

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

+ **FAO No. 392/2016**

% **25th September, 2017**

TATA AIG GENERAL INSURANCE CO. LTD. Appellant

Through: Mr. Rudra Kahlon, Adv.

versus

SANT LAL SHARMA & ORS. Respondent

Through: Mr. Radheshyam Singh, Adv.
for R-1 and 2.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

FAO No. 392/2016 & C.M. Nos. 29625/2016 (for stay) and 7408/2017 (under Order XLI Rule 27 CPC)

1. This first appeal under Section 30 of the Employees Compensation Act, 1923 is filed by the insurance company, respondent no.2 before the Employees Compensation Commissioner below, impugning the judgment of the Employees Compensation Commissioner dated 16.5.2016 by which the Employees Compensation Commissioner has allowed the claim petition filed by the respondent nos. 1 and 2/claimants, legal heirs of the deceased Sh.

Sunny Sharma. Respondent nos. 1 and 2/claimants have been awarded an amount of Rs.9,01,000/- along with interest at 12% per annum from 29.5.2012 i.e 30 days after the date of the accident.

2. The facts of the case are that the subject claim petition was filed by the respondent nos. 1 and 2 herein pleading that the deceased Sh. Sunny Sharma was employed as a driver with the respondent no.3 herein, respondent no.1 before the Employees Compensation Commissioner, for the vehicle of the respondent no.3/Sh. Anil Bhati bearing no. DL-2W-3365 (Gramin Sewa). It was pleaded on 28.4.2012 when the deceased was on duty with the vehicle then in the meantime another vehicle at around 6 PM bearing no. 3865 driven by Sh. Lucky came there and was parked just before the vehicle of Sh. Sunny Sharma/deceased. This resulted in an altercation and Sh. Sunny Sharma the deceased was beaten up by Sh. Lucky and a helper Sh. Deepak. The fight resulted in death of Sh. Sunny Sharma and resulting in an FIR No. 124/2012 under Sections 304/341/506/34 IPC at Police Station Badarpur, New Delhi. It was pleaded by the respondent nos. 1 and 2/claimants that the accident of death occurred during the course of and arising out of employment of the deceased as

a driver of the vehicle of the respondent no.3 herein. Deceased was pleaded to be 20 years old at the time of the accident and getting a salary of Rs.10,000/- per month. The subject claim petition was hence prayed for being allowed.

3. Respondent no.3 herein/employer did not appear before the Employees Compensation Commissioner and was proceeded *ex-parte*. The appellant/insurance company contested the case and filed its written statement. The factum with respect to insurance of the vehicle has not been disputed for the period from 22.12.2011 to 22.12.2012. It was however pleaded that there was no relationship of employer and employee between the deceased Sh. Sunny Sharma and the respondent no. 3 herein.

4. Respondent nos. 1 and 2/claimants led evidence and filed their affidavit by way of evidence dated 6.5.2015. Evidence was also led of an eye witness Sh. Deepak Kumar. Appellant/insurance company, thereafter, led its evidence on 18.4.2016.

5. Learned counsel for the appellant has argued that the Employees Compensation Commissioner below has wrongly held in favour of existence of relationship of employer and employee because

no proof was filed of any employment. It is argued that accordingly this raises a substantial question of law under Section 30 of the Employees Compensation Act.

6. In my opinion the argument urged on behalf of the appellant is misconceived because in India normally an employment of a driver is not in terms of a written contract in most of the cases. It is not found on record that when the vehicle met with an accident that the owner of the vehicle had lodged any complaint that the vehicle was stolen. The vehicle, therefore was being driven with the consent of the employer at the time of the accident, and accordingly in my opinion in the facts of the case such as the present, the affidavit by way of evidence led on behalf of the respondent nos. 1 and 2/claimants is enough for holding the relationship of the employer and employee. In cases where there is found to be a relationship or a family relationship between the deceased and the employer, or maybe in peculiar facts of a case, then in such cases courts want more than a mere affidavit by way of evidence, however, there is no reason why an unrelated person being the deceased would be given the vehicle of the owner/respondent no. 3 unless the same was in the course of

employment, more so, when the vehicle was a commercial vehicle and used for a commercial purpose. Once two views are possible from the reading of the evidence, then in my opinion, the Employees Compensation Commissioner has committed no illegality in the facts of the present case for holding existence of the relationship of employer and employee and which does not raise a substantial question of law for this appeal to be entertained under Section 30 of the Employees Compensation Act.

