

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

+ **FAO No.259/2016**

% **20th April, 2017**

SHRI RAM GENERAL INSURANCE CO. LTD. Appellant
Through: Mr. Priyadarsi Acharya,
Advocate.

Versus

SMT. SHOBHA DEVI AND ORS. Respondents
Through: Mr. Vipin Kumar Mishra,
Advocate for respondent Nos.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 Employees Compensation Act, 1923 the appellant/insurance company/respondent no.2 before the Employees Compensation Commissioner, impugns the judgment dated 17.2.2016 passed by the Employees Compensation Commissioner whereby the Employees Compensation Commissioner has allowed the claim petition filed by the respondent nos.1 to 4 herein. The Employees Compensation Commissioner has awarded compensation of Rs.6,52,280/- on account of death of the driver Sh. Teju Chaupal, an employee of the respondent no.5 herein and who was

the respondent no.1 before the Employees Compensation Commissioner.

2. The facts of the case are that the deceased Sh. Teju Chaupal was working as a driver with the respondent no.5 herein and was driving the vehicle bearing no. DL-1VA-8536. The deceased had a valid licence at the time of accident. The vehicle was ensured with the appellant/company. On 28.2.2014, at about 3.00 A.M. the deceased was driving the vehicle for transportation of the staff of M/s Honda C.L. Company. After dropping the last passenger, when the deceased was driving the vehicle, an unknown vehicle hit the deceased's vehicle resulting in the deceased sustaining grievous multiple injuries. The deceased Sh. Teju Chaupal was taken to Kailash Hospital at Greater Noida in U.P. but he expired in spite of treatment. FIR No.89/2014 was lodged. The last salary of the deceased was said to be Rs.16,000/- per month. The accident was pleaded to be have occurred during and in the course of employment. Hence the claim petition was filed.

3. Respondent no.5/owner of the vehicle in his written statement pleaded that the deceased was not working regularly but was only working on call duty and was paid on day or on hour basis. It was accordingly pleaded by the respondent no.5 that there was no relationship of employer and employee. Respondent no.5 however

admitted that he had paid an amount of Rs.1 lakh to the deceased on humanitarian grounds and had also paid Rs.30,000/- as medical expenses. Surprisingly respondent no.5 also pleaded that the vehicle was being driven not by the deceased Sh. Teju Chaupal but by another person, namely Sh. Ram Charan.

4. The issue before the Employees Compensation Commissioner was with respect to whether the deceased was driving the vehicle at the time of the accident and whether the deceased was having a relationship of employee with the employer/respondent no.5. The Employees Compensation Commissioner has held this in favour of the respondent nos.1 to 4 herein/claimants by observing as under:-

“6(1) Respondent No.1 has stated that on the date of accident, the deceased Sh. Teju Chaupal was not driving the vehicle irrespective of the fact that he was paid compensation amount to the deceased. The contents of FIR are in line with the contents of accident as detailed in the claim application. The driving license is also on record in the name of deceased. Post mortem report also indicates that death is due to shock with hemorrhage as a result of AMI. These documents indicate that deceased was driving the vehicle at the time of accident and it was very much in the knowledge of respondent no.1 and therefore, having relationship of employer employee, he has paid death compensation to the claimant/dependents. Thus it can safely be inferred that deceased was in the employment of Respondent No.1 and was involved in the accident. Thus employer employee relationship exists between the deceased and respondent No.1. Further the deceased has died in the accident resulting into death of deceased which was caused out of and during the course of employment. Hence the dependents of deceased are entitled to death compensation under the provisions of Act.”

5. An appeal under Section 30 lies only if there arises a substantial question of law as stated in the proviso to this Section.

Appraisal of evidence does not result in arising of a substantial question of law. The finding of the Employees Compensation Commissioner takes one possible and plausible view and Employees Compensation Commissioner has rightly held that there was no reason for the respondent no.5 herein/owner of the vehicle to pay compensation to the deceased of Rs.1 lakh along with medical expenses if really the deceased was not the employee of the respondent no.5/owner herein. Employees Compensation Commissioner also notes that the post mortem report indicates that death is due to shock with hemorrhage and which indicates that the deceased was driving the vehicle at the time of the accident. No fault can be found with respect to findings of the Employees Compensation Commissioner of existence of relationship of employer and employee and there is no requirement that an employee under the Employees Compensation Act has to be a regular monthly employee. The definition of employee in Section 2(dd)(ii)(c) of the Employees Compensation Act does not require that the employee should be a monthly employee.

6. Learned counsel for the appellant argued that there is a considerable delay between the date of death of the deceased on 28.2.2014 and the registration of FIR on 13.7.2014, however, merely because there is delay in registration of the FIR would not mean that

otherwise the death is not proved on account of the accident happening out of and in the course of employment, and which has taken place in the facts of the present case, and rightly so decided by the Employees Compensation Commissioner as per para 6(1) of the impugned judgment. The present case is not a criminal case where mere delay in registration of the FIR would have a final bearing of the factum of accident not happening. As already stated above, the post mortem report was proved and which post mortem report is commensurate with the death of the deceased on account of accident. Also why would the respondent no.5/owner herein should pay compensation to the deceased if the deceased was not driving the vehicle at the time of the accident.

7. In view of the above, no substantial question of law arises.
Dismissed.

APRIL 20, 2017
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VALMIKI J. MEHTA, J