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

+ **FAO 120/2016**

MUMTAZ BEGUM & ORSAppellants
Through: **Mr. Anshuman Bal, Advocate**

versus

SADDAM HUSSAIN & ORSRespondents
Through: **Mr. Sameer Nandwani, Advocate**
for respondent No.2

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER

% **10.08.2016**

Impugned order of 25th January, 2016 dismisses appellants' claim petition under *the Employee's Compensation Act, 1923*, by holding that the three-wheeler in question was taken on rent by the deceased and he was not the employee of the respondent No.1 and, so in the absence of employer-employee relationship, the claim petition does not survive.

Learned counsel for appellants submits that no relief is claimed against first respondent in this appeal and hence, issuance of notice to first respondent is dispensed with.

During the course of hearing, learned counsel for appellants had drawn the attention of this Court to the finding given on issue No.1 in paragraph No.10 of the impugned order to point out that first respondent in his written statement had admitted that the deceased was working as a driver on his three-wheeler scooter on a salary of ₹8,500/- per month.

Learned counsel for appellants submits that in the face of the

aforesaid admission, dismissal of appellants' claim petition is unwarranted.

Upon hearing and on perusal of the impugned order and the material on record, I find that where the fact of admission made by first respondent is recorded in the impugned order, it has been observed by the learned Commissioner that first respondent has failed to file any document in support of the admission. Judicial notice can be taken of the fact that in such kind of private employment, documentary proof is hard to find. In any case, dismissal of appellants' claim petition in the face of the admission of first respondent is wholly unwarranted. Consequently, the impugned order of 25th January, 2016 is hereby set aside and the matter is remanded back to the learned Deputy Labour Commissioner concerned for proceeding afresh with the appellants' claim petition. Needless to say, the permissible defences would be available to the respondent-insurer.

Trial court record be remitted back forthwith.

Let the parties appear before the concerned Deputy Labour Commissioner on 30th August, 2016.

This appeal is accordingly disposed of.

(SUNIL GAUR)
JUDGE

AUGUST 10, 2016

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