7. For the sake of completion of narration I may note that it is not required that compensation is granted under the Employees Compensation Act only when death takes place on account of driving of the vehicle, inasmuch as, the expression which is used in the statute is that there is death of the employee while performing duties as an employee i.e the accident arose out of and in the course of employment. If dispute arises which resulted in a fight and consequently death of the deceased Sh. Sunny Sharma when he was performing his duties as an employee of the respondent no. 3 herein, then, such death is to be held to be a death arising out of and in the course of employment. This aspect I have considered and decided in

the case titled as ***Shriram General Insurance Co. Ltd. Vs. Ashma Begum and Ors.***, FAO No. 92/2017 decided on 17.5.2017. The relevant paras of this judgment are paras 5 and 6 and these paras read as under:-

“5. Under the Act, it is not necessary that before the accident is categorized as an accident under Section 3(1) of the Act that there must be an accident of the vehicle which is being driven by the deceased driver. If during the course of performance of his duties, the employee driver is murdered, then, such incident will also amount to an accident under Section 3(1) of the Act. This has been held by this Court in the case of ***ICICI Lombard General Insurance Co. Ltd. Vs. Smt. Sonia & Ors. 2014 (1) RLR 546*** wherein the claim petition was held to be rightly allowed by the Employee’s Compensation Commissioner in the facts when the deceased Sh. Rakesh Yadav/employee had died on account of his being attacked during the course of performing his duties of supply of milk. The relevant paras of this judgment are paras 2, 5, 6 and 13, and which paras read as under:-

“2. The facts as pleaded in the claim petition were that the deceased Sh. Rakesh Yadav was employed with Gopi Chand, respondent no.1 before the Commissioner (respondent no.7 herein), to drive the vehicle TATA 407 No. UP-17-C-0540. The salary of the employee Rakesh Yadav was Rs.4500/- and a daily allowance of Rs.50/- per day. It was pleaded in the claim petition that on 1.5.2008 in the morning owner/Sh. Gopi Chand insisted that deceased employee drive the vehicle for supplying of milk to certain areas and which the deceased refused because he knew that there was a dispute between Gopi Chand and certain persons in the area and thus a mishappening may occur. However, on being compelled, the deceased Rakesh Yadav took the vehicle for supply of the milk. During the performance of his duty, at Maujpur, Delhi, at about 7.20 a.m, the deceased Rakesh Yadav was attacked by one Vikram and his two sons as they were having grudge for milk not being supplied. As a result of beating, the deceased Rakesh Yadav received multiple injuries and he was declared dead when brought to the G.T.B.Hospital. An FIR under Section 302/34 IPC bearing no. 178/2008 was registered with the police station Seelampur, Delhi where the accused persons are facing trial. It was pleaded that the beating of the deceased employee Rakesh Yadav took place when he was on duty i.e the accident arose out of and in the course of employment, and therefore the dependants were entitled to compensation under the Act.

5. The appellant-insurance company was respondent no.2 before the Commissioner. It filed its written statement inter alia pleading that the death of the deceased employee Sh. Rakesh Yadav did not arise out of and in the course of employment and that the deceased was not having a valid driving licence. It is also argued in tandem with the case of the employer Gopi Chand that since there was no relationship of employer and employee between Rakesh Yadav and Gopi Chand the claim petition was bound to be dismissed.

6. The Commissioner has framed the necessary issues, and given his findings thereafter in paras 7 and 11 to 14 of the impugned judgment and which read as under:-

“7. Out of the pleadings of the parties the following issues were framed by my predecessor authority:-

(i) Whether there existed any employer-employee relationship between the deceased and Respondent?

(ii) Whether the claimants are entitled to the claimed amount, if so to what amount?

