

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

+ **FAO No.37/2014**

% **26th March, 2014**

NATIONAL INSURANCE CO. LTD. Appellant
Through: Mr. Pradeep Gaur, Advocate.

VERSUS

SMT. BADAMI DEVI AND ORS. Respondents
Through:

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. No.1869/2014 (exemption)

1. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

C. M. No.1868/2014 (condonation of delay in filing)

2. For the reasons stated in the application, delay of 130 days in
filing the appeal is condoned.

C.M. stands disposed of.

+ FAO No.37/2014 and C.M. No.1867/2014 (stay)

3. This first appeal is filed under Section 30 of the Employee's
Compensation Act, 1923 impugning the judgment of the Commissioner dated

14.6.2013 which has allowed the claim petition filed by the claimant; respondent no.1 herein; and who is the mother of the deceased employee Sh. Umesh Kumar. Sh. Umesh Kumar died on 24.7.2005 in an accident while driving T.S.R No.DL-1RJ-1105 (three wheeler) which belonged to the employer/respondent no.2 herein, respondent no.1 before the Commissioner.

4. The facts of the case as pleaded before the Commissioner by the respondent no.1 herein were that the deceased Sh. Umesh Kumar was employed by the respondent no.2 herein. The deceased employee on 24.7.2005 at 2.15 A.M. while driving the TSR No.DL-1RJ-1105 met with an accident and died. The death is therefore stated to have been caused on account of injuries sustained by him in the accident during the course of employment with the respondent no.2 herein. The deceased was 20 years old at the time of his death and his monthly salary was stated to be Rs.4,500/- per month. An FIR No.236/2005 was registered at police station Usmanpur, Delhi and the post mortem of the deceased employee was conducted in G.T.B hospital, Shahdara Delhi. Compensation was accordingly claimed from both the employer as well as the appellant-insurance company.

5. The Commissioner has held that there existed a relationship of employee and employer because the deceased Sh. Umesh Kumar was found to have driven the vehicle which met with an accident, and which vehicle was

found registered in the name of the respondent no.2 herein. The Commissioner also noticed that the appellant/insurance company has taken additional premium under the Workmen's Compensation Act, 1923 with respect to the driver, and this is also one of the grounds for holding that the deceased Sh. Umesh Kumar would have had a relationship of an employee with the employer/respondent no.2. The Commissioner has thereafter applied the statutory formula and awarded compensation both against the respondent no.2 herein as also the appellant/insurance company.

6. Before me, counsel for the appellant has argued the following two points:

(i) There was no relationship of employee and employer between the deceased Sh. Umesh Kumar and the respondent no.2 herein.

(ii) No compensation is payable because the deceased employee was having a licence for LMV and was not having a driving licence for the three wheeler which had met with the accident on 24.7.2005.

7. So far as the first argument is concerned, in my opinion, no substantial question of law arises under Section 30 for this appeal to be entertained because in cases of employing of a driver for driving of a TSR I do not think that there would be properly drafted and typed out contracts which are

required to be filed for showing the relationship of employer and employee. It is settled law that provisions of Code of Civil Procedure, 1908 (CPC) and Evidence Act, 1872 do not apply to the proceedings before the Commissioner. However, the fact that the vehicle which was driven by deceased Sh. Umesh Kumar met with an accident was in the name of the employer/respondent no.2, is sufficient to hold that the deceased Sh. Umesh Kumar was the employee of the respondent no.2 more so because there was no reason why the appellant/insurance company would have taken additional premium under the policy with respect to the Employee's Compensation Act if there was no employee i.e the deceased employee Sh. Umesh Kumar. The first argument therefore urged on behalf of the appellant is rejected.

8. So far as the second argument is concerned, in my opinion, though a vague plea of there not being a valid licence was taken in the written statement, but that is not too happily worded because the objection is that "if it is proved" that the deceased employee did not have a driving licence. Also no such specific issue with respect to the deceased Sh. Umesh Kumar not having an appropriate driving licence was sought to be got framed. Further the object of a pleading is to give notice of a case to the opposite party for being met and a plea of valid licence not being there is hardly a specific plea because lack of valid licence can include various issues of a licence being fake or expired or not

being for a vehicle of requisite type/category. Even if I allow such a plea to be raised it is not disputed before me that the deceased had an LMV licence. The issue is whether LMV licence entitled the deceased Sh. Umesh Kumar to drive the three wheeler scooter. The law in this regard is now settled by a Division Bench judgment of three Judges of the Supreme Court in the case of *National Insurance Company Ltd. Vs. Swaran Singh & Ors. (2004) 3 SCC 297* and wherein the Supreme Court has held that merely because there is a different type of driving licence in itself that will not enable the insurance company to wriggle out of its liability unless it shows that possessing of a different type of driving licence than the vehicle which was being found driven is the main or contributory cause for the accident. It has further been held that if accident is caused because of some other unforeseen or intervening causes like mechanical failures having no nexus with driver not possessing the requisite type of licence, the insurance company will not be allowed to avoid its liability merely taking by a pleading of breach of conditions concerning the driving licence.

9. In view of the ratio of the judgment of the Supreme Court in the case of *Swaran Singh & Ors. (supra)*, in my opinion, once the deceased had a driving licence for a light motor vehicle, he was also otherwise competent to drive the three wheeler scooter and which is of a lower category than an LMV, and in any case no issue has been urged by the appellant-company before the

Commissioner and no evidence is led that the different type of licence of the deceased Umesh Kumar being for an LMV and not for a TSR is the main or contributory factor with respect to causing of the accident. Therefore even the second ground urged on behalf of the appellant does not have any merit.

10. 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 therefore the appeal is dismissed, leaving the parties to bear their own costs.

MARCH 26, 2014
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VALMIKI J. MEHTA, J.