

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

+ **FAO No. 67/2017**

% **18th September, 2017**

M/s SHRI RAM GENERAL INSURANCE CO. LTD. Appellant

Through: Ms. Meenakshi Midha and Mr.
Kapil Midha, Advocates.

versus

SAROJ & ANR. Respondents

Through: Ms. Shivali Gautam, Advocate
for R-1.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. Appl. No. 5105/2017 (for condonation of delay)

This is an application seeking condonation of delay of 112 days
in filing the appeal.

For the reasons stated in the application the same is allowed and
the delay in the appeal is condoned.

C.M. stands disposed of.

FAO No. 67/2017 and C.M. Appl. No. 5103/2017 (for stay)

1. This first appeal under Section 30 of the Employees
Compensation Act, 1923 is filed by the Insurance Company

impugning the judgment of the Employees Compensation Commissioner dated 29.7.2016 by which the Employees Compensation Commissioner has allowed the claim petition filed by the respondent no. 1 herein (claimant/applicant before the Employees Compensation Commissioner) and granted compensation of Rs.7,13,960/- along with interest at 12% per annum from 29.9.2012 till its realization.

2. The facts of the case are that respondent no. 1 pleaded that her deceased husband Sh. Nagender Kumar died on 15/16.10.2012 while working as a driver with the respondent no. 2 herein. It was pleaded that the deceased Sh. Nagender Kumar, husband of respondent no. 1 herein, was appointed as driver on Vehicle No. HR-69-C-2050 (10 tyre truck) owned by respondent no. 2 herein. It was pleaded that the deceased Sh. Nagender Kumar had gone from Haridwar to Chennai and had reached Chennai on 15.10.2012. On coming out from the office Sh. Nagender Kumar fell into a manhole of an underground water tank. Deceased Sh. Nagender Kumar is said to have drowned in the underground water tank and his body was discovered the next day and taken out from the water tank. Body of Sh. Nagender Kumar was taken to a Government hospital for

post-mortem and which was conducted in Institute of Anatomy, Madras Medical College, Chennai. FIR No. 553/2012 was registered at Police Station – C5 Vengal, Chennai. Accordingly, it was pleaded that there was a relationship of employer and employee between Sh. Nagender Kumar and respondent no. 2 herein and that Sh. Nagender Kumar died as a result of accident of falling into a manhole during the course of and arising out of employment.

3. At this stage itself I may note that the claim petition filed by the respondent no. 1 herein before the Employees Compensation Commissioner was silent as regards the relationship between the respondent no. 1 herein/claimant and the respondent no. 2 herein and who was also the respondent no. 2 before the Employees Compensation Commissioner. Appellant herein, the insurance company, was respondent no. 1 before the Employees Compensation Commissioner. It has, however, subsequently come out on the record before the Employees Compensation Commissioner, and which is clear from the photocopy of the driving license filed by the respondent no.1/claimant/wife of deceased Sh. Nagender Kumar, that the deceased Sh. Nagender Kumar/husband of the respondent no. 1/claimant was infact the real brother of the respondent no. 2. This is

being stated by this Court that in such cases of close relations between family members, issue of employer and employee will have to be more clearly proved than other cases where there is a small time driver of a private employer and who dies in an accident of the vehicle covered under the Employees Compensation Act.

4. Respondent no. 2 before the Employees Compensation Commissioner disputed the claim petition filed by the respondent no. 1/claimant. It was pleaded by the respondent no.2 that the truck in question was though in the name of respondent no. 2, but the same was actually of all the three sons of Sh. Jagat Ram. Sh. Jagat Ram was the father of the deceased husband of the respondent no. 1/Smt. Saroj and whose name was Sh. Nagender Kumar. Sh. Jagat Ram was also the father of the respondent no. 2/Sh. Sanjay Khatri. Respondent no. 2/Sh. Sanjay Khatri in his written statement further pleaded that all the three sons of Sh. Jagat Ram including deceased Sh. Nagender Kumar were joint owners of the vehicle because the father Sh. Jagat Ram though had purchased the vehicle in the name of respondent no. 2, however it was that all the three sons of Sh. Jagat Ram were joint owners of the vehicle. Respondent no. 2 denied the relationship of the employer and employee and pleaded that vehicle was taken by

deceased Sh. Nagender Kumar to Chennai as an owner of the vehicle. Respondent no. 2 therefore pleaded that the claim petition be dismissed because the deceased Sh. Nagender Kumar was not an employee of the respondent no. 2. It was also denied that the accident occurred during the course of and arising out of employment.

