

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

+ **FAO No.356/2013**

% **30th January, 2014**

TATA AIG GENERAL INSURANCE CO. LTD. Appellant
Through: Mr. Pankaj Kumar, Advocate.

versus

SH. DEV KUMAR PRASAD AND ANR. Respondents
Through: Ms. Pratima Nain Chauhan, Advocate
for respondent No.1.

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

+ FAO No.356/2013 and C.M. No.14257/2013 (stay)

1. This first appeal is filed by the insurance company under Section 30 of the Employee's Compensation Act, 1923 impugning the judgment passed by the Employees Commissioner dated 25.6.2013 which has allowed the compensation claim filed by the employee/workman/respondent no.1 herein.

2. The facts of the case are that the workman stated that he was employed as a driver with the respondent no.2 herein and who was the respondent no.1 before the Employees Commissioner for the vehicle bearing No.HR-55-M-1777 (truck). It was further pleaded that on 12.3.2012 the workman received personal injuries by an accident arising out of and in the course of his employment when he was driving the truck on occupational trip from Gurgaon to Bhutan carrying bags of Baley malt. At about 2.00 A.M. when the vehicle reached Sasamusa, Gopalganj, Bihar all of a sudden a cow suddenly appeared on the road, the workman/driver swerved his vehicle so as to avert from hitting the cow but the vehicle could not be kept in control and turned turtle. Respondent no.1/workman was entrapped in the vehicle and sustained grievous injuries all over his body and fracture in his left hand as a result of which he became 100% disabled for the purpose of his employment as a driver. It was pleaded that additional premium was charged by the appellant-company for covering the employee/workman under the Act. Respondent no.1 was 35 years old at the time of accident and was earning wages of Rs.7,000/- per month and Rs.100/- per day for food allowances. Accordingly, compensation was claimed from the employer, respondent no.2 herein and the insurance company who was the respondent no.2 before the Commissioner.

3. It may be noted that whereas the respondent no.1 workman stepped into the witness box, filed his affidavit by way of evidence and was cross-examined, however, neither the appellant insurance company nor the employer led any evidence. Therefore, there was no reason to believe the self-serving pleading of the employer that the respondent no.1 was not employed as a driver. I also cannot agree with the argument urged on behalf of the appellant that it was not allowed to lead evidence inasmuch as the order sheet shows that the date of 11.4.2013 was fixed for respondent's evidence of the appellant insurance company but the appellant instead of leading evidence filed an application. Thereafter the order sheet dated 6.6.2013 does not record that the appellant-insurance company wanted time for leading evidence. If appellant company was correct that it wanted to lead evidence and it was not so recorded in the order dated 6.6.2013, it was bound to have immediately filed an application before the Commissioner stating that the order dated 6.6.2013 wrongly does not record the submissions of the appellant company of wanting to lead the evidence. In my opinion, the insurance company was bound to do so in view of the settled law laid down by the Supreme Court right from the judgment in the case of *State of Maharashtra Vs. Ramdas Srinivas Naik AIR (1982) 2 SCC*

463. Therefore, it is not open to the appellant to contend that it was not allowed to lead evidence.

4(i) Counsel for the appellant contended that workman had filed a fabricated document Ex.AW1/2 being the form filed before the Department of Commercial Tax to show he was the employee-driver, and the same should not have been believed by the Commissioner to hold that the respondent no.1 was an employee, however, even this argument is misconceived inasmuch as it is not necessary that there are properly drafted contracts of employment with respect to employment of a driver and if the respondent no.1 was not a driver, there was no reason why his name would appear as a driver on this document Ex.AW1/2. Varying of signatures on the form is neither here nor there with respect to employment of the respondent no.1 as a driver because that does not take away the factum of the employee shown as a driver of the insured truck, and that too of the journey in question. The employer very conveniently may choose to deny the employment, however, the fact of the matter is that neither the employer nor the appellant led any evidence and in the facts of the present case therefore the Commissioner rightly believed the employee.

(ii) The conclusion of the Commissioner of the respondent no.1 being an employee is strengthened from the fact that the truck in question

undoubtedly was owned by respondent no.1 before the Commissioner and the respondent no.2 herein, who lived at New Delhi, whose truck had met with an accident in Gopalganj, Bihar, and which could only be if the employee/workman was driving the truck as the driver and employee, when we take the fact that it is not the case of the employer that the truck was missing or stolen for it to have been found at Gopalganj, Bihar although the employer/respondent no.2 herein was in fact living in Delhi. Therefore, clearly the respondent no.1 herein was an employee of the respondent no.2 herein and the conclusion of the Commissioner, in this regard, is buttressed by the above-stated additional reasoning.

5. I may note that one of the contentions raised before the Commissioner and also before this Court is that the insurance company is not liable because the licence of the driver/workman was not a valid licence but was a fake licence. This aspect is no longer *res integra* and has been dealt with by the Supreme Court in the judgment in the case of ***United India Insurance Company Ltd. Vs. Lehu and Ors. (2003) 3 SCC 338***. Para 20 of this judgment is relevant and the same reads as under:-

“20. When an owner is hiring a driver he will therefore have to check whether the driver was a driving licence. If the driver produces a driving licence which on the face of it looks genuine, the owner is not expected to find out whether the licence has in fact been issued

by a competent authority or not. The owner should then take the test of the driver. If he find that the driver is competent to drive the vehicle, he will hire the driver. We find it rather strange that Insurance Companies expect owners to make enquiries with RTO's, which are spread all over the country, whether the driving licence shown to them is valid or not. Thus where the owner has satisfied himself that the driver has a licence and is driving competently there would be no breach of Section [149\(2\)\(a\)\(ii\)](#). The Insurance Company would not then be above of liability. If it ultimately turns out that the licence was fake the Insurance Company would continue to remain liable unless they prove that the owner/insured was aware or had notice that the licence was fake and still permitted that person to drive. More importantly even in such a case the Insurance Company would remain liable to the innocent third party, but it may be able to recover from the insured. This is the law which has been laid down in Skiandia's Sohan Lal Passi's and Kamla's case We are in full agreement with the views expressed therein and see no reason to take a different view.”

6(i) In the present case, I note that Commissioner has referred to the specific licence number of the workman/driver and at best there was a discrepancy with respect to RTO name missing on the card on account of the same having been broken. Also, the employee had produced the licence in his cross-examination and which question and answer reads as under:-

“Q. Can you show the Driving License?

Ans. Yes, DL No.WB-11198754159. The name of the R.T.O. of DL was missing as the DL Card was broken.”

(ii) In my opinion, in such circumstances the issue will stand covered against the appellant as per the recent judgment of the Supreme

Court in the case of *Lal Chand Vs. Oriental Insurance Co. Ltd. (2006) 7 SCC 318* which states that discrepancy in the driving licence is not a ground for the insurance company to deny the claim.

7. I may note that there is no dispute that there was an insurance policy and the accident which took place was during the currency of the insurance policy. Therefore, insurance company who very happily took premium should not be allowed to unnecessarily deny the claims which are made under the policy.

8. In view of the above, I do not find any merit in the appeal, and the same is therefore dismissed, leaving the parties to bear their own costs.

9. I also take on record the fact that counsel for the respondent no.1/workman states that cross objections were filed, which are however not on record, but the same are not pressed.

JANUARY 30, 2014
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VALMIKI J. MEHTA, J.