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

% **Date of Decision:25th May, 2017**

\+ FAO 31/2017 and CMs 1887/2017, 1888/2017

RELIANCE GENERAL INSURANCE CO. LTD...... Appellant

Through: Mr. A.K. Soni, Advocate

versus

HEMLATA & ORS. ..... Respondents

Through: Mr. B.K. Gautam, Mr. Siddharth, Advocates for respondents no.1 and 2

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

J U D G M E N T (ORAL)

1. The appellant has challenged the order dated 29th September, 2016 whereby the Commissioner, Employees' Compensation has awarded compensation of Rs.3,11,970/- along with interest @ 12% per annum.

2. On 3rd January, 2011, Ramesh Kumar was driving Mahindra Champion bearing No.DL-1-LJ-1290 during the course of his employment with respondent no.4. On 3rd January, 2011 at about 12.10 pm, the aforesaid vehicle was met with an accident which resulted in fatal injuries to Ramesh Kumar. The police registered FIR No.05/11 under Sections 279/304A IPC at P.S. Badli, Delhi. Ramesh Kumar was survived by his widow, a minor daughter and a brother who filed the application for compensation before the Commissioner, Employees' Compensation.

3. The Commissioner, Employees' Compensation held that the deceased suffered the fatal accident during the course of his employment with respondent no.4 and awarded compensation of

Rs.3,11,970/- along with interest @ 12% per annum.

4. Learned counsel for the appellant urged at the time of the hearing that there was no employer-employee relationship between the deceased and respondent no.4. It is further submitted that the deceased was not holding a valid driving licence to drive the offending vehicle.

5. Respondent No.4 has denied the relationship of employment with the deceased. Respondent No.4 has set up a defence that his brother, Amit was driving insured vehicle on the date of the accident i.e. 03rd January, 2011. When the vehicle reached near Vijaya Bank, Samaypur, Bawana Road, the rear left side of the vehicle got punctured and the wheel rim bended, whereupon Amit left the vehicle on the road and went away to search a mechanic. When the brother of respondent No.4 returned, he did not find the vehicle whereupon he went to P.S. Samaypur, Badli where he found the vehicle. The aforesaid defence set up by respondent No.4 is contrary to the police record. The police received intimation of the accident whereupon the policeman visited the site and found vehicle in an accidental condition. The policeman thereafter went to Baba Saheb Ambedkar Hospital. The MLC records that the deceased was found unconscious after road side accident and brought to Baba Saheb Ambedkar Hospital where he was declared dead. The mechanical inspection done by the police shows fresh damage on the right side of the body. The site plan filed by the police shows that the vehicle was found in the accidental condition at the point 'X'. The defence of respondent No.4 does not appear to be true. The finding of Commissioner, Employees'

Compensation with respect to the relationship of employment between the deceased and respondent No.4 is upheld.

6. The police has recovered the driving licence No.P08102000207211 of the deceased valid up to 23rd October, 2020 in respect of the LMV (NT). The driving licence has been verified by the police to be genuine. As per the fitness certificate issued by GNCTD, the insured vehicle has been classified as LGV. In that view of the matter, no case for grant of the recovery rights is made out by the appellant.

7. The appellant has deposited Rs.5,20,117/- (Rs.4,79,488 + Rs.40,629/-) with the Commissioner, Employees' Compensation on 4th January, 2017.

8. The Commissioner, Employees' Compensation is directed to disburse the amount by instructing the concerned bank as under:-

(i) Rs.3,00,000/- be kept in 60 FDRs of Rs.5,000/- each in the name of Hemlata for the period 1 month to 60 months respectively with cumulative interest.

(ii) Rs.1,70,000 be kept in FDR in the name of Baby Neha till she attains the majority with cumulative interest. Upon attaining the majority, the bank shall release the interest accrued on the FDR to Neha and shall keep the principal amount of Rs.1,70,000 lakh in 34 FDRs of Rs.5,000/- each for the period 1 month to 34 months respectively in the name of Neha with cumulative interest.

9. The balance amount after keeping Rs.4,70,000/- in FDRs be released to Hemlata by transferring the same to her savings bank account No.32609992598 with State Bank of India, Badli, Rithala

Road, Delhi (IFSC Code: SBIN0002299).

10. The maturity amounts of the FDRs along with interest shall be credited in the above savings bank account of Hemlata.

11. All the original FDRs shall be retained by the concerned Bank. However, the statement containing FDR number, FDR amount, date of maturity and the maturity amount be furnished to Hemlata.

12. No cheque book or debit card be issued to the Hemlata without permission of this Court. However, in case, the debit card and/or cheque book have already been issued, the State Bank of India, Badli Branch, Delhi shall cancel the debit card and/or cheque book.

13. No loan or advance or pre-mature discharge shall be permitted without the permission of this Court.

14. Hemlata is at liberty to approach this Court for release of further amount in case of any financial exigency.

15. The appeal and the pending applications are disposed of.

16. Copy of this judgment be given *dasti* to counsel for the parties under the signature of the Court Master.

MAY 25, 2017 **J.R. MIDHA, J.**

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