

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

+ **FAO No.320/2012 & C.M. No.12975/2012 (stay)**

% **31st March, 2014**

M/S. THE NEW INDIA ASSURANCE CO. LTD. Appellant
Through: Mr. D.D. Singh, Advocate.

VERSUS

SMT. CHAMPA DEVI AND ORS. Respondents
Through: Mr. Puneet Parihar, Advocate for
respondent No.6.

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 by the appellant/insurance company under Section 30 of the Employee's Compensation Act, 1923 (hereinafter referred to as 'the Act') impugning the judgment of the Commissioner dated 29.3.2012 which has allowed the claim petition filed by the respondent nos.1 to 5 herein, and who are the dependants of the deceased Sh. Raju Paswan.

2. The facts of the case are that the deceased Sh. Raju Paswan was employed as a driver by the respondent no.6 herein (respondent no.1 before the Commissioner) for driving his truck bearing no.HR-63-A-1249. On

30.5.2008, the deceased Sh. Raju Paswan was driving the truck on the trip from Mundhra Port, Kandla (Gujrat) to Delhi. The truck was loaded with tyres. At 6.30 A.M. near Alwar in Rajasthan, the truck met with an accident from a container coming from the opposite side bearing no.HR-G-0558 and which was said to be driven in a rash and negligent manner. As a result of the accident, the deceased Sh. Raju Paswan sustained serious burn injuries and died on the same day after being admitted to the hospital at Ajmer for treatment. FIR no.76 dated 30.5.2008 was registered with respect to the accident. The claim petition was therefore filed seeking compensation under the Act.

3. The Commissioner has held that the relationship of employer and employee was established as also the aspect with respect to there being a valid insurance policy. Commissioner therefore applied the statutory formula and awarded compensation of Rs.4,33,820/- alongwith interest @ 12% per annum. The relevant observations of the Commissioner read as under:-

“Issue No.1

- (i) The case of the petitioner is that her son deceased Raju Paswan was employed with respondent No.1 as driver No.HR-63-A-1249 and during the course of his duties died on 30.5.2005 in the accident therefore, claimants are entitled for compensation.
- (ii) Respondent No.2 has contended that claimant has not filed any documentary evidence in support of her claim application, though,

Respondent No.2 in its Written Statement in one line has admitted the relationship and in another line has denied the same. In the given situation the factum of death is not proved beyond doubt but the circumstance are suggestive that the death was caused due to accident. In the given situation inference can be drawn. The three judges Bench of The Hon'ble Supreme Court of India in the case of Mackinnon Mackenzie and Co. Pvt. Ltd., V/s. Ibrahim Mahmood Isshak cited at 1969 ACJ 422 held that, "As in a case of death caused by accident the burden of proof rest upon the workman to prove that the accident arose out of employment as well as in the course of employment. But this does not mean that workman who come to court for relief must necessarily prove it by direct evidence. Although, the onus of the proving that the injury by accident arose both out of and in the course of employment rest upon the applicant, these essential may be inferred with the facts proved justify the inference. On the one hand the Commissioner must not surmise conjecture or guess on the other hand, he may draw an inference from the proved facts as long as it is a legitimate inference.

(iii) It will be worthwhile to mention that the workmen's compensation Act, 1923, is a social legislation and it is generally accepted that various provisions of the act ought to be received liberal interpretation. The act being welfare legislation made for the interest of the poor workman, even if any, particular provision of the Act is capable of interpretation, that which is more favorable to the persons for whose benefit the legislation has been made should be adopted. The rights of the workman deserve to be treat generously while applying statutory provision.

(iv) In the light of the above discussions I have no hesitate to draw the inference that deceased Raju Paswan was employed by respondent No.1 as driver, more so because there was no contrary evidence led by the Respondent.

Issue No.2

(i) The factum of accident is not denied by the parties therefore, on the basis of the admitted fact it is held that deceased Raju Paswan sustained injuries and died during the course of employment.

10. The petitioner has stated in her claim application that her son deceased Sh. Raju Paswan was employed with respondent No.1 and drawing of Rs.4000/- PM and Rs.50 daily as perks and was of aged 25 years at the time of accident, in the given situation the petitioner is

entitled the compensation. The Minimum wages at the time of accident for a skilled worker Rs.4057/-, whereas, the wages as per section 4 sub-section 1 explanation 2 are to be taken as Rs.4000/-.

$$216.91 \times 4000 \times 50 / 100 = \text{Rs.}4,33,820/-$$

11. The respondent No.2 being insurer of the Truck is hereby directed to deposit the amount of compensation alongwith interest @ 12% per annum from the date of accident within 30 days for further disbursement to the claimant through Pay order in favour of "CWC South West District" failing which the same will be recovered as arrears of land revenue as per the provisions of the section 31 of the Act.

Given under my hand seal of this court 29th day of March 2012."

4. On behalf of the appellant/insurance company, it was argued before this Court that since the driving licence of the deceased was found to be fake/forged, and this aspect was deposed to and proved in the evidence of the appellant through its officer Sh. Rakesh Singh, the claim petition ought to have been dismissed and not allowed. It is argued in alternative that in case the claim petition had to be allowed, the appellant/insurance company should be given rights of recovery against the owner of the vehicle/employer i.e respondent no.6 herein.

5(i) The law with regard to whether the insurance company is discharged from its liability on account of the employee having a fake/forged driving licence is now settled by the Supreme Court as per its judgment in the case of *National Insurance Co. Ltd. Vs. Swaran Singh & Ors. (2004) 3 SCC 297*. In this judgment, Supreme Court has held that an

owner of a vehicle does not have to make any detailed enquiry at the time of employing of a driver in order to ensure that the driving licence is not a fake or a fabricated one. The employer satisfies himself simply by checking the licence which is given by the employee/driver to him.

(ii) In the present case, the employer/respondent no.6 came into the witness box and led his evidence by way of affidavit. Appellant did not cross-examine the employer, much less on the aspect that the employer/respondent no.6 had not made enquiries with respect to valid licence of the deceased Sh. Raju Paswan.

(iii) Accordingly, applying the ratio of the Supreme Court in the case of *Swaran Singh (supra)* I hold that the insurance company cannot avoid its liability.

(iv) It is clarified that in case the driving licence is a forged and fabricated document, then, the insurance company can in accordance with the ratio of the judgment in the case of *Swaran Singh (supra)* initiate appropriate proceedings against the respondent no.6, and in such proceedings, the respondent no.6 will have all rights in accordance with law to show that the claim made by the appellant/insurance company against the employer/respondent no.6 is not in accordance with law or the facts of the present case.

6. In view of the above, there is no merit in the appeal, and the same is therefore dismissed subject, of course, to the observations of the right of the appellant/insurance company against the respondent no.6. Parties are left to bear their own costs.

MARCH 31, 2014
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VALMIKI J. MEHTA, J.