claim of the dependants of the deceased Sh. Raj Kumar.

2. The facts of the case are that the deceased Sh. Raj Kumar was an employee of respondent no.2 herein namely Sh. Raman Kumar and who

was the respondent no.1 before the Commissioner. The deceased was directed to drive the truck bearing no.DL-1GA-6972 to Barwala (Panchkula) at 9.00 PM on 17.12.1997. It is not disputed before me that there was an insurance policy with respect to the subject truck and the death of the deceased Raj Kumar took place during the currency of the policy. The facts which transpire are that the deceased Raj Kumar did not reach the destination but on the next date i.e 18.12.1997 his body was found in a field of Bakhtapur, Tajpur Road, Near Alipur, Delhi.

3. As to whether the murder of the deceased, Sh. Raj Kumar can be said to be an accident arising out of and/or during the course of employment, the Commissioner has given the following findings and conclusions:-

“ISSUE NO.2

Whether the accident arose out of and during the course of employment?

With respect to the issue whether accident arose during and in the course of employment or not, the insurance company had raised two defenses (a) that a murder cannot be held to be an accident and (b) the murder did not result during the course of employment. With respect to the first aspect that whether a murder is an accident or not, the counsel for the claimants had relied upon a judgment of Hon’ble Delhi High Court title as **“United India Insurance Company Ltd. Vs. Kanshi Ram reported in 110 (2004) DLT 130.** On carefully going through

the said judgment, I am of the considered opinion that murder is well covered under the term accident as envisaged in the Act. With respect to the other point whether the accident arose out of and in the course of employment of the deceased with the respondent No.1, reliance has been placed by the Counsel for the claimant on the Police Investigation wherein it has been stated that the deceased was murdered during the course of his employment with the respondent No.1. This fact has also been confirmed vide letter dated 17.10.2006 by PIO/DCP North West in reply to an application of Shri Ashwani Kumar the claimant. During the arguments, the Counsel for the Insurance Company also raised another issue with respect to the right of the legal heir of the claimant to claim compensation. In this respect, the counsel for the claimants opposed the said contention of the counsel for insurance company on the ground that firstly, the legal heir of the deceased claimants was impleaded as claimant by an order of predecessor of this Hon'ble Court upon an application filed by the legal heir of the claimant vide order dated 20.08.2006 and the insurance company did not oppose/challenge the said order. Secondly, the Counsel for the claimant relied upon a judgment titled as **Pasupati dutt Vs. Kelvin Jute Mills A.I.R. 1937 Calcutta**, where it was held that :-

“On the death of a workman through some accident arising in the course of his employment, a right to the compensation payable by the employer under the Workman's Compensation Act vests in his dependant or dependants actually existing at the time of his death; and if such dependant dies before any claim to such compensation is made or investigated, the right passes on his heir or legal representatives as they are included in the word “dependant” in section 8”.

On a careful perusal of the above judgment in full and coupled with the fact that the insurance company did not challenge the order of my predecessor regarding the impleadment of the legal heirs of the dependants, I am of the considered opinion that the above objection taken by the insurance company has no merit and is thus dismissed.”

4. With respect to the above findings/conclusions of the Commissioner, there is absolutely no illegality because if a driver is murdered when he was driving the truck during the course of his employment i.e while taking the truck to a particular place, then in such a case there exists the necessary connection of the death arising out of and in the course of employment. The Commissioner has discussed the evidence being the investigations done by the police, and which investigations showed that the deceased was murdered by the cleaner of the truck, who thereafter fled.

5. Learned counsel for the appellant argued before this Court that the deceased could not have been an employee on 17.12.1997 when he was murdered because his body was found on 18.12.1997 near Alipur, Delhi. I have frankly failed to understand this argument because the deceased was put on a duty as an employee to drive the truck to Barwala and hence the action of driving the truck is as an employee/driver and it makes no difference thereafter when the deceased was murdered and when/where the dead body was found. This argument is a most specious one raised by an insurance company, to say the least, inasmuch as, the insurance company happily takes premium but when the issue comes of making

payment of the compensation claim under the valid insurance policy, then all sorts of frivolous defences are raised. The present appeal is one such frivolous attempt to somehow or the other avoid liability with respect to valid policy in question.

6. Counsel for the appellant has also argued before this Court that the deceased was not validly driving the truck because he only had a license for Light Motor Vehicle (LMV) and not a Heavy Motor Vehicle licence, however, when the counsel was asked to point out as to his plea in the written statement, only a general plea was pointed out of the license of not being effective and no specific plea is raised that there is no liability of the appellant-insurance company on the ground that the deceased had license only of LMV and not for driving of a truck. Another and second reason for this Court to reject this argument is that I note that this argument has not been raised before the Commissioner because the impugned judgment of the Commissioner does not show that this issue has been discussed. This issue would not have been discussed because this argument would not have been raised by the appellant-insurance company. If this argument was raised, and the Commissioner would not have decided upon the same, then the appellant-insurance company surely would have moved an application

before the Commissioner urging that this ground was argued but it has not been decided. Admittedly, the appellant took no such steps. Thirdly, I put to counsel for the appellant-insurance company to show the insurance policy and its terms whereby the appellant-insurance company can avoid liability on account of this plea which is urged before me, but counsel for the appellant could not point out to me the policy which contains such a term by which the appellant-insurance company can avoid liability on this count.

7. For the sake of completion of narration, I would like to refer to the findings of the Commissioner on issue no.1 pertaining to relationship of employer and employee between the deceased and the respondent no.2 herein and which discussion on issue no.1 reads as under:-

“ISSUE NO.1

Whether there is relationship of employer-employee between the deceased and the respondent No.1?

The claimants in their claim application had claimed that their son namely Sh. Raj Kumar was employed by respondent No.1, as Driver on his truck bearing No. DL-1GA-6972 on a monthly salary of Rs.3000/- plus Rs.50 per day for out station duties by way of diet money.(not legible) claimants has also stated on solemn affirmation during his evidence that his deceased brother was working as a driver with respondent No.1. There has been no denial of the fact of the respondent No.1 as he did not choose to appear and file any written statement. The respondent Insurance Company, though had tried, during the cross-examination of claimants witnesses to disprove the

Employer-Employee Relationship, however, it could not succeed in his efforts to bring any material distinction/discrepancies to prove its contentions. Moreover, the record clerk from P.S.Alipur was also examined by the claimant who produced the copies of the Inner Case Diary relating to the investigations of the case pertaining to FIR No. 455/97 under Section 302 IPC, P.S.Alipur, Delhi which clearly established the employer-employee relationship between the respondent No.1 and the deceased. Considering the above facts and circumstances, I am of the considered opinion that the claimants have succeeded in proving the fact that the deceased Raj Kumar was an employee of the respondent No.1 and thus the employer-employee relation stands established.”

8. In view of above, there is absolutely no merit in the appeal, and the same is therefore dismissed with costs of Rs.20,000/- to the respondent no.2. Cost be paid within a period of four weeks.

JANUARY 21, 2014
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VALMIKI J. MEHTA, J.