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

Date of Decision: September 02, 2016

+ **FAO 361/2016 & C.M.27572/2016**

JYOTI & ORSAppellants
Through: Mr. S.N. Parashar, Advocate

versus

YOGESH AGGARWAL Respondent
Through: Nemo

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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In proceedings under *the Employee's Compensation Act, 1923*, appellants' claim petition stands dismissed while noting that the FSL report reveals that the deceased was under the influence of liquor. Section 3 of *the Employee's Compensation Act, 1923* is reproduced in the impugned order, which shows that if an employee is found under the influence of drink, liquor, drugs, then he is not entitled to any compensation.

At the outset, learned counsel for appellant submits that Section 3 of *the Employee's Compensation Act, 1923* does not apply to the case of a death of an employee and relies upon Himachal Pradesh High Courts'

decision in *New India Assurance Co. Ltd. v. Tahira Begum and Others*, 2008 ACJ 463. It is pointed out that neither in the MLC nor in the Post-mortem Report, alcohol content in the blood of the deceased was detected and so, merely by relying upon FSL report, denial of compensation to appellant is bad in law. It is further submitted that Section 3 (1) (b) of *the Employees' Compensation Act, 1923* relates to injury case and not to a death case. So, it is contended by appellants' counsel that impugned order deserves to be set aside and claim petition ought to be allowed. Nothing else is urged on behalf of the appellants.

Upon hearing and on perusal of impugned order, the decision cited and the material on record, I find that Section 3 of *the Employee's Compensation Act, 1923* deals with employer's liability for compensation and this provision cannot be read in isolation as Section 10-A and Section 22-A of *the Employee's Compensation Act, 1923* deal with cases of fatal accident. So, it cannot be said that the aforesaid Act does not apply to the case of a fatal accident of an employee.

In *Tahira Begum (supra)*, an expert, who had rendered the forensic report, was examined and due to infirmity in the deposition of the expert, the benefit was extended to the claimant. It needs no reiteration that report by the Assistant Chemical Examiner of Forensic Science Laboratory is *per se* admissible.

It is not the case of appellants that they had sought to cross-examine the expert. So, reliance placed by appellants' counsel upon decision in *Tahira Begum (supra)* is of no avail. Since the FSL report *per se* admissible, therefore, non-detection of the alcohol content in the post-mortem report or in the MLC is of no avail to the case of appellants.

In the considered opinion of this Court, the impugned order suffers from no infirmity and there is no substance in this appeal. Accordingly, this appeal and the application stand dismissed.

(SUNIL GAUR)
JUDGE

SEPTEMBER 02, 2016

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