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

Date of decision: 16th September, 2015

\+ W.P.(C) 4102/2015

SMT. ANJU DEVI ..... Petitioner
Through: Mr. Mr.P Vashishtha and Mr.Harendra Singh, Advocates

Versus

DIRECTOR GENERAL EMPLOYEES STATES INSURANCE CORPORATION & ANOTHER ..... Respondents
Through: Mr.K.P.Mavi, Advocate for R-1. Mr.Manish Kumar, Advocate for R-2.

CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA

: SUNITA GUPTA, J. (ORAL)

1. This is a writ petition under Article 226 of the Constitution of India filed by the petitioner seeking direction to respondent no.1 to process the claim of the petitioner as per Employees' State Insurance Corporation Act, 1948 (hereinafter referred to as 'the Act') and to give benefit to the petitioner in terms of the aforesaid Act.

2. The petitioner is the widow with two minor daughters whose husband unfortunately died in road accident on 25.08.2013. It is the case of the petitioner that her husband was employee with M/s Sudhir Power Projects Limited/respondent no.2 and was working with the company at the time of his death. He was permanent employee of the company and was insured with respondent-corporation for all the

benefits under the Act. During the course of his employment while driving the employer's motorbike No. HR26-BG-9395 the husband of the petitioner died. The Employees' State Insurance Act has a deeming provision that if death occurs while driving the official transport then it is presumed that death has occurred during the course of employment. The respondent-corporation has not given any benefit to the widow despite the fact that the death has occurred more than one and a half year back. Respondent no.2 has also not taken any initiative in this regard. The petitioner visited the office of respondent no.1 several times but could not file her claim as respondent refused to receive the claim papers. As such, a letter of request was sent through advocate but no reply has been given by respondent no.1. Hence, this petition.

3. The claim of the petitioner is resisted by both the respondents. Respondent no.1 submitted that the deceased Sh. Ranjay Kumar was covered under the Act on 10.04.2010. Last contribution paid in respect of the deceased was deposited in the month of October, 2010 and thereafter the salary of the deceased exceeded the Employees' State Insurance wage limit and deceased was de-covered under the Act. When the alleged accident took place on 25.08.2013 he was neither covered under the Act nor any contribution was paid in respect of the deceased. Therefore, the employer did not send any accident report to respondent no.1. Since the deceased was not covered under the Act, the legal representatives of late Sh. Ranjay Kumar are not entitled for the benefits under the Act. As such, petition is misconceived and liable to be dismissed.

4. In the counter affidavit filed by respondent no.2, it is alleged that the petitioner has deliberately chosen not to disclose the true and correct facts and as such, the petition is not maintainable and liable to be dismissed. It is further alleged that the day when the unfortunate accident took place, it was Sunday and the same being a holiday, the deceased was not under employment of the respondent at that point of time. This fact is further established as the co rider who had expired alongwith the deceased was not an employee of respondent no.2. Respondent no.2 had provided the bike to the deceased only for official use and the said bike being used on a holiday that too not being used for official engagements can in no manner substantiate or prove the factum of petitioner's husband being under course of employment. Moreover, the entire account of deceased was settled by respondent as full and final, as reflected in the ledger account. In addition to full and final settlement, respondent no.2 also paid a sum of Rs.2 lac to the petitioner which is evident from the creditors ledger maintained by respondent no.2. These facts have been deliberately not disclosed by the petitioner. Moreover, the husband of the petitioner was a member of ESIC only till September, 2010 and was, thus, not covered for the benefit under the Act, as claimed. So far as deeming provision of State Insurance Act, 1948 is concerned, the same does not apply to the petitioner's husband as no doubt the vehicle driven was official transport, however, death had not taken place during the course of employment as it was Sunday and he was not on official duty on that day. As such, petition is liable to be dismissed.

5. I have heard learned counsels for the parties and perused the

record. Counsel for the petitioner submits that in case the claim filed by the petitioner is decided by respondent no.1 then he will seek his appropriate remedy. On the other hand, counsel for respondent no.1 submits that on the fateful day when the alleged accident took place resulting in unfortunate death of the deceased, he was neither covered under the Act nor any contribution was paid in respect of deceased. That being so, the claim, even if filed by the petitioner, is not maintainable. Counsel for respondent no.2 also supports respondent no.1 in submitting that after October, 2010 the deceased was de-covered under the Act since his salary exceeded the Employees' State Insurance wage limit. Moreover, the accident had not taken place during the course of employment. Even otherwise, all the dues were settled as reflected in the annexures filed alongwith the counter affidavit.

6. That being so, there is no merit in the writ petition. Same is accordingly dismissed. Petitioner, however, is at liberty to seek remedy before the appropriate forum, if available under law.

(SUNITA GUPTA)
JUDGE

SEPTEMBER 16, 2015
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