

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

+ **FAO No.146/2017**

% **25th April, 2017**

NEW INDIA ASSURANCE CO. LTD. Appellant

Through: Mr. Ravinder Singh, Advocate.

versus

RUBI AND ORS. Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. No. 12644/2017 (exemption)

1. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

FAO No. 146/2017 and C.M. No. 12645/2017 (stay)

2. This first appeal under Section 30 of the Employees Compensation Act, 1923 (hereinafter referred to as 'the Act') impugns the judgment of the Employees Compensation Commissioner dated 6.2.2017 allowing the claim petition filed by the claimant/respondent no.1. The claim petition was filed on account of the death of Sh. Ajit Singh who was working as a driver.

3. The facts of the case are that the deceased driver was driving the vehicle bearing no. MH-12TR-BWV-874 for delivery from Pune to

Dehradun by road. On 29.5.2013 at about 12.30 P.M. in the day when the vehicle reached at Nardan Railway Flyover bridge at Mumbai-Agra Road, P.S. Nardana, Distt. Dhule, Maharashtra, the deceased driver lost control over the vehicle and the vehicle fell down from the flyover. The deceased died as a result of this accident and therefore the subject claim petition was filed.

4. By the impugned order, the Employees Compensation Commissioner has held that the respondent no.1 in the claim petition, and which is the respondent no.4 herein, had employed the deceased on need basis or daily basis and had let out/transferred the services of the deceased to the respondent no.5 herein, and which was the respondent no.2 before the Employees Compensation Commissioner. By referring to the definition of the employer under Section 2(e) of the Act, the Employees Compensation Commissioner has held that where the actual employer lent out the services of an employee temporarily or for hire to another person and which is the respondent no.5 herein in the present case, the another person i.e the respondent no.5 herein would become the employer and would be liable to pay compensation. The relevant observations of the Employees Compensation Commissioner are contained in para 8 of the impugned judgment and which para 8 reads as under:-

“8. I have perused the record of the case I find that Respondent-3 M/s. Shree Sidhivinayak Enterprises has admitted that deceased Sh. Ajeet Singh

was engaged by the Respondent and his services were let on hire to M/s. Tata Motors for transporting the vehicle no.MH-12TR-BWV 874 from Pune to Dehradun. The factum of an accident of the deceased is also admitted by Respondent no.1 as well as Respondent no.3 and has been further proved on record by the evidence of the Claimant and by the documents placed on record by the Claimant. The vehicle in question has been taken on superdari from the police by Respondent no.3/insurer as disclosed from the evidence on record. Further the insurer/Respondent no.3 has admitted that policy No.TP73618 issued for the vehicle in question and on the date of accident the policy was valid. The policy in question was transit policy named in Tata Motors. The contention of insurer/Respondent no.3 that the case of the Claimant is required to be dismissed on the grounds of non-impleadment of Uttaranchal Police is also not valid because the Uttaranchal Police is only the purchasers of the vehicle in question and the policy as above was issued by the insurer/Respondent no.3 in the name of Tata Motor as a transit policy and thus the beneficiary of the policy in question would be Tata Motor. As to the question of delay in filing the claim petition Respondents have taken objection and from the explanation for delay given by the Claimant I am satisfied that the Claimant has sufficient cause for filing the claim petition. Hence, the delay in filing the claim petition is condoned as I feel that when the factum of accident and death which is out of and in the course of employment has been proved by the Claimant on record and in the circumstances, I feel that the Claimant should not be deprived payment of compensation only on the grounds that the claim petition has been filed by the dependents late. The Employees Compensation Act 1923 is a social beneficial legislation and the Claimant under the Act should not be deprived from the payment of compensation on the grounds of mere technicalities. Further I find that this case M/s Tata Motors Respondent No.2 has been proceeded ex-parte. In the facts and circumstances of the case I hold M/s Tata Motors (Respondent No.2) as the employer of the deceased. In this regard a reference to definition of the employer given under Section 2(e) of the Act would be apposite to be referred the same read as under:-

“Section 2(e) “employer” includes anybody of persons incorporated or not and any managing agent of employer and the legal representatives of a deceased employer, and, when the services of workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, means such other persons while the workman is working for him.”

Further in the above regard I may also refer to the judgment of Hon’ble Supreme Court in the case of **“Zila Sahakari Kendra Vs. Shahjadi Begum and Ors on 29 September 2006. The apex court held as under:-**

“The definition of employer, therefore, embraces within its fold not only a person who employs either permanently or on temporary basis but also those who were in control of the workman temporarily lent or let on hire to them by the person with whom the workman has entered into a contract of service. It is, therefore, a broad definition. It has been found as of fact by the Commissioner of Workmen Compensation that the deceased was under the complete control of the requisitioning authority. In terms of requisitioning authority, namely the State of M.P.”

5. Learned counsel for the appellant could not argue anything on fact or law which is against the finding contained in para 8 of the impugned judgment and it was only argued on behalf of the appellant that the policy in question would have to be examined by the appellant as to whether or not additional premium was paid for claim covered under the Act. The argument which is raised of whether the compensation claim petition is or is not maintainable under the Act on account of the insurance premium being not paid under the Act is not a subject matter of decision as per the impugned judgment inasmuch as admittedly this plea was not taken by the appellant before the Employees Compensation Commissioner. Once the plea is not taken by the appellant before the Employees Compensation Commissioner, and hence not adjudicated, then for the first time this factual plea cannot be allowed to be urged in this Court in view of Section 30 of the Act which provides that a first appeal will only lie if there arises a substantial question of law. With respect to a factual plea which is not raised in the court below no substantial question of law can arise.

6. No substantial question of law arises. Dismissed.

APRIL 25, 2017
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VALMIKI J. MEHTA, J