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

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Date of Decision: 25th September, 2017

+ **FAO 420/2016 & CM Appl. No.31583/2016**

NEW INDIA ASSURANCE COMPANY LTD Appellant
Through **Mr. Vinod Trisal, Adv.**

versus

HARBANS KAUR (SINCE DECEASED)
THR LEGAL HEIRS & ANR Respondents
Through **Ms. Pratima N. Chauhan, Adv. for**
R1.
Mr. Nitish Negi, Adv. on behalf of
Mr. Ankur Chhibber, Adv. for
GNCTD.

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

J U D G M E N T (O R A L)

1. The appellant has challenged the order dated 09th May, 2016 whereby compensation of Rs.3,38,880/- has been awarded to respondent No.1.
2. Respondent No.1 filed an application for compensation before the Commissioner, Employees' Compensation claiming that her son, Hardeep Singh was employed as a driver on vehicle No.RJ-06-GA-6980 owned by respondent No.2; on 05th November, 2013, the vehicle was booked for transporting goods from Hyderabad to Delhi; Hardeep Singh fell down while tightening the ropes and broke his back bone; Hardeep Singh was admitted

by conductor in Sri Arobindo Institute, Indore where he remained for a week and was thereafter brought to Delhi but he succumbed to his injuries on the way; truck bearing No.RJ-06-GA-6980 was owned by respondent No.2 and insured with the appellant; Hardeep Singh was aged 45 years and was drawing wages of Rs.9,000/- per month plus Rs.200/- per day as food allowances.

3. Respondent No.2 (owner of the insured vehicle) did not appear before the Commissioner, Employees' Compensation and was proceeded *ex parte*.

4. The appellant contested the claim application on the ground that there was no employer and employee relationship between the deceased and respondent No.2. The appellant also raised the defence that there was no valid permit, fitness or driving licence. It was further submitted that no FIR, MLC or post-mortem report was produced and the applicant has not even mentioned the place of incident.

5. Learned counsel for the appellant urged at the time of hearing that the Commissioner, Employees' Compensation has passed the impugned order without satisfying that there was any employer-employee relationship between the deceased, Hardeep Singh and respondent No.2. The appellant also challenges the genuinity of the alleged accident.

6. The record of the Commissioner, Employees' Compensation has been perused. There is no evidence whatsoever to show the employer-employee relationship between the Hardeep Singh and respondent No.2 other than the oral statement of respondent No.1.

7. This Court is of the view that the owner of the insured vehicle had the duty to inform about the accident to the insurance company to enable the insurance company to appoint an Investigator to verify the accident.

However, there is no intimation of the accident by the owner of the insured vehicle to the insurance company in the present case.

8. In the facts and circumstances of this case, impugned order is set aside and the case is remanded back to the Commissioner, Employees' Compensation. The appellant is at liberty to appoint an Investigator to verify the claim and submit its report before the Commissioner, Employees' Compensation. The Commissioner, Employees' Compensation shall pass a fresh order. The Commissioner, Employees' Compensation shall adjudicate whether the claim made by the respondent No.1 is genuine and if so, whether there was employer-employee relationship between the deceased Hardeep Singh and respondent No.2. The Commissioner, Employees' Compensation shall permit the appellant to lead additional evidence and opportunity to respondent No.1 to rebut the same. The appeal is disposed off in the above terms. The pending application is disposed of.

9. The parties shall appear before the Commissioner, Employees' Compensation on 25th October, 2017.

10. The appellant has deposited Rs.4,70,261/- with the Commissioner, Employees' Compensation on 14th June, 2016. The Commissioner, Employees' Compensation shall retain the said amount in FDR till the fresh order is passed in the matter.

11. With respect to the directions issued by this Court to the Commissioner, Employees' Compensation in para-6 and 7 of the order dated 05th May, 2015, list for reporting compliance on 06th December, 2017.

12. The record of the Commissioner, Employees' Compensation be returned back forthwith.

13. Copy of this judgment be given *dasti* to learned counsels for the parties under signature of Court Master.

SEPTEMBER 25, 2017
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J.R. MIDHA, J.

