

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

+ **FAO No.212/2017**

% **8th May, 2017**

NEW INDIA ASSURANCE COMPANY LTD. Appellant

Through: Ms. Archana Gaur, Advocate.

versus

SH. RAKESH AND ORS. Respondents

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. No.17387/2017 (exemption)

1. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

FAO No.212/2017 and C.M. No.17386/2017 (stay)

2. This first appeal under Section 30 of the Employee's Compensation Act, 1923 (hereinafter referred to as 'the Act') is filed against the impugned judgment of the Employee's Compensation Commissioner dated 6.3.2017 allowing the claim petition filed by the respondent nos.1 and 2 herein, claimants in the claim petition, and who were the parents of the deceased Sh. Shakti Gahlot. The appellant is

the insurance company and was sued as respondent no.2 before the Employee's Compensation Commissioner.

3. The facts of the case are that the respondent nos.1 and 2 here filed the claim petition on account of death of Sh. Shakti Gahlot who was employed as a driver of vehicle No. DL-1YC-3567 owned by the respondent no.3 herein and who was the respondent no.1 before the Employee's Compensation Commissioner. The deceased Sh. Shakti Gahlot died on 8.6.2011 when an accident took place at about 4.00 P.M while the deceased was driving the subject vehicle being a car. Sh. Shakti Gahlot died on account of injuries received by him during the accident. The deceased was 25 years of age at the time of the accident and he was drawing a salary of Rs.8,000/- per month. The owner of the vehicle, respondent no.3 herein, did not appear before the Employee's Compensation Commissioner and hence was proceeded *ex-parte* after publication. Appellant and who was respondent no.2 before the Employee's Compensation Commissioner filed its written statement and disputed the claim of the respondent nos.1 and 2 herein.

4. The Employee's Compensation Commissioner after pleadings were complete, framed the following issues:-

“(i) Whether their existed relationship of employee and employer between deceased Sh. Shakti Gahlot @ Shakti and R-1 on the day of accident on 08/06/2011?

(ii) If so whether the accident resulting into death of Sh. Shakti Ghalot @ Shakti occurred out of and during his employment in R-1?

(iii) If so to what amount of compensation the claimant dependents of the deceased workman are entitle to what directions are necessary to be passed in this regard?"

5. Respondent nos.1 and 2 herein supported their case and filed affidavit by way of evidence and respondent no.2 herein was cross examined with respect to her affidavit by way of evidence. Appellant also led its evidence by filing an affidavit by way of evidence. It is not disputed that the appellant had issued the subject policy bearing No.400258483 for the period from 25.2.2011 to 3.11.2011 for the subject vehicle DL-1YC-3567. The owner of the vehicle as per the policy was the respondent no.3 herein. The policy was exhibited as Ex.R2W1/A. The fact with respect to the driving licence in the name of the deceased Sh. Shakti Ghalot was also established on record and his driving licence bearing No. 1431/FKD/04 being exhibited as Ex.R2W1/C. The Employee's Compensation Commissioner concluded in view of the evidence on record i.e as per the affidavits by way of evidence and the documents, being the verification report of Form-54 issued by the licencing authority; notice served being Ex.R2W1/E; postal receipts in respect of notice is Ex.R2W1/F&G; the factum with respect to happening of the accident. The factum of the appellant issuing the insurance policy which was

otherwise valid was not disputed. Employee's Compensation Commissioner has as per the evidence also held that there was a relationship of employer and employee between the deceased Sh. Shakti Gahlot and the respondent no.3 herein, and that since the accident resulted in death of Sh. Shakti Gahlot, consequently the accident arose out of and in the course of employment and hence the respondent nos.1 and 2 herein were entitled to compensation of Rs.8,90,840 as per the formula prescribed alongwith interest @ 12% per annum from 8.7.2011.

6. (i) Learned counsel for the appellant argued that the driving licence issued in the present case as per the verification report produced by it as Ex. R2W1/C showed that the amount for renewal of the licence was deposited vide receipt no.919781 dated 7.3.2014 but the amount deposited for renewal was not found in the cash book, and therefore, it is argued that the deceased did not have a valid driving licence on the date of the accident.

(ii) I cannot agree with the argument urged on behalf of the appellant because a person who seeks to validate his licence is only responsible for depositing the fee with the RTO. If because of the faulty maintenance of the record by the RTO, the amount duly deposited as shown by the deceased is not found in the cash book, then

the driver who deposited the amount for renewal of the licence cannot be penalized. In my opinion nothing turns upon the argument urged on behalf of the appellant once the amount with respect to renewal of the licence was deposited with the RTO in terms of the receipt filed.

7. (i) The second argument urged on behalf of the appellant was that the licence in question showed that the same was issued for LMV and the deceased who was driving a car should be held to be driving the vehicle without licence.

(ii) Once again this argument is without merit because the Light Motor Vehicle (LMV) licence will also include entitlement of a driver to drive a car. It would be that a driver of car may not be entitled to drive a heavy vehicle but it cannot be the legal position that a person who has a LMV licence is not entitled to drive a car. Nothing has been pointed out to me under the Motor Vehicles Act, 1988 or Rules framed thereunder that a person who has a LMV licence is not entitled to drive a car.

8. An appeal under Section 30 of the Act is entertained only if a substantial question of law arises. Appraisal of evidence and drawing of conclusion are in the realm of jurisdiction of the Employee's Compensation Commissioner and such conclusions once appropriately drawn and they are supported by the material evidence,

such findings and conclusions cannot be said to be in any manner perverse for the appellant to argue that a substantial question of law arises.

9. Dismissed.

MAY 08, 2017
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VALMIKI J. MEHTA, J

