

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

RESERVED ON : 30th NOVEMBER, 2017
DECIDED ON : 18th DECEMBER, 2017

+ **FAO 413/2016**
SEEMA & ORS Appellants
Through : Mr.Anshuman Bal, Advocate.

versus

NARINDER SINGH & ANR Respondents
Through : Ms.Prerana, Advocate, for LR's of R1.
Mr.A.K.Soni, Advocate, for R2.

CORAM:
HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

CM 46374/2016 (Delay)

1. For the reasons mentioned in the application for condonation of delay in filing the appeal, the delay is condoned.
2. The application for condonation of delay is disposed of.

FAO 413/2016

1. Present appeal under Section 30 of The Employee's Compensation Act, 1923 (hereinafter 'the Act') has been preferred by the appellants against the respondents to challenge the legality and correctness of an order dated 30.11.2015 whereby their claim petition

was dismissed by the Commissioner. The appeal is contested by the respondents.

2. I have heard the learned counsel for the parties and have examined the file. On perusal of the record, it reveals that claim was declined solely on the ground that it was excluded under Section 3(1) of the Act. Learned Commissioner came to the conclusion that since the victim was under the influence of liquor at the time of occurrence, no claim for compensation could be entertained.

3. It is not in dispute that the victim Dalip Kumar had met with an accident while driving the TSR bearing registration No.DL-1RL-4343 in front of Mayur Vihar-I, Metro Station on road Pandav Nagar, Delhi. Soon after the incident he was taken to hospital where he was medically examined. The examining doctor in the MLC recorded that the patient had smell of alcohol (++). Dr.Rakesh Singh from LBS Hospital proved the MLC No.12644/12 CR No.183673/12 dated 07.11.2012 prepared by Dr.Abhishek Rathi. He deposed that the deceased Dalip Kumar was attended by Dr.Abhishek Rathi who mentioned in the MLC, 'smell of alcohol (++)' which meant that the patient was excessively under the influence of alcohol. Basing its conclusion on its report, the learned Commissioner declined the compensation.

4. I have examined Section 3 of the Act. As per Section 3(1)(b)(i), the employee is not entitled for compensation in respect of any ***“injury, not resulting in death or permanent total disablement”*** caused by an accident which is directly attributable to the employee having been at the time thereof under the influence of drink or drugs.

In the instant case, the victim had suffered death. Hence, Section 3(1)(b) of the Act was not applicable to the accident in question.

5. No other findings have been recorded by the learned Commissioner to ascertain if there was relationship of employer and employee or that that the victim had suffered death by accident arising out of and in the course of his employment or that if the victim was married or unmarried at the relevant time.

6. Considering the above facts and circumstances, the denial of compensation solely because it was not covered under Section 3(1)(b) of the Act cannot be sustained and is set aside.

7. The matter is remanded to the Commissioner concerned to record findings on all the issues involved in the claim petition.

8. The appeal is allowed in the above terms. Parties shall appear before the Commissioner concerned on 8th January, 2018.

9. Records be sent back forthwith with the copy of the order.

(S.P.GARG)
JUDGE

DECEMBER 18, 2017 / tr