

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

+ **FAO No. 273/2016**

% **12th May, 2017**

NAEEM AND ORS. Appellants

Through: Mr. Anshuman Bal, Advocate.

versus

MOHD. SALIM AND ANR. Respondents

Through: Mr. A.K.Soni, Advocate for R-2.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

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

VALMIKI J. MEHTA, J (ORAL)

1. By this appeal under Section 30 of the Employee's Compensation Act, 1923 the appellants/claimants impugn the judgment of the Employees Compensation Commissioner dated 15.01.2016 dismissing the claim petition on the ground that the deceased Habib was found under the influence of alcohol at the time of accident, and hence there is no liability of the respondents in view of the Section 3(1) Proviso (b)(i) of the Employee's Compensation Act.

2. The facts of the case are that the deceased Habib was employed as a Driver on the TSR/vehicle bearing registration No. DL-1LF-5330 owned by the respondent no.1 herein and who was the also

the respondent no.1 before the Employees Compensation Commissioner. An accident took place on 30.01.2008 at about 10:10 pm when the deceased was driving the vehicle and he died as a result of the injuries received in the accident. FIR No. 37/2008 was registered at Police Station Mandawali Fazalpur at Delhi and post-mortem of the deceased was conducted in GTB Hospital, Shahdara, Delhi.

3. The respondent no.2/Insurance Company herein was also the respondent no.2 before the Employees Compensation Commissioner. Respondent no.2 filed its written statement and contested the claim petition. It was inter alia pleaded in the written statement that the deceased did not have a valid driving licence at the time of the accident.

4. The Employees Compensation Commissioner vide the impugned judgment has dismissed the claim petition by making the following observations in para 8 of its judgment and which para reads as under:-

“8. I have perused the record of the case. It reveals from the records that the deceased had taken alcohol in an excessive quantity and the fact is clearly mentioned in the MLC filed by the Claimants himself as smell of alcohol (++). In view of section 3(1) the employer’s liability for payment of compensation is waived if the employee was under the influence of drink or drugs during the course of his employment. The section reads as under:-

“Employer’s liability for compensation:- (1) If personal injury is caused to by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter:

Provided that the employer shall not be so liable:-

- a) In respect of any injury which does not result in the total or partial disablement of the (employee) for a period exceeding (three) days;
- b) In respect of any injury, not resulting in death (or permanent total disablement) caused by an accident which is directly attributable to –
 - i. The (employee) having been at the time thereof under the influence of drink or drugs, or
 - ii. The wilful disobedience of the (employee) to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of (employees), or
 - iii. The wilful removal or disregard by the (employee) of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of (employee)’’.

(underlining added)

5. In view of the categorical language of Section 3(1) Proviso (b)(i) of the Employee’s Compensation Act, there cannot be any dispute that no compensation can be granted. I completely agree with the aforesaid conclusion of the Employees Compensation Commissioner inasmuch as the MLC filed on record shows that the deceased was under the influence of alcohol as two positives are written in the MLC.

6. Learned counsel for the appellants places reliance upon the recent judgment of the Supreme Court in the case of ***Jaya Biswal and Others vs Branch Manager, IFFCO Tokio General Insurance Company Limited & Another, (2016) 11 SCC 201*** to argue that in this judgment Supreme Court has held that as per Section 3(1) of the Employee’s Compensation Act if there are personal injuries on account of the accident then the claim should be allowed. I have put a query to

counsel for the appellants to show me any observations in this judgment of the Supreme Court in *Jaya Biswal's* case (*supra*) which holds that even if the deceased employee was under the influence of alcohol, yet, the deceased employees' legal heirs can get compensation under the Employees Compensation Act, but no such ratio of this judgment in *Jaya Biswal's* case (*supra*) has been pointed out to this Court that compensation can be granted inspite of the categorical language of Section 3(1) Proviso (b)(i) of the Employee's Compensation Act which denies compensation on account of injuries resulting when the employee is found to be under the influence of drink or drugs.

7. Learned counsel for the appellants argued that the provision of Section 3(1) Proviso (b)(i) only talks of not giving of compensation when there is injury which does not result in death and the employee is found to be under the influence of drink or drugs i.e, it is argued that if there is a death, and not that there are injuries only, because of influence of drink or drugs, then there is no exemption provided under Section 3(1) for not granting of compensation.

8. I do admit that the provision of Section 3(1) Proviso (b)(i) is not happily worded inasmuch as it seems to suggest that only when there is an injury or there is a permanent disablement caused by an

accident, not resulting in death, then compensation cannot be granted in case the employee was under the influence of drink or drugs, meaning thereby if there is a death then applicability of Section 3(1) Proviso (b)(i) seems to be excluded, however, the aforesaid relevant provision of law cannot be interpreted to mean that if there is injury or permanent disablement with the employee being alive then such employee cannot be granted compensation if he is found under the influence of drink or drugs but in case the employee dies in the accident although he is found under the influence of drink or drugs then compensation should be granted. If this interpretation as propounded by the appellants is accepted then it would result in a peculiar situation which is not warranted by the intent and the purpose of the provision. No such judgment has been pointed out to this Court during the course of hearing that even if an employee is found to be under the influence of drink or drugs and he dies then yet the said employee can be granted compensation under the Employees Compensation Act i.e compensation can be granted inspite of the fact that the employee is under the influence of drink or drugs and dies as a result of accident. As already stated, the deceased employee in the present case was under the influence of alcohol as the MLC shows not one positive but two positives.

9. I may also note that the Employees Compensation Commissioner has failed to decide the issue of appellants not being entitled to compensation on account of deceased not having a valid driving licence. Admittedly, neither the original nor any copy of driving licence was filed before the Employees Compensation Commissioner. Counsel for the appellants argued that the driving licence of the deceased was lost during the accident and hence could not be filed, however, I cannot hold that a person has a driving licence merely on an oral statement inasmuch as if this is done then in all cases driving without licence and injuries caused as a result thereof will put insurance companies to a humongous liability which is not envisaged by the Employee's Compensation Act. I would like to observe that even if the driving licence was lost in the accident, it was not difficult for the appellants to have summoned the record of the RTO to show that there was a licence issued in the name of the deceased and which admittedly has not been done by the appellants.

10. In view of the above discussion, I do not find any merit in the appeal and the same is, therefore, dismissed thereby leaving the parties to bear their own costs.

MAY 12, 2017/mb

VALMIKI J. MEHTA, J