

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
 + **FAO 361/2013 and CMs 14601/2013 (stay), 14603/2013(delay)**
 % **19th March, 2014**

SHRIRAM GENERAL INSURANCE CO. LTD. Appellant
Through: Mr. K.L. Nandwani, Mr. Samber N.,
Advocates

VERSUS

BABU AND ANR. Respondents
Through: Mr. R.K. Nain, Ms. Pratima N.
Chauhan, Advocates 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)

CM 14603/2013 (for condonation of delay)

For the reasons stated in the application, the delay in filing the appeal is condoned.

The application is accordingly disposed of.

FAO 361/2013 and CMs 14601/2013 (stay)

1. Of course, it is no longer a surprise that an Insurance Company will litigate and litigate irrespective of the fact that in this case it has not even

bothered to lead evidence before the Commissioner. Obviously, the Insurance Company is financially capable for keeping the litigation alive but surely, that does not mean that courts in any manner should not take a strict view if there is a totally baseless litigation. This appeal is one such frivolous litigation.

2. This first appeal is filed under Section 30 of the Employee's Compensation Act, 1923 against the judgment of the Commissioner dated 24.6.2013 by which the claim petition filed by the respondent no. 1 has been allowed and compensation awarded.

3. The facts of the present case are that respondent no. 1/claimant was appointed as a cleaner by the respondent no. 2 herein for the truck/vehicle bearing no. HR-47A-4536. On 28.2.2011 the truck was returning from Panipat to Delhi when the tyre of the said truck got punctured at G.T. Road near Sonipat when the respondent no. 1 was engaged in affixing the jack for wheeling out the punctured tyre, when all of a sudden, the jack got de-affixed and the vehicle fell down upon the respondent no.1. Respondent no. 1 suffered injuries as a result of this accident on his legs. Respondent no. 1 also suffered a crack in his backbone. Respondent no. 1 was taken to the Hospital and given necessary treatment. The subject claim petition was filed both against the employer/respondent no.1 and the appellant/Insurance

Company to whom premium was paid for coverage under the Employee's Compensation Act, 1923.

4. The respondent no. 2 herein (respondent no. 1 before the Commissioner) i. e the employer admitted to the employment of respondent no.1/claimant as a cleaner on the subject truck as also accident in question. Respondent no. 2 before the Commissioner, herein the appellant/Insurance Company, though disputed the case of the respondent no. 1/claimant, however, it led no evidence.

5. The Commissioner by the impugned order dated 24.6.2013 has rightly allowed the claim petition by making the following observations :

“9. The case of the petitioner was that he was employed as a cleaner on the day of accident i.e. 28.02.2011 with respondent No. 1 on his vehicle bearing No. HR 47A 4536 truck and on 28.02.2011, when he was coming in truck from Panipat on its return trip from Panipat to Delhi, vehicle in question was got punctured at G.T. Road near Sonipat. When he was engaged in affixing the jack to wheel out the tyre, all of sudden jack de-affixed and the vehicle fell down and petitioner-workman sustained injuries on his backbone and leg foot. After this accident, he became 100% disabled for the purpose of his employment as cleaner. He prayed that compensation be got paid from respondents. Vehicle in question was insured with respondent No. 2 at the time of accident, since the respondent No. 1 in his reply and in his evidence admitted the factum of employee-employer relationship and accident occurred out of during in the course of his employment, the issue which was disputed by the respondent No. 1 was last drawn wages of petitioner. Respondent No. 1 admitted that petitioner was getting salary @ Rs. 6000/- per month instead of Rs. 7000/- per month + Rs. 100/- per day as food allowance. In cross examination petitioner exhibit AW-2/A and respondent No. 1 exhibit RW-1/A done by counsel for respondent No. 2, nothing has come

