

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

+ **FAO No.369/2013**

% **12th February, 2014**

NATIONAL INSURANCE CO. LTD. Appellant
Through: Mr. Sanjeet Ranjan, Advocate.

Versus

SH. SUBHASH LAL & ANR. Respondents
Through: Mr. R.K. Nain, Advocate.

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

+ FAO No.369/2013 and C.M. No.15008/2013 (stay)

1. This first appeal is filed under Section 30 of the Employees' Compensation Act, 1923 impugning the judgment of the Commissioner dated 12.8.2013 which has allowed the claim petition filed by the claimant, respondent no.1 herein.

2. The case as set up by the respondent no.1 was that he was employed as a driver by the respondent no.2 herein/employer, respondent no.1 before the Commissioner, for driving of the vehicle bearing No.HR-55-N 5772 which was owned by the employer. On 1.12.2012 he was given

instructions to carry out an occupational trip from Mumbai to Delhi and when the vehicle reached Delhi near Akshardham, applicant went for searching the godown where goods were to be unloaded. At that stage, he met with an accident from a vehicle which was coming from opposite side at a very high speed and driven rashly. As a result of the accident, the applicant/respondent no.1 received injuries all over his body including his left leg and which had to be amputated from the knee. The vehicle in question was insured with the company at the time of accident, and an additional premium was charged by the appellant for coverage under the Employee's Compensation Act, 1923. Claim petition was accordingly filed.

3. The employer admitted before the Commissioner that the applicant was employed as a driver on the subject vehicle and that an accident occurred on 1.12.2012 and which is during the currency of the policy for which additional premium under the Employee's Compensation Act, 1923 was paid to the appellant/insurance company.

4. In view of the above, the Commissioner without taking of evidence by the appellant/insurance company allowed the claim petition. The Commissioner has also held that objections that documents like MLC report, driving licence etc having not been filed are not ground for disallowing the claim petition. Reliance for such purpose has been placed

upon the judgment of the Supreme Court in the case of *National Insurance Co. Ltd. Vs. Mastan and Anr. 2006 ACJ 528.*

5. Counsel for the appellant argued before this Court that the impugned order is liable to be set aside because the same has been passed without allowing the appellant/insurance company to lead evidence, however, when asked to show that which is the defence in the written statement for which the evidence had to be led, attention of this Court was drawn to para 2 of the preliminary objections, and which reads as under:-

“2. That is no document like M.L.C., and EMPLOYMENT CERTIFICATE, WAGES/SALARY CERTIFICATE, DRIVING LICENCE, PERMIT, FITNESS ETC. which has been placed on record or supplied to the answering respondent to establish his claim. Thus claim petition should be dismissed.”

6. This aspect of the defence of the appellant-insurance company has been rightly dealt with by the Tribunal in para 7 of its judgment and which reads as under:-

“7. I have gone through the contents of the claim application as well as reply filed by Respondents and documents placed on record by petitioner. In view of admission of R-1 that petitioner met an accident on 1.12.2012 by which his left leg was amputated from knee. On the other hand principally R-2 has also admitted vehicle in question was insured on the day of accident. Since the factum of Employee-Employer relationship accident are the admitted facts that I am of the view that further no trial is required in the court. The objection of Ld counsel of R-2 was that, that no documents like permit, medical and DL has been placed by petitioner on record as such petitioner is not entitled for any relief as terms and condition of

policy is not fulfill. The objection Ld counsel of R-2 is not considerable because accident by which petitioner lost his left leg from knee not in question it is admitted fact by R-1 that petitioner was employed as a driver with them and he was on his employment on the day of accident. Apex court of land has held in case of National Insurance Company Ltd. Vs. Mastan that if death an accident are the admitted fact than these document have no relevancy if not placed on record. Petitioner can not deny for relief merely not placing these documents on court record.”

7. In addition to the reasoning given by the Commissioner I must note that objection such as the one which has been pleaded by the appellant/insurance company is no objection in the eyes of law because the insurance company must lay out a specific defence that to the knowledge of the employer the driver/employee was not having a licence or was having a fake licence. The Supreme Court in the case of *United India Insurance Company Ltd. Vs. Lehru and Ors. (2003) 3 SCC 338* has held that there is no duty in the employer to conduct a detailed enquiry once the driving licence of the driver is shown to the employer. The relevant observations of the Supreme Court in the case of *United India Insurance Company Ltd. (supra)* read 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.”

8. In the present case, the issue of appellant being entitled to lead evidence would have come only when there was a specific defence which was pleaded that to the knowledge of the employer the driver/employee/respondent no.1 did not have a driving licence or had a fake driving licence. The preliminary objection which has been reproduced above is totally bereft of the requisite averments and therefore once necessary pleadings did not exist, there was no requirement of allowing the applicant/insurance company to lead any evidence. Evidence was only required if the appellant/insurance company had specifically pleaded that to the knowledge of the employer the driving licence was fake or there was no

driving licence at all. This has not been pleaded by the appellant/insurance company.

9. An appeal under Section 30 arises if there is a question of law involved. There is no question of law, much less a substantial question of law, for this appeal to be entertained, and the same is therefore dismissed, leaving the parties to bear their own costs.

FEBRUARY 12, 2014
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VALMIKI J. MEHTA, J.