11. The respondent no.1 and III were proceeded ex-parte.

12. On behalf of respondent no.II/Insurance Company, Legal Manager namely Sh. Mohit, Raj Nagar filed his affidavit alongwith computerized copy of policy No.3003/63548937/00/000 insuring vehicle No.UP-17C-0540, a public carrier vehicle with Shri Gopi Chand as insured. He also filed particular of Driving Licence in the form of Accident Information Report of Sh. Rakesh Kumar vide bearing No.R-640/BPT/2002 dated 2.1.2002 issued by the R.T.O., Bhagpat, U.P. which was issued for driving motor-cycle and LMV(T) only valid for the period 2.1.2002 to 1.1.2005 only. He was also cross examined by the A.R. of the petitioner.

13. The matter was placed for arguments. Written arguments alongwith case laws were filed by the petitioner and oral argument were also heard of the parties.

14. I have to give my findings issue-wise as under:-

ISSUE NO.1

The case of the petitioner is that her husband namely Rakesh Yadav was employed with the respondent no.1 as driver at his vehicle Tata 407 No.UP-17C-0540. That on 01.05.008, in the morning at about 7.20 a.m. the deceased/driver namely Rakesh while engaged as driver by the respondent no.1 and he was driving the said vehicle on the same day at Maujpur, Delhi and was supplying the milk during this process he was attacked by the accused Vikram and his two sons. After receiving the multiple injuries he was taken to the G.T.B.Hospital, where he was declared dead. A case was registered vide FIR No. 178/2008, U/s 302/34 IPC with P.S.Seelampur, Delhi. In support of the claim, petitioner namely Soniya filed an affidavit alongwith documents, certified copy of the FIR, Charge-sheet, Post

Mortem Report, Site Plan and statement of witness. Petitioner namely Ram Chander also filed his affidavit alongwith the documents i.e. Certified copy of FIR, Superdari order of the said vehicle dated 3.5.2008, Superdarinama of the said of the said vehicle and Election I-card of respondent no.1. On going through the documents filed by the claimants i.e. FIR, Charge-sheet, P.M.R., Site plan and statement of witness, it is established that deceased namely Rakesh Kumar Yadav husband of claimant no.1 was employed as driver on the above said vehicle. It is also established as driver on the above said vehicle. It is also established that incident occurred on 1.5.2008 out of and during the course of employment. After going through the documents which was filed by petitioner namely Ram Chander i.e Superdari order, Superdarinama and Election I-card of respondent no.1 proved that respondent no.1 was the owner of the above said vehicle at the time of accident. It is further established that the insurance policy of the vehicle shown the name of the owner as Gopi Chand. In this accident deceased sustained grievous injuries and he was taken to the G.T.B.Hospital, where he was declared dead by the doctor of said hospital. Therefore, in the light of the FIR, P.M.R., Chargesheet and superdari order I hold that deceased driver Rakesh Kumar Yadav died during the course of and out of employment with respondent no.1 not respondent no.III.

In view of the above discussion Issue no.1 is decided in favour of the petitioner and against the respondent.” (underlining added)

13. The second argument urged on behalf of the appellant also has no merit because the expression ‘arising out of and in the course of employment’ is wide enough for taking into its fold a death of employee who is attacked while performing the duties of a driver. In the present case, the applicants before the Commissioner have sufficiently discharged their onus of proof by filing of their own affidavits as also the documents in the criminal case including the FIR which was registered that deceased Rakesh Yadav was in fact attacked by the accused Vikram and his two sons which caused serious injuries to the deceased Rakesh Yadav who was declared as brought dead at G.T.B hospital. Therefore, the accident in this case, being the murder of the deceased, clearly arises out of and in the course of employment. The expression ‘arising out of and in the course of employment’ does not mean that there has to be death only because of driving of the vehicle. Accordingly, I reject the second argument which is urged on behalf of the insurance company.” (underlining added)

6. It is therefore clear that if an employee dies during the course of performance of his duties i.e while on duty as a driver of the employer, then, if the death takes place on account of murder of the deceased driver by an attack on him, then such an incident is an accident as per Section 3(1) of the Act. In the facts of the present case also it has therefore to be held that the

deceased Mohd. Sarif died on account of accident which arises out of and in the course of employment because the deceased was attacked resulting in his death and which incident occurred while performing his duties as a driver of the vehicle owned by the employer/respondent no.9.”

8. In view of the above there is no merit in the appeal. No substantial question of law arises. Dismissed.

SEPTEMBER 25, 2017
ib/AR

VALMIKI J. MEHTA, J

