

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

+ **FAO No.92/2017 and C.M. No.7161/2017 (stay)**

% **17th May, 2017**

SHRIRAM GENERAL INSURANCE CO. LTD. Appellant

Through: Mr. A.K. Soni, Advocate with
Mr. Junaidullah, Advocate.

versus

ASHMA BEGUM AND ORS. Respondents

Through: Mr. Anshuman Bal, Advocate
for respondent Nos.1 to 8.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **YES**

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 appellant/insurance company impugning the judgment of the Employee's Compensation Commissioner dated 30.12.2016 by which the Employee's Compensation Commissioner has allowed the claim petition filed before him by the respondent nos.1 to 8 herein. The Employee's Compensation Commissioner by the impugned judgment has awarded compensation to the respondent nos.1 to 8 on account of death of Mohd. Sarif and who was the late husband of the respondent no.1 and the father of the respondent nos.2 to 8. The Employee's

Compensation Commissioner has awarded the compensation as per the statutory formula totaling to Rs.8,29,340/- alongwith interest @ 12% per annum.

2. The facts of the case are that the deceased Mohd. Sarif was employed as a driver by the respondent no.9 herein, one Sh. Jaffar, and who was the respondent no.1 before the Employee's Compensation Commissioner. The deceased Mohd. Sarif was employed for driving of the vehicle UP-36T-9797. On 1.8.2014 at about 2.30 P.M. when the deceased Mohd. Sarif was driving the subject vehicle near Pandora Pul, Shiv Puri, Madhya Pradesh, he was looted and murdered by some persons. The incident took place under the jurisdiction of P.S. Kolaras, Shiv Puri, M.P. FIR No.260/2014 was registered with respect to the incident under Section 394/397 IPC. Post mortem of the deceased was conducted in a government hospital at Kolaras, Shiv Puri, M.P.

3. The employer/respondent no.9 herein did not appear before the Employee's Compensation Commissioner and was proceeded *ex-parte*. The claim petition was contested by the appellant/insurance company and which was the respondent no.2 before the Employee's Compensation Commissioner.

4. Respondent nos.1 to 8 led evidence and the respondent no.1 being the widow of Mohd. Sarif filed her affidavit by way of evidence and proved the copy of ration card as Ex.CW1/A, copy of Adhar Card as Ex.CW1/B, copy of PAN card Ex.CW1/C, copy of death certificate of deceased Mohd. Sarif as Ex.CW1/D, copy of driving licence of deceased Mohd. Sarif as Ex.CW1/E and copy of parivar register as Ex.CW1/F.

5. Under the Act, it is not necessary that before the accident is categorized as an accident under Section 3(1) of the Act that there must be an accident of the vehicle which is being driven by the deceased driver. If during the course of performance of his duties, the employee driver is murdered, then, such incident will also amount to an accident under Section 3(1) of the Act. This has been held by this Court in the case of *ICICI Lombard General Insurance Co. Ltd. Vs. Smt. Sonia & Ors. 2014 (1) RLR 546* wherein the claim petition was held to be rightly allowed by the Employee's Compensation Commissioner in the facts when the deceased Sh. Rakesh Yadav/employee had died on account of his being attacked during the course of performing his duties of supply of milk. The relevant paras of this judgment are paras 2, 5, 6 and 13, and which paras read as under:-

“2. The facts as pleaded in the claim petition were that the deceased Sh. Rakesh Yadav was employed with Gopi Chand, respondent no.1 before

the Commissioner (respondent no.7 herein), to drive the vehicle TATA 407 No. UP-17-C-0540. The salary of the employee Rakesh Yadav was Rs.4500/- and a daily allowance of Rs.50/- per day. It was pleaded in the claim petition that on 1.5.2008 in the morning owner/Sh. Gopi Chand insisted that deceased employee drive the vehicle for supplying of milk to certain areas and which the deceased refused because he knew that there was a dispute between Gopi Chand and certain persons in the area and thus a mishappening may occur. However, on being compelled, the deceased Rakesh Yadav took the vehicle for supply of the milk. During the performance of his duty, at Maujpur; Delhi, at about 7.20 a.m, the deceased Rakesh Yadav was attacked by one Vikram and his two sons as they were having grudge for milk not being supplied. As a result of beating, the deceased Rakesh Yadav received multiple injuries and he was declared dead when brought to the G.T.B.Hospital. An FIR under Section 302/34 IPC bearing no. 178/2008 was registered with the police station Seelampur, Delhi where the accused persons are facing trial. It was pleaded that the beating of the deceased employee Rakesh Yadav took place when he was on duty i.e the accident arose out of and in the course of employment, and therefore the dependants were entitled to compensation under the Act.

5. The appellant-insurance company was respondent no.2 before the Commissioner. It filed its written statement inter alia pleading that the death of the deceased employee Sh. Rakesh Yadav did not arise out of and in the course of employment and that the deceased was not having a valid driving licence. It is also argued in tandem with the case of the employer Gopi Chand that since there was no relationship of employer and employee between Rakesh Yadav and Gopi Chand the claim petition was bound to be dismissed.

6. The Commissioner has framed the necessary issues, and given his findings thereafter in paras 7 and 11 to 14 of the impugned judgment and which read as under:-

“7. Out of the pleadings of the parties the following issues were framed by my predecessor authority:-

- (i) Whether there existed any employer-employee relationship between the deceased and Respondent?
- (ii) Whether the claimants are entitled to the claimed amount, if so to what amount?

