

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

+ **FAO No. 184/2016**

% **24th April, 2017**

RELIANCE GENERAL INSURANCE CO. LTD. Appellant

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

versus

REZWANA KAUSER & ORS. Respondents

Through: Mr. Vivek Kumar, Advocate for
R-1 to 4.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this first appeal under Section 30 of the Employee's Compensation Act, 1923, the appellant/Reliance General Insurance Company Limited impugns the judgment of the Employee's Compensation Commissioner dated 29.2.2016 which has allowed the claim petition filed by the claimants/respondent nos. 1 to 4 herein.

2. The facts of the case are that the deceased Md. Tauqir was employed as a helper with the respondent no. 5/M/s Satkar Logistics Private Limited herein, respondent no.1 before the Employees Compensation Commissioner. Md. Tauqir on 15.7.2010 died while falling from the vehicle bearing no. HR-55-J-8545. On account of fall

from the vehicle at night where he was sleeping the deceased received injuries and was taken to ESIC Hospital where he was declared brought dead by the doctors. The present claim petition was thus filed pleading that the deceased was drawing Rs.6,000/- per month and was aged 24 years at the time of his death and since there was an accident resulting in death, hence the claim petition be allowed.

3. Respondent no. 5 herein before the Employees Compensation Commissioner contended that Md. Tauqir was not its employee because Md. Tauqir was never employed by the respondent no. 5 as its employee. The employment of the driver of the vehicle Md. Izaz was however admitted by the respondent no. 5.

4. Appellant/insurance company did not dispute that it had granted the necessary insurance policy and in case there was relationship of employer and employee between Md. Tauqir and respondent no. 5 herein, in such a case the claim petition would lie.

5. Before this Court, firstly, it is argued on behalf of the appellant/insurance company that the Employees Compensation Commissioner has wrongly held Md. Tauqir to be an employee/helper employed by the respondent no. 5 herein. It is argued that there was no evidence before the Employees Compensation Commissioner for the

Employees Compensation Commissioner to give such finding as per para 7 of the impugned judgment and which paragraph reads as under:-

“Detailed arguments were advances by both the parties and in view of above facts and examination of pleadings/documents on record and evidence of claimants, it has been established that the deceased Md. Tauqir was in the employment of Respondent management and died out of and in the course of his employment. Even from the statement dated 15.7.2010 recorded by Investigating Officer, Police Station Okhla Industrial Area it is proved that Md. Tauqir was helper on the vehicle no. HR 55-J-8545.”

6. No doubt, besides the DD Entry there was no evidence led on behalf of the respondent nos. 1 to 4 herein with respect to employment of Md. Tauqir with the respondent no. 5 herein, however, it is seen that the Employees Compensation Commissioner had earlier passed a detailed order on 3.6.2015 in order to determine whether Md. Tauqir was or was not the helper in the truck in question and therefore the employee of respondent no. 5 herein. By this order dated 3.6.2015 various facts and documents were sought for from the respondent no. 5 herein. Respondent no. 5 herein filed its affidavit before the Employees Compensation Commissioner but that affidavit was a completely vague affidavit. Really therefore the conclusion of the Employees Compensation Commissioner in para 7 of the impugned judgment is actually based upon the order dated 3.6.2015 and the response affidavit of the respondent no. 5 herein dated 29.7.2015, and let me therefore reproduce the order dated 3.6.2015 and the reply of the respondent no.

5 herein dated 29.7.2015 given before the Employees Compensation Commissioner as under:-

1. **Order dated: 03.06.2015**

“PRESENT : Sh. Vivek Kumar Adv for claimant
Sh. Kamal deep Adv for R-II
Sh. Sidharth Yadav Adv for R-I.

Partial arguments heard.

