

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

+ **FAO No. 163/2017**

% **18th April, 2017**

NEW INDIA ASSURANCE COMPANY LTD. Appellant

Through: Mr. Ravinder Singh, Advocate.

versus

AMARJIT KAUR & ANR. 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. Appl. No. 14358/2017 (for exemption)

Exemption allowed, subject to all just exceptions.

C.M. stands disposed of.

FAO No. 163/2017 and C.M. Appl. No. 14359/2017 (for stay)

1. This first appeal under Section 30 of the Workmen's Compensation Act, 1923 has been filed by the Insurance Company, respondent no. 2 before the Employees Compensation Commissioner, challenging the judgment dated 21.2.2017 whereby the Commissioner has allowed the claim petition filed by the respondent no. 1 herein, the

widow of the deceased Sh. Saranjit Singh. The Commissioner has awarded compensation of Rs.5,89,800/- taking the age of the deceased as 52 years and the wage at Rs.8,000/- per month.

2. The facts of the case are that the late husband of the respondent no. 1, Sh. Saranjit Singh was working as a cleaner on a truck being No. HR-55S-5392, a truck owned by the respondent no. 2 herein and who was the respondent no. 1 before the Employees Compensation Commissioner. On 20.7.2014, late Sh. Saranjit Singh met with an accident arising out of and during the course of employment, inasmuch as, he was travelling with the subject truck on a business trip coming from Karnal to Pune at Maharashtra. When the vehicle reached under the jurisdiction of Police Station Gordhan Vilas, District Udaipur, Rajasthan, there was an accident on Udaipur Balicha bypass at about 9:30 p.m. when the vehicle was parked at Mahadev Hotel, Udaipur, Balicha bypass for taking evening meal because a car being driven in a rash and negligent manner came from Udaipur side and hit cleaner Sh. Saranjit Singh who died during his treatment in hospital. FIR No. 310 dated 21.7.2014 was lodged. The truck owned by respondent no. 2 herein was insured with the present appellant, namely, M/s New India Assurance Company Limited with an additional premium being paid to the appellant under the Employee's

Compensation Act. The validity of the subject policy was from 23.7.2013 to 22.7.2014 and therefore the accident happened within the validity period of the policy.

3. Two aspects have been argued on behalf of the appellant before this Court. Firstly, it is argued that the Commissioner has wrongly taken the wages payable at Rs.8,000/- per month though in the claim petition the respondent no. 1 admitted that the deceased was earning only Rs.6,500/- per month plus Rs.200/- as food allowances. The second aspect which is argued is that the age of the deceased was 57 years as stated in the post mortem report filed before the Commissioner and thus the impugned judgment has wrongly taken the age of the deceased as 52 years.

4. I cannot agree with any of the arguments urged on behalf of the appellants. As regards the first argument it is noted that Section 4 of the Employee's Compensation Act was amended by inserting sub-Section (1B) by Act 45 of 2009 with effect from 18.1.2010 whereby the Central Government by notification in the official gazette was entitled to notify for the purpose of calculation of compensation under sub-section (1) of Section 4 of the Employee's Compensation Act, the monthly wages payable to an employee. The Commissioner has

therefore rightly acted under this provision by taking the figure of minimum wages which are payable at Rs.8,000/- per month. The first argument of the appellant is therefore rejected.

5. The second argument urged on behalf of the appellant that the age of the deceased should be taken as 57 years, inasmuch as, respondent no. 1 in the petition stated age of the deceased to be 35 years and the post mortem report mentions maximum age of the deceased as 57 years is once again an argument without merit because the Commissioner has relied upon the Election Identity Card of the deceased showing the deceased as 31 years on 1.1.1994 and therefore being 52 years of age at the time of the accident/death on 20.7.2014. Weightage cannot be given to age stated in the post mortem report and which would be on the basis of oral information supplied, and once a civil case is to be decided on balance of probabilities, the Commissioner has not erred in accepting the documentary evidence of the Election Identity Card for taking the age of the deceased as 52 years. The second argument urged on behalf of the appellant is also therefore rejected.

6. Dismissed.

APRIL 18, 2017/ AK

VALMIKI J. MEHTA, J