

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO 267/2012**

% **4th March, 2014**

ORIENTAL INSURANCE CO. LTD. Appellant
Through: Ms.Manjusha Wadhwa and Ms. Punja
Rekha Angara, Advocates.

VERSUS

PUSHPA DEVI & ORS. Respondents
Through: Ms. Pratima N. Chauhan, Adv. for R-
1 & 3.

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 is filed under Section 30 of the Employee's Compensation Act, 1923 impugning the judgment of the Commissioner dated 14.5.2012 which has allowed the claim petition of the respondents no.1 to 3 herein, dependants of the deceased Sh. Diwan Singh who was employed as a driver by the respondent no.4 herein/employer.

2. The facts of the case are that the deceased Sh. Diwan Singh was employed as a first driver to drive the vehicle HR-38H-6417-Truck owned

by respondent no.4 herein. On 1.5.2010 deceased Diwan Singh was on an

occupational trip from Delhi to Bhiwandi (Maharashtra). The nature of the trip was that the goods which were being transported had to be exported and being a time bound assignment extra labour was put in to ensure timely arrival of the goods at Bhiwandi causing stress and strain upon the deceased Diwan Singh. On 4.5.2010, when the vehicle was one kilometer short of Bhiwandi the deceased Diwan Singh felt pain in his chest. The vehicle was parked on the road side and the deceased lay on the back seat. The second driver then drove the truck upto the office of respondent no.4 herein from where he was taken to the hospital by the staff of the company. The deceased remained in the Balaji Specialty Hospital, Thane-Bhiwandi road, Kalher and on the next date at about 11.00 AM, he expired. It was pleaded by respondent nos. 1 to 3 that the death was caused on account of driving of the heavy vehicle and stress and strain related to the employment resulting in failure of the bodily organ and therefore the death took place because of an accident arising out of and in the course of employment. The truck was admittedly insured with the appellant-insurance company for the period from 31.1.2010 to 30.1.2011 and additional premium was paid to the appellant-insurance company under the Employees Compensation Act.

3. The only issue which has been urged on behalf of the appellant before me is that death which is caused on account of failure of a bodily organ i.e

heart disease, cannot mean that there is an accident by which the employee suffers injury and dies and therefore there is no scope for applicability of the Employee's Compensation Act, 1923.

4. I do not have to dilate too much on the legal position because the issue in the present case is squarely answered against the appellant by a recent judgment of the Supreme Court reported as ***Param Pal Singh Through Father (Mst.) Vs. M/s National Insurance Co. & Anr. 2013 1 AD (S.C) 610***. The facts of the present case are almost on all fours with the facts of ***Param Pal Singh's case (supra)*** where the employee was also a driver and who died on account of strain of driving. The relevant paras of the judgment of the Supreme Court in the case of ***Param Pal Singh's case (supra)*** are paras 17,20,21,22, 27 and 28 which read as under:-

“17. On merits to retrace the facts, the deceased Jeet Singh @ Ajit Singh was employed as truck driver by the second Respondent. His services were utilized for driving the truck belonging to the second Respondent bearing No. DL-IG-8255. The deceased was driving the said truck in connection with the commercial transport operation of the second Respondent from Delhi to Nimiaghat on 17.07.2002. According to the claimant when the truck reached the near about of Nimiaghat, District Giridih, the deceased felt giddy and, therefore, parked the vehicle on the road side near a hotel and soon thereafter he stated to have fainted. The deceased was removed to a nearby hospital where the doctors declared him brought dead. An FIR was lodged with the Police Station, Nimiaghat in FIR No. 7/2002 dated 18.07.2002. The postmortem was stated to have been conducted on 19.07.2002 and thereafter the dead body was taken to his native place for performing last rites. The claimant in his

application before the Commissioner submitted that the death of the deceased was due to the strain and stress of continuous driving in the course of his employment with the second Respondent, that the vehicle which he was driving bearing No. DL-IG-8255 was insured with the first Respondent vide covering note No. 0968499 for the period of 14.02.2002 to 13.02.2003 and that an additional premium was also paid for coverage of compensation payable under the Workmen's Compensation Act. The claimant, as an adopted son of the deceased, claimed compensation as his dependant.

20. Once we cross the said hurdle only other question to be considered is whether death of the deceased was in an accident arising out of and in the course of his employment with the second Respondent? It is common ground that the vehicle which was driven by the deceased did not meet with any road accident on 17.07.2002. As a matter of fact, the deceased while driving the vehicle from Delhi to Nimiaghat when reached near the destination, namely, Nimiaghat felt giddy and thereafter stated to have collapsed as he was found in a faint condition in the vehicle which he managed to park on the road side.