5. The only issue to be decided by this Court, and as to whether such issue raises a substantial question of law, is whether the Employees Compensation Commissioner is justified in the facts of the present case in holding that there existed a relationship of employer and employee between the deceased Sh. Nagender Kumar and the respondent no. 2 herein. The evidence which has been led by the respondent no. 1 before the Employees Compensation Commissioner and the issues framed on the basis of which evidence was led are stated in paras 5, 6 and 7 of the impugned judgment and which paras read as under:-

“5. On 07.01.2016, AR of Claimant stated that he does not wish to file rejoinder on W.S. of R-1 & R-2. After hearing the parties following issues were framed in this case:-

- (i) Whether there exists relationship of employer-employee between the respondent no. 2 and the deceased Sh. Nagender who is real brother of R-2.
 - (ii) Whether the accident which occurred on 15/16-10-12 could be held to be out of and during the course of employment.
 - (iii) If so, to what amount of compensation the claimant are entitled to? What direction are necessary to be passed in this case.
- Matter adjourned for filing evidence.

6. Petitioner filed evidence by way of affidavit as AW-1/A. The evidence was tendered by the claimant on 24.02.2016 as per details below:-

- (i) Copy of FIR marked as AW-1/1.
- (ii) Copy of Report of Investigation on the dead body of deceased Sh. Narender @ Naginder Kumar is marked as AW-1/2.
- (iii) Copy of Post-Mortem Certificate is marked as AW-1/3.
- (iv) Copy of Embalming Certificate is marked as AW-1/4.
- (v) Copy of Sealing Certificate is marked as AW-1/5.
- (vi) Copy of Death Certificate is marked as AW-1/6.
- (vii) Copy of Insurance Policy of the vehicle is marked as AW-1/7.
- (viii) Copy of registration of vehicle is marked as AW-1/8.
- (ix) Copy of Fitness of the vehicle is marked as AW-1/9.
- (x) Copy of Election Identity Card is exhibited as AW-1/10.
- (xi) Copy of Aadhar Card is exhibited as AW-1/11.
- (xii) Copy of driving license is marked as AW-1/12.

7. That the petitioner has filed her evidence by way of affidavit dated 25.01.2016 exhibit as AW-1/A which she tendered on 24.02.2016. She has also filed documents which are placed in the file. The AR of R-2 has cross examined the petitioner and nothing adverse against the petitioner has come during the cross. The petitioner Smt. Saroj also adduced one witness namely Sh. Surender Singh and has also filed his affidavit dated 26.03.2016. The AR of R-2 has also cross examined the witness dated 30.03.2016 and nothing adverse against the petitioner.”

6. The Employees Compensation Commissioner has given a finding, as per para 9 of the impugned judgment, that there exists a relationship of employer and employee between the respondent no. 2 and the deceased Sh. Nagender and that the deceased Sh. Nagender died on account of an accident arising out of and in the course of his employment with respondent no. 2 herein. Para 9 reads as under:-

“9. That in view of above facts and examination of pleadings/documents and hearing of arguments in this case. The RC of the vehicle is in the name of R-2 i.e. Sh. Sanjay Khatri S/o Sh. Jagat Ram so it has been established that the deceased was in the employment of R-2 and died out of and in the course of his employment which has been admitted by the respondent no. 1. Further in view of the contents of claim, reply filed by the respondents and documents placed on record it is held that the

petitioners are entitled for death compensation under the provisions of the Act. Further since the vehicle in question is duly insured, therefore the liability of payment of respondent no. 1 i.e Insurance Company, therefore all the issues is decided in favor of the petitioners.”

7. Learned counsel for the appellant has very vehemently argued that the Employees Compensation Commissioner has committed a gross illegality and perversity in holding existence of relationship of employer and employee merely on self-serving statement of the respondent no. 1 herein, and which was supported by the oral self-serving statement of AW2/Sh. Surinder Singh and who was none other than the brother-in-law of deceased Sh. Nagender Kumar i.e. the real brother of respondent no. 1 herein/claimant. It is argued that provisions of the Employees Compensation Act are no doubt meant to be read liberally so as to give compensation, however, it is argued that provisions of the Employees Compensation Act are not meant to defraud moneys of the insurance companies and which is happening in the present case because one brother being the deceased Sh. Nagender Kumar, husband of the respondent no. 1/claimant, could not be the employee of the respondent on. 2 the other brother, in the facts of the present case, and more so when there is no accident of the vehicle and the deceased is said to have died by falling into a manhole. It is argued that a substantial question of law arises as to whether on

the evidence as led on behalf of the respondent no. 1/claimant of herself and her brother Sh. Surinder Singh, the Employees Compensation Commissioner has not committed a complete illegality and perversity in holding the existence of relationship of employer and employee as per para 9 of the impugned judgment.