The R-1 is asked to explain the following in writing:-

- i) Why the driver Md. Izaz has not been issued appointment letter.
- ii) Period of Employment of Md. Izaz as he was working for almost ten years, copy of ESI & PF ships be filed.
- iii) Who was the helper with the driver in the vehicle no. HR-55J 8545 & who was the helper on that day.
- iv) As to why the deceased Md Taquir was allowed to be on vehicle No. HR-55J 8545.
- v) Service records/statutory records of Md. Izaz & all the other Drivers and helper be filed along with the No. of vehicles, owned/rented/used/taken on lease by the R-1 during the period 1-1-10 to 31-7-10, having the details of Name & Residential Address.
- vi) Attendance records of all the Drivers & helpers who were on duty in the month of July 2010.
- vii) R-II to file copy of Insurance policy of the vehicle No. HR-55J 8545 along with the details as to how many persons & in which capacity have been insured by the R-II.
- viii) Fixed for 1/7/15 at 2.30 p.m”

2. **Reply dated 29.7.2015**

“REPLY ON BEHALF OF R-1 TO THE QUIRIES RAISED BY THIS HON’BLE AUTHORITY
RESPECTFULLY SOWETH:

The respondent, hereby, gives reply to the queries raised on 03/06/2015 by this Hon’ble Court as Under:

1. Mohd. Izaz worked on daily wages and as and when he made himself available was engaged as driver and no appointment letter was issued to him.
2. Mohd. Izaz was engaged by R-I in 2007 on call basis and therefore, he was engaged as driver on daily wages as and when he made himself available. Hence, PF and ESI were not applicable.
3. There was no fixed helpers with the vehicles. Helpers were engaged on daily wages and on call basis and many a times were arranged by the drivers as casual workers. It is an old matter and no records are available to ascertain as to who was the helper on the vehicle on that day.
4. We did not allow late Mohd. Taquir to be on vehicle no. HR-55J 8545. The vehicle was inside NMS Empty Yard, which is under the control of Yard operator/Government Authorities. We have no

- control over the yard. As per information gathered, Mohd. Taquir was nephew of Mohd. Izaz and had come to meet him.
5. & 6, Since the drivers and helpers were engaged on daily wages and on call basis, they used to be paid on the basis of no. Of days attended by them. No record is maintained for them for the period 01/01/2010 to 31/07/2010.
7. This query pertains to R-2.”

7. A reading of the order dated 3.6.2015 and the response filed by the respondent no. 5 herein makes it clear that to even the driver Md. Izaz no employment letter was given. Even no records were maintained with respect to who were the employees of the respondent no. 5 company. In such circumstances, in my opinion, the impugned judgment has rightly held that the deceased Md. Tauqir was the helper in the vehicle in question, inasmuch as, if Md. Tauqir was not the helper then who was the helper was not stated by the respondent no. 5. I may also note that under Section 30 of the Employee’s Compensation Act an appeal will lie only if there is a substantial question of law and once two views are possible from the evidence and the Employees Compensation Commissioner has taken one possible and plausible view, then it has to be held that no substantial question of law arises. In my opinion, as per the evidence led before the Employees Compensation Commissioner, Employees Compensation Commissioner was entitled to take the view that deceased Md. Tauqir was an employee of respondent no. 5 company being employed as the helper of the truck in question.

8. Learned counsel for the appellant then argued that the Employees Compensation Commissioner in para 9(ii) of the judgment has committed a typing mistake by taking 50% of the monthly wages of Rs.6,000/- as the figure of Rs.4,000/-, and to which learned counsel for the respondent nos. 1 to 4 has rightly pointed out that the Employees Compensation Commissioner by a Corrigendum dated 28.3.2016 has corrected its figure of Rs.6,000/- which was in para 9(ii) of the impugned judgment to the figure of Rs.8,000/- per month. Rs. 8,000/- per month is the monthly wages figure which the government has notified in terms of Section 4(1B) of the Employee's Compensation Act and this Court has been receiving many many cases where the monthly wages figure as per Section 4(1B) of the Employee's Compensation Act have been taken at Rs. 8,000/- and therefore 50% of this amount would come to Rs. 4,000/- as stated in para 9(ii) of the impugned judgment.

9. In view of the above, there is no merit in the appeal, and the same is therefore dismissed, leaving the parties to bear their own costs.

APRIL 24, 2017

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VALMIKI J. MEHTA, J