21. The entitlement to claim compensation is therefore dependent on fulfillment of the stipulations contained in Section [3\(1\)](#) of the Workmen's Compensation Act, which read as under:

3. Employer's liability for compensation.-(1) If personal injury is caused to an employee by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter:

Provided that the employer shall not be so liable -

(a)

(b)

(i)

(ii)

(iii)”

22. However, there are decisions of the English Court as early as of the year 1903 onwards stating that unlooked-for mishap or an untoward event which is not expected or designed should be construed as falling within the definition of an "accident" and in the event of such "untoward" "unexpected" event resulted in a personal injury caused to the workman in the course of his employment in connection with the trade and business of his employer, the same would be governed by the provisions of Section 3 of the Workmen's Compensation Act. Such a legal principle evolved from time immemorial got the seal of approval of this Court and for this purpose we can refer to the celebrated decision in **Ritta Farnandes** (supra). After referring to the decision of House of Lords in **Clover Clayton & Co. v. Hughes** reported in 1910 A.C. 242 this Court referred to the relevant passage in the decision of House of Lords in paragraph 4, which reads as under:

“4. Even if a workman dies from a pre-existing disease, if the disease is aggravated or accelerated under the circumstances which can be said to be accidental, his death results from injury by accident. This was clearly laid down by the House of Lords in **Clover Clayton & Co. v. Hughes** where the deceased, whilst tightening a nut with a spanner, fell back on his hand and died. A post mortem examination showed that there was a large aneurism of the aorta, and that death was caused by a rupture of the aorta. The aneurism was in such an advanced condition that it might have burst while the man was asleep, and very slight exertion or strain would have been sufficient to bring about a rupture. The County Court Judge found that the death was caused by a strain arising out of the ordinary work of the deceased operating upon a condition of body which was such as to render the strain fatal, and held upon the authorities that this was an accident within the meaning of the Act. His decision was upheld both by the Court of Appeal and the House of Lords:

“No doubt the ordinary accident,” said Lord Loreburn, L.C. “is associated with something external: the bursting of a boiler or an explosion in a mine, for example. But it may be merely from the man's own miscalculation, such as tripping and falling. Or it may be due both to internal and external conditions, as if a seaman were to faint in the rigging and tumble into the sea. I think it may also be something going wrong within the human frame itself, such as straining of muscle or the breaking of a blood vessel. If that occurred when he was lifting a

weight, it would properly be described as an accident. So, I think, rupturing an aneurism when tightening a nut with a spanner may be regarded as an accident.

With regard to Lord Macnaghten's definition of an accident being "an unlooked for mishap or untoward event which is not expected or designed" it was said that an event was unexpected if it was not expected by the man who suffered it, even though everyman of commonsense who knew the circumstances would think it certain to happen."

27. Applying the various principles laid down in the above decisions to the facts of this case, we can validly conclude that there was CAUSAL CONNECTION to the death of the deceased with that of his employment as a truck driver. We cannot lose sight of the fact that a 45 years old driver meets with his unexpected death, may be due to heart failure while driving the vehicle from Delhi to a distant place called Nimiaghat near Jharkhand which is about 1152 kms. away from Delhi, would have definitely undergone grave strain and stress due to such long distance driving. The deceased being a professional heavy vehicle driver when undertakes the job of such driving as his regular avocation it can be safely held that such constant driving of heavy vehicle, being dependant solely upon his physical and mental resources & endurance, there was every reason to assume that the vocation of driving was a material contributory factor if not the sole cause that accelerated his unexpected death to occur which in all fairness should be held to be an untoward mishap in his life span. Such an 'untoward mishap' can therefore be reasonably described as an 'accident' as having been caused solely attributable to the nature of employment indulged in with his employer which was in the course of such employer's trade or business.

28. Having regard to the evidence placed on record there was no scope to hold that the deceased was simply travelling in the vehicle and that there was no obligation for him to undertake the work of driving. On the other hand, the evidence as stood established proved the fact that the deceased was actually driving the truck and that in the course of such driving activity as he felt uncomfortable he safely parked the vehicle on the side of the road near a hotel soon whereafter he breathed his last. In such

circumstances, we are convinced that the conclusion of the Commissioner of Workmen's Compensation that the death of the deceased was in an accident arising out of and in the course of his employment with the second Respondent was perfectly justified and the conclusion to the contrary reached by the learned Judge of the High Court in the order impugned in this appeal deserves to be set aside. The appeal stands allowed. The order impugned is set aside. The order of the Commissioner for Workmen's Compensation shall stand restored and there shall be no order as to costs.” (underlining added)

5. Counsel for the appellants argues that the deceased did not die on account of heart disease caused because of his employment, however, I do not agree because the facts of this case are squarely covered by the ratio in *Param Pal Singh's case (supra)* as the respondent nos. 1 to 3 herein have led evidence, and which shows that the deceased was admitted to hospital because of chest pain while driving the truck, and which is due to strain of long distance driving and urgency of timely reaching of the export consignment, and ultimately he expired because of the same reason in the hospital on the next date. In the present case, Commissioner has rightly held that there is sufficient evidence to hold that the death of the deceased took place on account of strain and stress of driving. Therefore, the ratio of *Param Pal Singh's case (supra)* squarely applies.

6. While dismissing the appeal the awarded amount of Rs.6,44,850/- is reduced to Rs.6,27,519/- because there is calculation/computation error in the judgment of the Commissioner.

7. In view of the above, there is no merit in the appeal, and the same is therefore dismissed, leaving the parties to bear their own costs.

MARCH 04, 2014
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VALMIKI J. MEHTA, J.