11. The respondent no.1 and III were proceeded ex-parte.

12. On behalf of respondent no.II/Insurance Company, Legal Manager namely Sh. Mohit, Raj Nagar filed his affidavit alongwith computerized copy of policy No.3003/63548937/00/000 insuring vehicle No.UP-17C-0540, a public carrier vehicle with Shri Gopi Chand as insured. He also filed particular of Driving Licence in the form of Accident Information Report of Sh. Rakesh Kumar vide bearing No.R-640/BPT/2002 dated 2.1.2002 issued by the R.T.O., Bhagpat, U.P. which was issued for driving motor-cycle and LMV(T) only valid for the period 2.1.2002 to 1.1.2005 only. He was also cross examined by the A.R. of the petitioner.

13. The matter was placed for arguments. Written arguments alongwith case laws were filed by the petitioner and oral argument were also heard of the parties.

14. I have to give my findings issue-wise as under:-

ISSUE NO.1

The case of the petitioner is that her husband namely Rakesh Yadav was employed with the respondent no.1 as driver at his vehicle Tata 407 No.UP-17C-0540. That on 01.05.008, in the morning at about 7.20 a.m. the deceased/driver namely Rakesh while engaged as driver by the respondent no.1 and he was driving the said vehicle on the same day at Maujpur, Delhi and was supplying the milk during this process he was attacked by the accused Vikram and his two sons. After receiving the multiple injuries he was taken to the G.T.B.Hospital, where he was declared dead. A case was registered vide FIR No. 178/2008, U/s 302/34 IPC with P.S.Seelampur, Delhi. In support of the claim, petitioner namely Soniya filed an affidavit alongwith documents, certified copy of the FIR, Charge-sheet, Post Mortem Report, Site Plan and statement of witness. Petitioner namely Ram Chander also filed his affidavit alongwith the documents i.e. Certified copy of FIR, Superdari order of the said vehicle dated 3.5.2008, Superdarinama of the said of the said vehicle and Election I-card of respondent no.1. On going through the documents filed by the claimants i.e. FIR, Charge-sheet, P.M.R., Site plan and statement of witness, it is established that deceased namely Rakesh Kumar Yadav husband of claimant no.1 was employed as driver on the above said vehicle. It is also established as driver on the above said vehicle. It is also established that incident occurred on 1.5.2008 out of and during the course of employment. After going through the documents which was filed by petitioner namely Ram Chander i.e Superdari order, Superdarinama and Election I-card of respondent no.1 proved that respondent no.1 was the owner of the above said vehicle at the time of accident. It is further established that the insurance policy of the vehicle shown the name of the owner as Gopi Chand. In this accident deceased sustained grievous injuries and he was taken to the G.T.B.Hospital, where he was declared dead by the doctor of said hospital. Therefore, in the light of the FIR, P.M.R., Chargesheet and superdari order I hold that deceased driver Rakesh Kumar Yadav died during the course of and out of employment with respondent no.1 not respondent no.III.

In view of the above discussion Issue no.1 is decided in favour of the petitioner and against the respondent.” (underlining added)

13. The second argument urged on behalf of the appellant also has no merit because the expression ‘arising out of and in the course of employment’ is wide enough for taking into its fold a death of employee who is attacked while performing the duties of a driver. In the present case, the applicants before the Commissioner have sufficiently discharged their onus of proof by filing of their own affidavits as also the documents in the criminal case including the FIR which was registered that deceased Rakesh Yadav was in fact attacked by the accused Vikram and his two sons which caused serious injuries to the deceased Rakesh Yadav who was declared as

brought dead at G.T.B hospital. Therefore, the accident in this case, being the murder of the deceased, clearly arises out of and in the course of employment. The expression 'arising out of and in the course of employment' does not mean that there has to be death only because of driving of the vehicle. Accordingly, I reject the second argument which is urged on behalf of the insurance company." (underlining added)

6. It is therefore clear that if an employee dies during the course of performance of his duties i.e while on duty as a driver of the employer, then, if the death takes place on account of murder of the deceased driver by an attack on him, then such an incident is an accident as per Section 3(1) of the Act. In the facts of the present case also it has therefore to be held that the deceased Mohd. Sarif died on account of accident which arises out of and in the course of employment because the deceased was attacked resulting in his death and which incident occurred while performing his duties as a driver of the vehicle owned by the employer/respondent no.9.

7. Counsel for the appellant argued that respondent nos.1 to 8 had not filed the driving licence and therefore the claim petition could not have been allowed, however, it is seen that the respondent no.1 had deposed that the original licence was lost in the incident and the photocopy of the licence was proved and exhibited as Ex.CW1/E. It is settled law that strict provisions of the Indian Evidence Act, 1872 do not apply to proceedings before the Employee's Compensation Commissioner, and therefore the fact that the deceased Mohd. Sarif

had a valid driving license stood proved by Ex. CW1/E. In any case it is seen that there is no objection raised before commencement of the cross-examination of the respondent no.1 who deposed as CW1 that the driving licence cannot be exhibited because original of the driving licence is not produced. Once there is no objection to the exhibition of the document being the driving licence, subsequently an objection cannot be raised that the original driving licence had to be produced and the photocopy of the same could not be exhibited, because, this is the law in view of the judgment of the Supreme Court in the case of ***R.V.E. Venkatachala Gounder Vs. Arulmigu Viswesaraswami & V.P. Temple and Another, (2003) 8 SCC 752.***

8. In view of the above, no substantial question of law arises for this appeal to be entertained under Section 30 of the Act. Dismissed.

MAY 17, 2017
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VALMIKI J. MEHTA, J