

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

+ **FAO No. 449/2013 and CM Nos. 18555-18556/2013**

% **20th January, 2014**

NATIONAL INSURANCE CO. LTD. Appellant
Through: Mr. Pankaj Seth, Advocate.

VERSUS

RAM PRAKASH & ORS. Respondents
Through:

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This appeal under Section 30 of the Employee's Compensation Act, 1923 is filed by the Insurance Company against the impugned judgment of the Commissioner, Employees Compensation dated 22.8.2013 by which compensation has been awarded to the respondent no. 1 herein, and who was the applicant before the Commissioner.

2. The facts as found as per the judgment of the Commissioner in the present case shows that the vehicle in question bearing No. UP 32B-K- 9310 was insured with the appellant in the relevant period when the accident took

place on 24.1.2011. The period of insurance admittedly is from 27.9.2010 to 26.9.2011. The vehicle was insured in the name of Sh. Rishi Kapoor who was added as respondent no. 3 to the proceedings before the Commissioner. Therefore, that there is a policy is not an issue. Similarly there is no dispute that the policy was in the name of Sh. Rishi Kapoor who did own the subject vehicle. Finally, that an accident did take place in which the applicant/respondent no. 1 was injured resulting in amputation of his right leg i.e also not disputed. The appellant argued before this Court, and the same aspect argued before the Commissioner also, that in view of the statement before the Commissioner of the respondent no.1 therein namely Sh. Harishchandra, whom the applicant/respondent no. 1 firstly claimed to be the employer, that showed the vehicle in question was no-longer owned by the insured Rishi Kapoor because the vehicle was transferred to the relative of the respondent no. 1 Sh. Harishchandra, with the consequence that the policy in question will not hence hold force inasmuch as insured-Rishi Kapoor, respondent no. 3 before the Commissioner, was no longer the owner of the vehicle. In this regard, I would refer to the relevant findings of the Commissioner and which read as under :-

“In reply respondent number 1 denied Employee-Employer relationship and claim of the petitioner on the ground that there

was no employer-employee relationship between respondent number 1 and petitioner and since never accident occurred out of and in the course of employment. Respondent number-1 further submitted that he is not registered owner of the vehicle in question. Vehicle in question was purchased by answering respondent through a dealer in the year 2010 for a sum of Rs. 65,000/- for and on behalf of his relatives residing at Gorakhpur. Vehicle in question was registered in the name of R-3 and same was to be transferred to the name of the relative of R-1 for whom vehicle was purchased. For sending vehicle in question to his relative of Gorakhpur services of petitioner was hired from the market by R-1 in the sum of Rs. 3000/-. R-1 admitted that accident took place at Hardoi and accident occurred only because of petitioner's negligence who was driving the car rash and negligence manner. On this ground he denied his responsibility towards any payment of compensation. I have seen the documents available on records and as per available documents it is not disputed facts that vehicle in question was not owned by R-3 at the time of accident and it was not insured with R-2. Further it is also not disputed that on the day of accident petitioner was not employed as a driver on said vehicle. As the stands taken by R-2 that vehicle in question was purchased from R-3 for one his relative who is residing Gorakhpur (UP), but not document/paper has been placed on records which shows that at the time of accident vehicle was transferred in the name of other person other than R-3. As such stands of R-2 is not appears correct and same is not considerable. Despite notice R-3 neither appeared nor filed his reply. As such I have left not option but to proceed ex-parte proceeding against R-3.

On the basis of above discussion it has been established that R-3 would have given vehicle in question for his business purpose to R-1. Therefore it is quite clear that petitioner met an accident out of and during in the course of his employment with R-3 for his trade & business, in which his right leg amputated and as a driver his total earning capacity reduced and become 100% permanent disabled for his category of work as a driver. I am not agree with the report of disability certificate issued by

Dr. Ram Manohar Lohia Hospital New Delhi in which 80% permanent disability has been assessed. In view of these discussion and circumstances as narrated above R-3 is liable to pay injury compensation to the extent of 100% to the petitioner. Since the vehicle in question was insured with R-2 on the day of accident in which petitioner received grievous injuries and his right leg amputated and become 100% permanent disabled for this R-2 i.e. Insurance Company is liable to indemnify to the petitioner. In view of these discussion issue No. 1 is decided in the favour of Petitioner and against the respondents.”

(underling added)

3. I completely agree with the aforesaid findings and conclusions because merely on the stand of the respondent no. 1 before the Commissioner (namely Sh. Harishchandra) it does not stand proved that the vehicle in question stood transferred from Sh. Rishi Kapoor to an unknown person who is stated to be the relative of Sh. Harishchandra. If the appellant-insurance company, and who was the respondent no. 2 before the Commissioner, wanted this fact to be established then the onus of proof was upon the appellant to establish this fact with regard to transfer of ownership of the vehicle. Since the appellant herein had failed to discharge the onus of proof of transfer of the subject vehicle from Sh. Rishi Kapoor to a person whose name does not even appear in the records of the Commissioner, I refuse to accept the argument that the appellant-insurance company is not liable on the ground that Sh. Rishi Kapoor was no longer the owner of the subject vehicle.

4. The next argument which was argued that the Commissioner has wrongly taken the disability at 100% although disability in question actually would be a partial disablement as per Section 2(g) of the Employee's Compensation Act, 1923. In order to appreciate this issue, let me refer to the relevant findings of the Commissioner and which read as under:

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ISSUE NO. 2

In view of discussion made in issue No. 1 for calculating compensation, the age of petitioner is taken 54 years on the basis of disability certificate issued by Dr. Ram Manohar Lohia Hospital New Delhi and wages of petitioner is taken 60% of Rs. 8,000/- as per section 4(1)(b) of the Act, restricted by Rs. 8000/- as per Govt. notification dated 31.05.2010 and relevant factor is 139.13 and percentage of disability i.e. 100%. Accordingly, compensation is calculated as under :-

139.13 X 4800 = Rs. 6,53,424/- + 14400/- difference

In view of the above made discussion and calculation, petitioner is entitled to get Rs. 6,53,424/- as injury compensation. Since the vehicle in question was insured with respondent No. 2 i.e. National Insurance Company Ltd. on the day of accident as such respondent No. 2 is liable to indemnify to insured. Respondent No. 2 is further directed to reimburse Rs. 53,055/- to petitioner on account of incurred medical expenses as per exbt. AW1/5 u/s 4(2A) of the act, as injury caused during the course of employment.”

5(i). The issue is whether the disablement, which the applicant before the Commissioner, (and the respondent no. 1 herein) suffered is a partial

disablement or is a permanent total disablement under Section 4(1)(b) of the Act.

(ii) I cannot agree with the argument urged on behalf of the appellant that the disablement in question in this case is a partial disablement inasmuch as requirement of a partial disablement under Section 2(g) is that a disablement is of a temporary nature. Here, the leg of the applicant/respondent no. 1 has been amputated and, therefore, he is not in a position to perform his duties as a Driver for his life and, therefore, clearly this is a case of permanent total disablement. Once the injury is a permanent total disablement and not a temporary disablement Section 4(1)(b) comes into play. It is not disputed that the formula to be applied as per Section 4(1)(b) has been correctly applied by the Commissioner. Therefore, I do not find any merit even in the second argument urged on behalf of the appellant-insurance company.

6. 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.

JANUARY 20, 2014
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VALMIKI J. MEHTA, J