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

Date of Decision: August 03, 2016

+ **FAO 82/2014 & C.M.No.4998/2014**

SHRI RAM GENERAL INSURANCE CO LTD Appellant

Through: Mr. P. Acharya and Mr. Sameer
Nandwani, Advocates

versus

TUNNIYA DEVI & ORS Respondents

Through: Mr. R.K. Nain, Advocate for
respondents No.1 to 7
None for respondent No.8

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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Impugned order of 23rd December, 2013 grants compensation of ₹6 lacs odd in proceedings under *the Employee's Compensation Act, 1923*, to the respondents-legal heirs of the deceased who, at the relevant time, was employed as loader on the vehicle of respondent No.8.

During the course of loading, the deceased-loader had sustained serious head injuries, which resulted in his death. Impugned order notes that the respondent No.8-owner had filed the reply wherein it was stated that there is no proof of employment and the accident in question was denied on merits and it was stated on behalf of the respondent No.8 that the deceased was employed on the truck of the owner by some contractor.

In view of the medical record, the accident in question stood proved. However, the challenge to the impugned order by learned counsel for appellant-insurer is on the ground that the relationship of employer-employee is not established and the appellant is not liable to pay the compensation. Neither the appellant nor the respondent No.8-owner had led any evidence and in such a situation, appellant cannot be heard to contend that there is no relationship of employer-employee because it is categorically stated by respondent No.8-owner of the offending vehicle that the deceased was deployed on his truck by some contractor.

Upon hearing and on perusal of impugned order and the material on record, I find that the aforesaid admission by the respondent No.8-owner, who was a principal employer, clearly indicates that though the respondent No.8 was not the immediate employer, but he was a principal employer and, so as per Sub-section 2 of Section 12 of *the Employee's Compensation Act, 1923*, he is entitled to be indemnified by the contractor. Since the appellant is the insurer, so on behalf of respondent No.8, the appellant is duty bound to pay the compensation awarded with liberty to get it recovered from the contractor.

According to learned counsel for appellant, the substantial question of law which arises for consideration in this appeal is that the age of the deceased has been wrongly taken to be 45 years whereas as per copy of the AADHAR card of the deceased, his age was 52 years and the basis of the computation will change and if the age of the deceased is taken to be 52 years, then the quantum of compensation would be ₹5,84,800/- instead of ₹6,14,559/-, as awarded by the trial court.

In the considered opinion of this Court, grant of compensation of

few thousands rupees more would not be a substantial question of law. Hence, this appeal and the application are dismissed while leaving the parties to bear their own costs.

(SUNIL GAUR)
JUDGE

AUGUST 03, 2016

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