

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

+ **FAO No.115/2016**

% **26th October, 2017**

SURAJ MUNNI & ANR. Appellants

Through: Mr. Anshuman Bal, Advocate.

versus

SACHIN BHATIA & ANR. Respondents

Through: Mr. Pankaj Gupta, Advocate for
respondent No.2.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This first appeal under Section 30 of the Employee's Compensation Act, 1923 (hereinafter referred to as 'the Act') is filed by the claimants impugning the judgment of the Employee's Compensation Commissioner dated 18.12.2015 whereby the claim petition filed by the appellants under Section 22 of the Act was dismissed and wherein compensation was prayed on account of the death of the son of the claimants one Sh. Vipin Kumar.

2. The facts of the case are that the deceased was pleaded to have been employed as a driver at wages Rs.7,000/- per month with the respondent no.1 on the vehicle of the respondent no.1 TSR registration no.DL-01RK-6298. The deceased met with an accident on 6.8.2009 at 2.00 P.M. at Azadpur Fly Over, Delhi when the deceased was working in the course of employment with the respondent no.1. Sh. Vipin Kumar died due to injuries caused by the accident arising out of and in the course of employment. DD No.7A was lodged at Adarsh Nagar, New Delhi and post mortem was conducted in Babu Jagjiwan Ram Hospital, Delhi. Respondent no.1 was proceeded *ex-parte* and it was only respondent no.2/insurance company which contested the claim petition and filed its written statement. It was contended by the respondent no.2 that there is no relationship of employer and employee and that no documents were filed to show the relationship of employer and employee including payment of wages.

3. After pleadings were complete the trial court framed the following issues:-

“i. Whether there exists employee-employer relationship between deceased Vipin Kumar and Sh. Sachin Bhatia and whether the accident

resulting into death of deceased occurred during and in the course of employment with R-1 i.e. Sh. Sachin Bhatia.

ii. If yes, whether the Claimants are entitled to compensation claim, claimed by them. If yes, what amount and what directions are necessary in this respect?”

4. The appellants/claimants thereafter led evidence and this aspect is recorded in para 5 of the impugned judgment and which para reads as under:-

“5. The Claimant filed his affidavit exhibited as PW1/A as evidence in this case along with documents i.e. Photocopy of election I-card of deceased Vipin Kumar (Exhibited as PW1/1), Copy of driving license of deceased Vipin Kumar (Exhibited as PW1/2), Copy of death certificate of deceased Vipin Kumar (Exhibited as PW1/3), Copy of Post Mortem Report of deceased conducted by Babu Jagjiwan Ram Memorial Hospital, Delhi (Marked as PW1/4), Copy of School Leaving Certificate of deceased Vipin Kumar (Marked as PW1/5), Copy of Election I Card of Claimant Sh. Suraj Muni (Exhibited as PW1/6), Copy of Election I Card of Claimant Smt. Urmila (Exhibited as PW1/7), Copy of Ration Card (Exhibited as PW1/8). He has deposed that he is not an eye witness of the accident. Claimant also deposed that he does not have any documentary proof to show that the deceased was employed with R-1 and that he was earning Rs.7000/- per month. Claimant also deposed that the deceased Vipin Kumar was driving the offending vehicle for the last 2 years before his death.”

5. Employee's Compensation Commissioner has dismissed the claim petition by observing that appellants/claimants have failed to prove that there was a relationship of employer and employee as no details have been given of payment of salary by the respondent no.1 and nor it was proved that any salary was paid by the respondent no.1 to the deceased. Employee's Compensation Commissioner held that

the deceased was driving the vehicle on per day basis from the respondent no.1. Hence the claim petition was dismissed.

6. Learned counsel for the appellants has drawn the attention of this Court to the judgment dated 26.3.2014 in FAO No.37/2014 titled as *National Insurance Co. Ltd. Vs. Smt. Badami Devi and Ors.* wherein in similar circumstances of issue arising as to the relationship of employer and employee it was held by this Court that it is not as if that for such employment in a TSR there would be properly drafted out contracts. Once the insurance company has issued a policy having a clause for payment under the Act i.e there existing a relationship of employer and employee, for which premium is paid and policy is issued to cover loss caused on account of injuries to an employee arising out of and in the course of employment, then, there is no reason to hold that the deceased should not be taken as employee of the owner of the vehicle.

7. The relevant para of the judgment in the case of *Smt. Badami Devi (supra)* is para 7 and this para 7 reads as under:-

“7. So far as the first argument is concerned, in my opinion, no substantial question of law arises under Section 30 for this appeal to be entertained because in cases of employing of a driver for driving of a TSR I do not think that there would be properly drafted and typed out contracts

which are required to be filed for showing the relationship of employer and employee. It is settled law that provisions of Code of Civil Procedure, 1908 (CPC) and Evidence Act, 1872 do not apply to the proceedings before the Commissioner. However, the fact that the vehicle which was driven by deceased Sh. Umesh Kumar met with an accident was in the name of the employer/respondent no.2, is sufficient to hold that the deceased Sh. Umesh Kumar was the employee of the respondent no.2 more so because there was no reason why the appellant/insurance company would have taken additional premium under the policy with respect to the Employee's Compensation Act if there was no employee i.e the deceased employee Sh. Umesh Kumar. The first argument therefore urged on behalf of the appellant is rejected."

8. In the facts of the present case admittedly it has been proved on record that the deceased was driving the vehicle which was owned by the respondent no.1 herein. Since in contractual relations of a driver and owner of a vehicle ordinarily a proper contract is not drawn out as is prepared in large commercial contracts, I follow and adopt the observations made in the case of *Smt. Badami Devi (supra)* that there is no reason to hold that the deceased was not an employee of the owner of the vehicle especially when there is an insurance policy taken with respect to the person who is employed as an employee/driver of the TSR vehicle.

9. In view of the above, this appeal is allowed. The matter is remanded to the Employee's Compensation Commissioner to calculate the compensation as required by law. Employee's

Compensation Commissioner will calculate the wages as per the statutory notifications of minimum wages issued and which the Employee's Compensation Commissioner has to take into account by virtue of Section 4(1B) of the Act. The appellants here will now along with copy of the present judgment move to the concerned Employee's Compensation Commissioner for calculation of the compensation as would be payable by law.

10. Appeal is accordingly allowed and disposed of in terms of the aforesaid observations. Trial court record be sent back when requisition is received from the Employee's Compensation Commissioner.

OCTOBER 26, 2017
Ne

VALMIKI J. MEHTA, J