

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

+ **FAO No.262/2017**

% **30th May, 2017**

THE NATIONAL INSURANCE COMPANY LIMITED

..... Appellant

Through: Mr. S.P.Jain and Mr. Himanshu
Gambhir, Advocates.

versus

SMT. POOJA DEVI & ORS.

..... Respondents

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 is filed by the Insurance Company, the respondent no.2 before the Employee's Compensation Commissioner below, impugning the judgment of the Employee's Compensation Commissioner dated 30.1.2017 whereby the claim petition filed by the respondent nos. 1 and 2 herein was allowed and compensation granted on account of death of Sh. Pradeep who was the husband and father of the claimants/respondent nos.1 and 2. The Employee's Compensation Commissioner has awarded compensation as per the statutory formula totaling to Rs.8,36,920/- along with interest at 12% per annum simple.

2. The present appellant was the respondent no.2 in the proceedings before the Employee's Compensation Commissioner. Admittedly, the present appellant did not appear in the proceedings before the Employee's Compensation Commissioner in spite of service. Hence there is no pleading filed on behalf of the appellant before the Employee's Compensation Commissioner and nor is any evidence led on behalf of the appellant before the Employee's Compensation Commissioner below.

3. The facts of the case are that the deceased Pradeep was employed by the respondent no.3 herein, and who was the respondent no.1 before the Employee's Compensation Commissioner below. The deceased Pradeep was employed by the respondent no.3 herein for driving his vehicle being Maruti Ritz passenger car bearing no. HR-55T-5284 and which was plying as a Taxi. On 16.6.2016, an accident took place of this vehicle near Air Force Radar Station, Nazafgarh-Dhansa Road and which resulted in death of the driver/deceased Pradeep. When the accident took place it was around midnight and as a result of the accident, not only the driver Pradeep but also a passenger Dinesh Kumar died, and who were declared brought dead by the RTRM Hospital. The subject claim petition was therefore filed by the claimants/respondent nos. 1 and 2.

4. Respondent no.3 herein, the employer had filed his written statement pleading that he had already sold the vehicle under an agreement dated 30.12.2014 to the deceased Pradeep. It was hence denied that there is any relationship of employer and employee between the respondent no.3 and the deceased Pradeep. However, in the cross-examination, the respondent no.3 herein, respondent no.1 before the Employee's Compensation Commissioner, conceded that the subject car was financed by the HDFC Bank and that not only no NOC was taken from HDFC Bank for the sale of the vehicle but in fact even an intimation was not given to HDFC Bank for sale of the vehicle. In fact, what is more crucial to be noted is that the present appellant/insurance company processed the claim and settled the claim on account of accident of the vehicle and paid the money under the subject policy directly to the financier/HDFC Bank and the remaining installments due to the financier/HDFC Bank were paid by the respondent no.3 herein. The respondent no.3 herein also admitted in the cross-examination that he continued to be the registered owner of the car and that no information whatsoever was given by him to the Motor Transport Authority at Gurgaon where the vehicle was registered as regards the sale of vehicle by the respondent no.3 to the deceased Pradeep.

5. On behalf of the appellant/insurance company it is argued that there was no relationship of employer and employee between the deceased Pradeep and the respondent no.3 herein because the respondent no.1 in his written statement had stated that there was an agreement to sale the vehicle on 30.12.2014 to the deceased Pradeep. Reliance is placed upon Section 2 sub-section 30 of the Motor Vehicles Act to argue that since the owner of the vehicle has changed, there no longer remains the relationship of employer and employee.

6. In my opinion, the arguments urged on behalf of the appellant completely lacks substance. Firstly it is seen that Section 2 sub-section 30 of the Motor Vehicles Act, 1988 defines an owner to mean a registered owner i.e a person in whose name the vehicle is registered. Admittedly, the vehicle was registered in the name of the respondent no.3 herein and who hence continued to remain the owner. Secondly, as per the definition of owner under Section 2 sub-section 30 where the vehicle is under a hire-purchase or an agreement of lease or an agreement of hypothecation, then, the person in possession of the vehicle under that agreement is an owner, and in the present case on the date of the accident, the vehicle in question was financed by the HDFC Bank and the vehicle under the financed agreement was in possession of the respondent no.3 herein. Therefore, the provision of

Section 2 sub-section 30 of the Motor Vehicles Act in fact does not help the appellant but in fact goes against the appellant in the facts of the present case and it is seen that as per the facts of the present case the owner of the vehicle on the date of the accident was respondent no.3 herein. In fact, in my opinion, the appellant having not even contested the claim petition before the Employee's Compensation Commissioner below, and also the fact that the appellant itself paid the amount under the insurance policy to the financing company/HDFC Bank taking the respondent no.3 herein to be an owner of the vehicle, hence the appellant is estopped from arguing that respondent no.3 was not the owner of the vehicle and that there was no relationship of employer and employee between the respondent no.3 herein and the deceased Pradeep.

7. No substantial question of law arises under Section 30 of the Employee's Compensation Act for this appeal to be entertained. Dismissed.

MAY 30, 2017/ib

VALMIKI J. MEHTA, J