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

RESERVED ON : 23rd NOVEMBER, 2017
DECIDED ON : 18th DECEMBER, 2017

+ **FAO 428/2016 & C.M.No.32382/2016 (Stay)**

RELIANCE GENERAL INSURANCE CO LTD Appellant

Through : Mr.A.K.Soni, Advocate.

versus

MUSTKEEM & ORS

..... Respondents

Through : Mr.R.K.Nain, Advocate, for R-1.
Mr.Ankur Chhibber with Mr.Bhanu Gupta,
Advocates for GNCTD.
Mr.K.Sunil with Mr.Mani Shankar, Advocates
for R-2.

CORAM:
HON'BLE MR. JUSTICE S.P.GARG

S.P GARG, J.

1. The present appeal has been preferred by the Reliance General Insurance Co.Ltd.(hereinafter 'the appellant') to challenge the legality and correctness of an Order dated 13.05.2016 of learned Commissioner, Employee's Compensation (hereinafter 'the Commissioner') whereby compensation of ₹8,90,480/- was awarded to

the legal heirs of the deceased Begum Monna @ Muna. The appeal is contested by respondent No.1-Mustkeem.

2. I have heard the learned counsel for the parties and have examined the file. Reliance has been placed by the respondents on *Malati Sardar vs. National Insurance Co.Ltd. and Ors.*; 2016 ACJ 542 and *Fahim Ahmad and Ors. vs. United India Insurance Co. Ltd. and Ors.*; 2014 ACJ 1254. Claim Petition was filed by respondent No.1 Mustkeem (hereinafter 'the petitioner') before the Commissioner on 24.11.2013. It was averred that Begum Monna @ Muna (his wife) was employed as a 'helper' for loading and unloading of the tractor for the last five months on the vehicle bearing No.HR-60D-1284 (Tractor) owned by Surender (hereinafter 'the respondent No.1'). She died on 03.12.2011 out of and during the course of employment. On 03.12.2011, the deceased was on duty on the tractor which was on its assigned trip from Tamsa to Ugra Khedi for fetching sand for civil repair work at tube well. The sand was loaded from Tamsa and when it was approaching toward its destination to the tube well, all of a sudden on the road, a man emerged suddenly and the driver tried to evade hitting the person and swerved his tractor towards right hand and in this process, the deceased lost her balance and fell down from the tractor. She came underneath the tyre of the vehicle and sustained grievous injuries. She was taken to hospital promptly where she succumbed to the injuries. Post-mortem examination was conducted.

3. It was further averred that the vehicle was owned by respondent No.1 at the time of incident and it was insured with Reliance General Insurance Co. Ltd (hereinafter 'the respondent No.2') vide policy

No.2004702343001329 for the period from 05.01.2011 to 04.01.2012 and an additional premium was charged by respondent No.2 from respondent No.1 under Employee's Compensation Act. It was further claimed that the victim was drawing wages @ ₹8,000/- i.e. ₹270/- per day; she was aged about 22 years at the time of her death.

4. The said claim petition was contested by the respondents. In the written statement filed by respondent No.1-Surender, he denied the petitioner's assertion and stated that the deceased was not employed with him. The accident had not taken place with the tractor, as alleged. The respondent No.2 also contested the petitioner's claim and denied that the victim was ever employed as 'helper' with respondent No.1.

5. In order to prove their submissions, the petitioner examined himself as AW-1 and one Fazil as AW-2. Respondent No.2 examined Deepak Soni, official of the insurance company as RW-1. Respondent No.1 did not adduce any evidence.

6. After perusal of the evidence led by the parties and after considering the rival contentions, the learned Commissioner awarded the compensation to the petitioner –Mustkeem by the impugned order.

7. It is not in dispute that tractor bearing No.HR-60D-1284 was owned by respondent No.1 and it was insured with respondent No.2 on the day of incident. It is also not in dispute that the victim had died due to injuries suffered by her. Evidence has emerged on record that she suffered injuries due to fall from the tractor being driven by her husband-Mustkeem. On that score, findings of the learned Commissioner cannot be faulted.

8. No credible evidence has, however, emerged on record to infer if the victim was employed as a 'helper' with respondent No.1 on the tractor for loading and unloading sand at the time of accident on 03.12.2011 or that she was on duty on the said tractor being used for carrying sand for civil repair work from Tamsa to Ugra Khedi. No document, whatsoever, has been produced on record to show if on any specific date, the victim was employed as a 'helper' by respondent No.1 on the tractor and if so what were her wages/salary. It was also not revealed as to what was the scope of work to be performed by the victim or if she was a full time 'helper' and what were the timings of her employment. It has come on record that the tractor in question was being driven by the victim's husband- Mustkeem at the time of incident. It has further come on record that the victim's father was also present on the said tractor that time. The petitioner – Mustkeem did not examine her father-in-law in the evidence. It was not revealed as to how and for what purpose victim's father had come to remain present on the tractor. Again no evidence has surfaced to infer if any specific civil work was being performed at any particular tube well or that the sand was being transported from Tamsa to Ugra Khedi. It was also not revealed as to for what specific purpose the tractor in question was to be used and whether victim was to work as 'helper' for carrying sand on a particular day(s). The victim is not expected to be paid ₹8,000/- p.m. for carrying sand only. Respondent No.1 in the written statement completely denied if there was any relationship of employee or employer or that the deceased was ever employed as a 'helper' on the

tractor. The petitioner-Mustkeem did not examine the employer in the evidence.

9. It has come on record that Mustkeem was employed as driver on the tractor for the last about six months prior to the incident. No evidence has, however, come on record to prove that aspect too. The victim was married to Mustkeem about five months prior to the incident. It is highly unbelievable that soon after the marriage, the petitioner Mustkeem would engage his newly married wife as a 'helper' on the tractor where he was working as a driver.

10. The matter was reported to the police by the petitioner Mustkeem and Daily Diary (DD) No.26 came to be recorded at Police Station Chandni Bagh at 8.35 p.m. In the said information conveyed to the police, Mustkeem did not claim if his wife was employed as a 'helper' on the said tractor or that the accident took place during the course of employment.

11. Record reveals that Mustkeem had initiated proceedings under Section 163-A of the Motor Vehicle Act before MACT, Panipat. The said Claim Petition was, however, withdrawn on 23.11.2013. Presence of AW-2 (Fazil) at the spot is highly suspect as he did not inform the police and did not take the victim to the hospital. He was known to the petitioner and seemingly was an interested witness to support him. Nothing has come on record if the employment was given to the victim by respondent No.1 in his presence.

12. Considering the facts and circumstances of the case, the impugned order based upon insufficient evidence regarding relationship

of employer and the employee between the victim and respondent No.1 at the relevant time cannot be sustained and is set aside.

13. The appeal preferred by the appellant is allowed. It is, however, made clear that the petitioner-Mustkeem will be at liberty to avail other legal remedies (if any) available to him in law.

**S.P.GARG
(JUDGE)**

DECEMBER 18, 2017/sa

