

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

+ **FAO Nos. 208/2017 & 209/2017**

% **5th May, 2017**

+ **FAO No. 208/2017**

THE NEW INDIA ASSURANCE CO. LTD. Appellant
Through: Mr. Anshum Jain and Mr. Amol
Sinha, Advocates.

versus

NAYYR & ANR. Respondents

+ **FAO No. 209/2017**

THE NEW INDIA ASSURANCE CO. LTD. Appellant
Through: Mr. Anshum Jain and Mr. Amol
Sinha, Advocates.

versus

AFJAL & ORS. Respondents

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

FAO No. 208/2017

1. By this first appeal filed under Section 30 of the Employee's Compensation Act, 1923 the appellant/insurance company impugns the judgment of the Employee's Compensation Commissioner dated 19.1.2017 whereby the Employee's Compensation

Commissioner had allowed the claim petition filed by the respondent no.1 herein.

2. The facts of the case are that the respondent no.1 was engaged as a driver on a vehicle being Truck No. HR-55-L-4189 owned by the respondent no.1 in the claim petition and who is the respondent no.2 herein. On 9.8.2015 the vehicle was on a business trip after it was got loaded from Dehradun and onwards to Chennai. When the vehicle reached Sanauli Road at Panipat in Haryana, it was parked on the side of the road to have its tyres etc checked. The respondent no.1 got electrocuted on account of electricity which passed through the truck from the live electric high voltage line. Electrocution resulted in injuries to both the respondent no.1 herein as also the cleaner of the truck (with respect to cleaner the company appeal FAO No. 209/2017 is filed). Both the respondent no. 1 herein and the cleaner Mohd. Shoaib were taken to hospital whereas the cleaner died due to electrocution, the respondent no.1 herein suffered grievous injuries on his body and left hand, resulting in amputation of his left hand. The case was registered in Police Station Chandnibagh, District Panipat, Haryana, dated 9.8.2015 vide U.D. No. 32/09. Respondent no.1 herein pleaded in the claim petition that since he is not in a position to drive a vehicle and which was his employment, he is

therefore permanently disabled for life for doing his job of a driver and hence he should be granted compensation. Respondent no.1 was 42 years of age at the time of accident and was drawing wages at Rs. 8000/- per month besides Rs.200 per day as food allowance.

3. Respondent no.2 herein, and who was the respondent no.1 in the claim petition, being the owner of the vehicle, did not appear and did not file his written statement. The appellant/insurance company contested the case by filing the written statement and it was pleaded therein that there is no relationship of employer and employee between the respondent no.1 and the respondent no.2, and which is the only issue urged before this Court.

4. Learned counsel for the appellant argued that there was no proof filed of relationship of employer and employee between the respondent no.1 and the respondent no.2, and therefore, the Employee's Compensation Commissioner has erred in allowing the claim petition. It is noted that the legal position for deciding that the claims under the Employee's Compensation Act is that the petitions before the Employee's Compensation Commissioner are not decided as per the strict rules of the Indian Evidence Act, and therefore, in the facts of the present case, the Employee's Compensation Commissioner has rightly, inter-alia as per the affidavit by way of evidence of

respondent no.1, drawn the conclusion of the respondent no.2 being the employer of the respondent no.1 and which conclusion is additionally justified because admittedly the vehicle/truck in question was owned by the respondent no.2, and who admittedly had got this vehicle/truck insured with the appellant. It is not the case of the appellant that the truck was stolen and was being driven by a stranger, and therefore, the Employee's Compensation Commissioner was entitled to and has rightly arrived at a conclusion that the relationship of employer and employee existed between the respondent no.2 and the respondent no.1. This Court cannot ignore the ground reality that for employment of a driver of a truck mostly the salary payment is in cash when employment is under a private individual; and also that no written service contract is ordinarily entered into.

5. An appeal under Section 30 of the Employee's Compensation Act lies only if there arises a substantial question of law. Appraisal of evidence and thereafter arriving at conclusions on the basis of the same does not result in arising of a substantial question of law. The Employee's Compensation Commissioner was entitled on the basis of evidence on record to arrive at the conclusion, and which did establish that there was a relationship of employer and employee between the respondent no.2 and respondent no.1 herein.

6. Dismissed.

FAO No. 209/2017

7. The facts of the present case are same as in FAO No. 208/2017 except that respondent nos. 1 and 2 herein being the claimants before the Employee's Compensation Commissioner are the legal heirs of the cleaner Mohd. Shoaib who expired due to electrocution on 9.8.2015.

8. In this case also it is disputed that there was a relationship of employer and employee. Besides the fact that deceased Mohd. Shoaib was indeed found on the truck in question, the relationship of employer and employee is proved by the affidavit by way of evidence filed of the driver of the vehicle namely Mr. Nayyr (respondent no.1/claimant in FAO No.208/2017). Merely because the cleaner Mohd. Shoaib was also related as a nephew of the driver, and as argued before this Court, it does not mean that it can be held on this ground itself that there was no relationship of employer and employee between the deceased and the respondent no.1 in the claim petition. Infact this objection of the deceased being related to the driver as a nephew has also not been taken by the appellant/insurance company in its written statement, and hence this plea is not available for being argued in this Court, and therefore this argument is rejected.

9. This Court also adopts the reasoning given while deciding
FAO No. 208/2017.

10. Dismissed.

MAY 05, 2017/ib

VALMIKI J. MEHTA, J

