

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

+ **FAO No. 353/2016**

% **24th May, 2017**

THE ORIENTAL INSURANCE CO. LTD. Appellant

Through: Mr. Himanshu Gambhir,
Advocate.

versus

DALGANJAN SINGH & ANR. Respondents

Through: Ms. Pratima N. Chauhan,
Advocate for R-1.

Mr. Raviinder Singh, Advocate
for R-2.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This first appeal under Section 30 of the Employee's Compensation Act, 1923 is filed by the Insurance Company impugning the judgment of the Employee's Compensation Commissioner dated 18.5.2016 allowing the claim petition and awarding compensation of Rs.4,99,152/- along with interest at the rate of 12% per annum.

2. Learned counsel for the appellant has argued two aspects. The first aspect which is argued is that no relationship of employer and employee was proved between the respondent no. 1 herein and the

respondent no. 2 herein. Respondent no. 2 herein was the respondent no. 1 before the Employee's Compensation Commissioner and he was impleaded as the employer and the owner of the vehicle. Respondent no. 1 herein was the claimant before the Employee's Compensation Commissioner.

3. With respect to the employment of the driver on a truck, normally we do not find employment letters or employment contracts. Courts as also the Commissioners under the Act have to arrive at a finding as per the evidence which is led on record and the Commissioner as also this Court, depending on facts of a case, can hold existence of relationship of employer and employee if the vehicle is not found to be stolen by the person who was found driving the vehicle at the time of the accident. Such finding arising out of evidence does not raise any substantial question of law under Section 30 of the Employee's Compensation Act for this Court to interfere. It is, therefore, held that the Employee's Compensation Commissioner has rightly decided the existence of relationship of employer and employee between the present respondents.

4. The second issue which is argued on behalf of the appellant is that the claim petition was filed after a delay of twelve

years nine months and twenty days and the same was allowed by reference to the judgment of the Supreme Court in the case of *Pratap Narain Singh Deo Vs. Srinivas Sabata., 1976 ACJ 141 (SC)* and which judgment admittedly does not deal with how there is sufficient cause for condonation in terms of the fifth Proviso of Section 10 of the Employee's Compensation Act. No doubt courts have to be liberal while allowing condonation of delay but there has to be some finding by the Employee's Compensation Commissioner as per the facts giving reasons as to why delay should be condoned. Unless reasons are given which are valid in law there is no automatic condonation of delay and unless there are reasons given i.e there is a speaking judgment, this Court cannot decide that whether such finding raises or does not raise a substantial question of law under Section 30 of the Employee's Compensation Act for the first appeal to be entertained by this Court. Putting it in other words, first there has to be a finding for this Court to come to a conclusion that whether or not the finding raises or does not raise a substantial question of law and in the absence of any finding/reasons this Court cannot decide as to whether or not the alleged finding which is only a conclusion raises or does not raise a substantial question of law.

5. Learned counsel for the respondent no. 1 has relied upon a judgment passed by a Division Bench of this Court in the case of ***Phuli Devi Vs. Jawahar Singh and Ors.***, LPA No. 54/2009 decided on 17.3.2009 to argue that the Division Bench of this Court had condoned the delay of nine years in filing of the compensation claim under the Employee's Compensation Act and reliance is also placed on the recently added Section 17(A) of the Employee's Compensation Act to argue that, on the basis of the aforesaid judgment and Section 17(A) of the Employee's Compensation Act delay should be condoned, however, these are arguments which have to be raised and decided by the Employee's Compensation Commissioner for deciding whether or not to condone the delay i.e whether there are sufficient reasons for delay and with respect to which a speaking judgment would have to be passed. There is no speaking judgment in the present case giving reasons as to why delay of twelve years nine months and twenty days should be condoned.

6. Accordingly, this matter is remanded to the Employee's Compensation Commissioner to give decision on the issue as to whether or not there should be condonation of delay and whether there is sufficient cause for condonation of delay in terms of the fifth Proviso of Section 10 of the Employee's Compensation Act. The Employee's

Compensation Commissioner will give reasoned judgment and discuss as to whether or not the delay in filing of the claim petition should or should not be condoned.

7. Accordingly, while setting aside the impugned order dated 18.5.2016, parties are directed to appear before the concerned Commissioner on 6th July, 2017, and the Commissioner will now hear and dispose of the matter with respect to issue of whether or not there is sufficient cause of condonation of delay in terms of the observations made herein above.

8. Trial court record be sent back.

MAY 24, 2017/

VALMIKI J. MEHTA, J