out which prove that petitioner was not in the employment of respondent No. 1 on the day of accident and not received injuries out of and during the course of his employment with respondent No. 2. As such, I have come to this conclusion on the basis of above made discussion the petitioner met with an accident resulting thereby he received grievous injuries out of and during in the course of employment of respondent No. 1 by which he become 90% disabled as per medical certificate issued by certifying surgeon, North West District (exhibit AW-1/5). Counsel for petitioner in his written arguments, placed on records relies upon the judgment of Hon'ble Supreme Court of India in a case titled as Maghar Singh Vs Jaswant Singh cited at 1997 ACJ 517, another case titled as State of Mysore Vs S.S. Makapur cited at 1963 2 SCR 943 and another case titled as Mackinnon Mackenzie and Company Pvt. Ltd. Vs Ibrahim Mohammad Isak cited at 1969ACJ 422. Since the respondent No. 1 admitted the facts of the case in his reply and evidence, as such, no questions remain for further testimony before this court. Respondent No. 2 who denied facts of the case except coverage of insurance could not prove his case by way of leading evidence as well as documentary proof. As such, contents of respondent No. 2 is not acceptable. The judgment on which petitioner relies is also not questionable by any respondents. As such, Issue No. 1 is decided in favour of petitioner and against the respondents. Accordingly, I hold that petitioner met with an accident on 28.2.2011 out of and during the course of his employment with respondent O. 1 and becomes disabled for his work as a cleaner which h3e was performing before this accident. As such, he is entitled to get injury compensation from respondents jointly or severally.

For calculating injury compensation, the age of petitioner is taken 38 years on the basis of disability certificate issued by Certifying Surgeon. The petitioner did not file any supportive document in regard of his last drawn wages drawing Rs. 7000/- + Rs 100/- per day as food allowance as such last wages Rs. 6000/- + Rs. 100/- per day as food allowance is taken for calculation of compensation as per admission of respondent No. 1 Hence, as per section 4(1) (b) of the Act, wages of petitioner is taken 60% of wages of Rs. 9000/- per month (Rs. 6000/- + Rs. 3000/-) as restricted by Rs. 8000/- as per Govt. notification dated 31.05.2010 and relevant factor is 189.56 and percentage of disability is 90% Accordingly, compensation is calculated as under :

$$189.59 \times 4800 \times 90 / 100 = \text{Rs. } 8,18,899/-$$

In view of the above made discussion and calculation, petitioner is entitled to get Rs. 8,18,899/- as injury compensation. Since the vehicle in question was insured at the time of accident of petitioner with respondent No. 2 and additional premium under Employees Compensation Act, 1923 was charged by respondent No. 2, as such, respondent No. 2 is liable to indemnify to insured.

10. As respondent No. 2 despite having the notice of accident, not discharged his responsibility as per section 4A of the Act, as such he is liable to pay simple interest @ 12% per annum from the date of accident till the date of realization. Regarding penalty, separate show cause notice is being issued.”

6. Before me, learned counsel for the appellant/Insurance Company urges the following aspects :

(i) The respondent no. 1 failed to prove any DD entry with the Police or MLC report, and therefore the claim petition should have been dismissed.

(ii) The employer did not file any permit or fitness certificate of the truck, and therefore, the claim is not covered by the terms of the policy.

(iii) The Commissioner has wrongly awarded interest from the date of the accident although the interest should have been awarded from one month after the passing of the order by the Commissioner.

(iv) Commissioner ought not to have considered disability at 90% and for which purpose reliance is placed upon the judgment of the Supreme Court in the case of *Palraj vs. The Divisional Controller, NEKRTC, JT 2010(10) SC*

94.

7. Before I advert to each of the arguments urged on behalf of the appellant/Insurance Company it needs reiteration that the appellant/Insurance Company led no evidence before the Commissioner in spite of repeated opportunities. I therefore have really failed to understand how appeal can be strenuously argued although no one from the appellant/Insurance Company has had the courage to stand in the witness box for deposing in favour of the appellant/Insurance Company and stand the test of cross-examination.

