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

% **Date of Decision: 9th August, 2016**

+ **FAO 458/2013**

SH BHIM SINGH Appellant
Through: Mr. S.N. Parashar, Adv.

versus

M/S SOUTH HARYANA
GOODS CARRIERS PVT LTD Respondent
Through: Mr. (appearance not given), Adv.

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. The appellant has challenged the order dated 16th June, 2013 whereby the Commissioner, Employees' Compensation has dismissed the application for compensation on the ground that the appellant suffered injury because of enmity between the two drivers which cannot said to be an accident.
 2. The view taken by the Commissioner, Employees' Compensation is contrary to the well settled law. In ***Rita Devi v. New India Assurance Co. Ltd.***, 2000 ACJ 801 (SC), the deceased was employed to drive an auto rickshaw for ferrying passengers on hire. On the fateful day, the auto rickshaw was parked in the rickshaw stand at Dimapur when some unknown passengers engaged the deceased for journey. As to what happened on that day is not known. It was only on the next day that the police was able to recover the body of the deceased but the auto rickshaw in question was never traced out. The owner of the auto rickshaw claimed compensation from the insurance company for the loss of auto rickshaw. The heirs of the deceased claimed compensation for the death of the driver on the ground
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that the death occurred on account of accident arising out of use of the motor vehicle. The Apex Court held that the murder to be an accidental murder.

Paras 9 and 10 are relevant and are quoted below:-

“9. A conjoint reading of the above two Sub- clauses of Section 163A shows that a victim or his heirs are entitled to claim from the owner/Insurance Company a compensation for death or permanent disablement suffered due to accident arising out of use of the motor vehicle (emphasis supplied), without having to prove wrongful act or neglect or default of any one. Thus it is clear, if it is established by the claimants that the death or disablement was caused due to an accident arising out of the use of motor vehicle then they will be entitled for payment of compensation. In the present case, the contention of the Insurance Company which was accepted by the High Court is that the death of the deceased (Dasarath Singh) was not caused by an accident arising out of the use of motor vehicle. Therefore, we will have to examine the actual legal import of the words 'death due to accident arising out of the use of motor vehicle'.

10. The question, therefore, is can a murder be an accident in any given case' There is no doubt that 'murder', as it is understood, in the common parlance is a felonious act where death is caused with intent and the perpetrators of that act normally have a motive against the victim for such killing. But there are also instances where murder can be by accident on a given set of facts. The differences between a 'murder' which is not an accident and a 'murder' which is an accident, depends on the proximity of the cause of such murder. In our opinion, if the dominant intention of the Act of felony is to kill any particular person then such killings is not an accidental murder but is a murder simplicitor, while if the cause of murder or act of murder was originally not intended and the same was caused in furtherance of any other felonious act then such murder is an accidental murder.”

(Emphasis supplied)

3. In **National Insurance Co. Ltd. v. Shiv Dutt Sharma**, 2004 ACJ 2049 (J&K), two sets of claims were made in this case; one relating to the accident in a bus and the other relating to an accident where bullets of

terrorists killed the passengers of a bus. The Jammu and Kashmir High Court held as under:-

“43. On the basis of the judicial pronouncements and the material which has come on the record, it is concluded:

(i) That a passenger travelling in a bus when he suffers from an injury on account of bomb explosion or on account of any other activity including terrorist activity, he would be well within his rights to claim compensation. This view is spelt out from the decision given by the Supreme Court of India in Shivaji Dayanu Patil v. Vatschala Uttam More, 1991 ACJ 777 (SC) and the latter decisions noticed above;

(ii) That even if a person is not actually in the vehicle and is standing outside and suffers an injury, even in that case Supreme Court of India has allowed compensation in Shivaji Dayanu Patil v. Vatschala Uttam More, 1991 ACJ 777 (SC). Therefore, merely because some of the victims were taken out of the bus and thereafter shot dead, would not make any difference;

(iii) That the material which has come on the record justified the grant of the compensation and the quantum thereof is accordingly sustained.”

4. The appeal is allowed and the impugned order dated 16th June, 2013 passed by the Commissioner, Employees' Compensation is set aside and the case is remanded back to the Commissioner, Employees' Compensation for fresh adjudication.

5. The record of the Commissioner, Employees' Compensation be returned back forthwith along with copy of this judgment.

6. Both the parties shall appear before the Commissioner, Employees' Compensation on 13th September, 2016.

7. Copy of this judgment be given *dasti* to learned counsels for the parties under signature of Court Master.

J.R. MIDHA, J.

AUGUST 09, 2016/ak