8. Learned counsel for respondent no.1 on the other hand has argued for the existence of relationship of employer and employee in terms of the affidavits by way of evidence filed of the respondent no.1 as her brother Sh. Surinder Singh as PW-2. It is argued that merely because deceased Sh. Nagender Kumar was the brother of respondent no.2 herein would not mean that there was no relationship of an employer and employee because deceased Sh. Nagender Kumar had taken the vehicle to Chennai as an employee of the respondent no.2.

9. In my opinion, the arguments urged on behalf of the appellant are completely justified. Para 9 of the impugned judgment is an apology for any reasoning and discussion which is required of as per the evidence led of proving the relationship of employer and employee in the facts of the present case between deceased Sh. Nagender Kumar (admittedly the real brother of the respondent no. 2

herein), and the respondent no. 2. It is noted that respondent no.2 had denied that the deceased Sh. Nagender Kumar was his employee and after all nothing prevented respondent no.2 from admitting existence of employer-employee relationship but thankfully respondent no.2 took up an honest and morally correct stand. Ordinarily, when a person who is not in relation of the owner of the vehicle, and such person is found to be driving the insured vehicle, and an accident occurs of the driver-employee arising out of and in the course of employment, then the courts are more inclined to believe the existence of relationship of employee and employer between the driver of the vehicle and the owner of the vehicle, however, facts of each case have to be scrutinized carefully, otherwise, grave frauds will be perpetuated upon the insurance companies, and as happened in the facts of the present case. Admittedly, there is no accident which has occurred of the vehicle and the deceased is said to have died only on account of falling in the manhole and taking that this incident happened arising out of and in the course of employment, existence of employment was a *sine qua non* for the claim petition to be allowed in favour of the respondent no.1/claimant by the Employees Compensation Commissioner. A self-serving averment in the facts of the present

case, and once respondent no. 2 himself has denied relationship of employer and employee, should not have entitled the Employees Compensation Commissioner to hold existence of the relationship of employer and employee. As already stated above, in fact the respondent no. 2 would have very happily admitted the case of the respondent no.1/claimant, and who was his sister-in-law, but the respondent no. 2 took up an honest and fair stand, inasmuch as, it was not difficult for the respondent no. 2 to admit the relationship of the employer and employee for his sister-in-law to get compensation once the vehicle in question was insured with an additional payment being paid as premium under the Employees Compensation Act. I, therefore, hold that the Employees Compensation Commissioner has committed a gross illegality and perversity in the facts of the present case in holding the relationship of employer and employee between the respondent no. 2 herein and deceased Sh. Nagender Kumar.

10. In view of the above discussion the impugned judgment of the Employees Compensation Commissioner dated 29.7.2016 is set aside and this appeal is allowed with costs of Rs. 25,000/- in favour of the appellant and against the respondent no. 1.

11. Since respondent no. 1 has received amount in terms of the impugned judgment of the Employees Compensation Commissioner, appellant will be entitled to file restitution proceedings. Since an amount of Rs.5,00,000/- has been directed to be kept as an FDR in the name of respondent no. 1 in terms of the order dated 1.2.2017 of the Employees Compensation Commissioner, the respondent no. 1 will return this FDR along with accrued interest thereon to the appellant within a period of four weeks from today.

12. In my opinion, the facts of the present case require that a complaint be registered against respondent no. 1 under Section 340 Cr.P.C. on account of having filed a completely false case. I have already discussed above that there is no relationship of employer and employee between the respondent no. 2 and the deceased Sh. Nagender Kumar, and in fact the respondent no. 1 had concealed the relationship between her and the respondent no. 2 at the time of filing of the claim petition, and this relationship of brother-in-law and sister-in-law emerged only because of the facts on record including the Driving License of deceased Sh. Nagender Kumar showing the deceased also to be the son of Sh. Jagat Ram, who was also the father of the respondent no. 2. Counsel for the appellant company is justified

in seeking institution of criminal proceedings against respondent no. 1 under Section 340 Cr.P.C. by directing filing of a complaint by the Registrar General of this Court, and accordingly while dismissing the appeal the Registrar General of this Court is directed to make out a complaint and file it with the concerned Metropolitan Magistrate under relevant provisions of the Indian Penal Code, 1860 including Section 209 of the Indian Penal Code in view of fraud and cheating perpetrated by the respondent no. 1 upon the appellant/insurance company in the facts of the present case. Of course, respondent no. 1 in accordance with law will always have a right to contest the criminal proceedings being initiated against her. Complaint be made by the Registrar General of this Court to the concerned Metropolitan Magistrate in terms of the present judgment within a period of eight weeks from today.

13. Since the present appeal is allowed C.M. Appl. No. 5103/2017 is accordingly disposed of.

SEPTEMBER 18, 2017

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VALMIKI J. MEHTA, J