8. So far as the first argument that there has to be a DD entry with the police and a MLC report, the argument is totally misconceived because this is not a medico legal case nor is the case where a police enquiry is required. The simple case is that while affixing the jack to wheel out the punctured tyre, all of a sudden the jack got de-affixed and as a result of which the vehicle fell down and respondent no. 1 suffered injuries on his legs and also suffered a crack in his backbone. In such circumstances, it is absurd for an Insurance Company to argue that there has to be a medico legal case and a report must be registered with the police. After all, in such a case the complaint with the police will be filed against whom inasmuch as it is not the case that a person has deliberately shifted the jack. This argument is therefore rejected.

9. The second argument, which is urged on behalf of the appellant/Insurance Company is that the truck did not have permit or fitness certificate, is again without merit inasmuch it is conceded before this Court that no such plea was raised in the written statement of the appellant. Obviously, it is necessary to raise a factual plea in the written statement by the Insurance Company to assert the fact that this aspect is disputed. Without requisite pleading, no such argument can be urged, much less in a first appeal after the Commissioner passes the judgment.

10. The third point which is urged is that the interest should be granted not from the date of the accident but from the date of the adjudication. This argument is misconceived and covered against the petitioner by a Division Bench judgment of four judges of the Supreme Court way back in the case of *Pratap Narain Singh Deo Vs. Srinivas Sabata & Anr. (1976) 1 SCC 289*. In this judgment it has been held if compensation is not paid within one month of the accident then interest on compensation is payable not after one month of the passing of the order by the Commissioner, but after one month of date of the accident. No doubt, there were subsequent judgments of the Supreme Court which held that interest has to be made payable after one month of the passing of the order by the Commissioner but the Supreme Court has now in the case of *Oriental Insurance Co. Ltd. Vs. Siby George*

& Ors. (2012) 12 SCC 540 clarified the issue and by referring to *Pratap Narain Singh Deo's* case it is held that interest will be payable one month after the accident and not one month after passing of the order by the Commissioner. The Supreme Court has in fact held that the judgments of the Supreme Court in the cases of *National Insurance Co. Ltd. vs. Mubasir Ahmed, (2007) 2 SCC 349* and *Oriental Insurance Co. Ltd. vs. Mohd. Nasir & Anr. , (2009) 6 SCC 280* are *per incuriam* because they do not refer to the larger bench judgment in the case of *Pratap Narain Singh Deo*.

At this stage, I must clarify that there is a typographical mistake in para 10 of the impugned judgment whereby interest has been granted from the date of the accident and the expression “one month after the date of the accident” is found missing. Therefore, para 10 of the impugned judgment may be read as interest of 12% will be payable one month from the date of the accident.

11. The last point which is urged on behalf of the appellant/Insurance Company is that the Commissioner has wrongly taken the disability factor at 90%. It may be noted that the appellant/Insurance Company does not dispute that respondent no. 1 suffered a fracture in his legs because of accident and also that there was a crack in his backbone. The Commissioner

has accordingly held in the facts of the case that disability instead of 100% should be taken as 90%. In my opinion, this finding does not raise any substantial question of law under Section 30 of the Act for this Court to interfere with the judgment of the Tribunal. The judgment in the case of *Palraj (supra)* relied upon by the appellant/Insurance Company will not apply to the facts of this case because it is not the case of the appellant/Insurance Company that the respondent no. 1 has already obtained subsequent employment and consequently the functional disability should not be taken at 90% as is done by the Commissioner. At the cost of repetition it is stated that the appellant/Insurance Company led no evidence before the Commissioner, much less any evidence of any re-employment of the respondent no. 1/claimant.

12. In view of the above, no substantial question of law arises for this appeal to be entertained under Section 30 of the Employee's Compensation Act, 1923 and the same is accordingly dismissed with costs of Rs. 20,000/- which shall be paid within six weeks.

13. I would also like to note that it is high time that insurance company should stop filing routine appeals, more so, in cases where it has not led any evidence before the Commissioner. Copy of this judgment be put up before the Board of Directors of the Appellant/Insurance Company and an affidavit

be filed within four weeks by the appellant/Insurance Company that copy of this judgment has been brought to the notice of the Board of Directors of the Appellant/Insurance Company.

MARCH 19, 2014
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VALMIKI J. MEHTA, J