

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

+ **FAO No. 482/2016**

% **11th October, 2017**

SHRIRAM GENERAL INSURANCE CO. LTD. Appellant

Through: Mr. Samar Nandwani, Advocate.

versus

NASEEM AHMED & ANR. Respondents

Through: Mr. R.K. Nain, Advocate for R-1.

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 is filed under Section 30 of the Employees Compensation Act, 1923 by the insurance company impugning the judgment of the Employees Compensation Commissioner dated 6.5.2016 by which the Employees Compensation Commissioner has allowed the claim petition which was filed by respondent no. 1 herein and granted compensation of Rs.8,84,016/- along with interest at the rate of 12% per annum from 30 days after the date of the accident as per Section 4(A) of the Employees Compensation Act.

2. The facts of the case are that the respondent no. 1 pleaded that he was employed as a driver by the respondent no. 2 herein for driving the truck bearing no. HR-56-2667. On 29.5.2010 the respondent no. 1 is pleaded to have received injuries during the course of employment because he had gone for getting his vehicle loaded with empty bottles from Pilkhani for M/s Jagjit Industries, Hamira, Punjab, and after that he was to collect cash for on-way expenses. Respondent no. 1 when he just came out from the factory where the bottles were loaded was hit by a vehicle and he sustained injuries on his neck and left side of the body. The result of the injury was that blood supply to his hand was affected and his hand became dysfunctional. Respondent no. 1 was taken to hospital and since the injuries were extensive the respondent no. 1 had to go for better treatment. He was referred to AIIMS Hospital, Delhi. Respondent no. 1 pleads that he took treatment as an outdoor patient and paid a sum of Rs.30,000/- on his treatment. The vehicle in question was insured for insurance premium paid under the Employees Compensation Act with the appellant for a policy which was valid for the period from 18.12.2009 to 17.12.2010. Respondent no. 1 was pleaded to be drawing wages of Rs.8,000/- per month and Rs.150/- per day as food

allowances. Respondent no. 1 was forty years of age at the time of the accident. Respondent no. 1 pleaded that in view of the judgment of the Supreme Court in the case ***Pratap Narain Singh Deo Vs. Srinivas Sabata and Another, (1976) 1 SCC 289*** once the injury is such that the injured employee is not able to carry out the work which he was otherwise doing before the injury for the employer, then the disability though may be partial to the body or limb, yet, such injury has to be taken as a 100% disability.

3. Appellant as also respondent no. 2 herein/employer was served in the proceedings before the Employees Compensation Commissioner. Respondent no. 2, however, did not file his written statement in the proceedings, however his statement was recorded under Rule 27 of the Workmen's Compensation Rules and where it was admitted by the respondent no. 2 that he was owner of the subject vehicle and the respondent no. 1 was employed by him as a driver and being paid a salary of Rs.8,000/- per month with Rs.150/- per day as food allowances. The respondent no. 2 also stated in his statement that accident took place when the respondent no. 1 was on duty because the respondent no. 1 was coming to respondent no. 2 for

getting advance for the ensuing trip and when he met with the accident.

4. Appellant filed its written statement and denied the claim on the ground that the plea of the respondent no. 1/claimant is not supported by any police report/MLC. It was pleaded by the appellant that injury has been manipulated and the respondent no. 2/owner never informed the insurance company about the accident. It was pleaded that the respondent no. 1 did not file the necessary driving license, etc. The factum of insurance was however admitted.

5. Respondent no. 1/claimant filed his affidavit by way of evidence and proved his case. Disability certificate was proved as AW1/1, medical treatment documents were proved as Ex.AW1/2, insurance policy was proved as Ex.AW1/3, election identity card was proved as Ex.AW1/4 and ration card Ex.AW1/5. Respondent no. 1 was subjected to cross-examination and he stood the test of cross-examination and there is nothing material which is elicited from the respondent no. 1 from his cross-examination that he was not the employee, that he did not suffer injuries in the accident or that his pay was not Rs.8,000/- per month, etc etc.

6. Whereas the respondent no. 1 led evidence and proved his case, and he was also supported by the statement of respondent no. 2 recorded on 15.2.2016, but, the appellant/insurance company led no evidence. Once the evidence is led by the claimant and the respondent leads no evidence, then in such a case there is no reason to disbelieve the case of the respondent no.1/claimant. In such a scenario no substantial question of law arises under Section 30 of the Employees Compensation Act for this appeal to be entertained.

7. Counsel for the appellant/insurance company argued that the disability in question is not 100% disability but is only partial disability as only the hand of the respondent no.1/claimant is affected, however, the argument is without any substance because way back since the year 1976 Hon'ble Supreme Court has clearly held in ***Pratap Narain Singh Deo's*** case (*supra*) that though disability may be partial disability, but once that partial physical disability prevents the employee from doing the work he otherwise did prior to the accident and injuries caused, such disability is taken as 100% disability. In the present case the respondent no. 1 was a driver and as a result of the accident his hand was affected whereby he cannot drive any vehicle, and therefore such disability becomes a 100% disability in terms of

the ratio of the Supreme Court judgment in the case of *Pratap Narain Singh Deo (supra)*.

8. Counsel for the appellant/insurance company then argued that the Employees Compensation Commissioner has wrongly taken the pay at Rs.8,000/- per month. Even this argument is without merit because respondent no. 1 has stepped into the witness box and proved his case but the appellant led no evidence. In such a scenario Employees Compensation Commissioner has committed no illegality in believing the statement of respondent no. 1, and therefore no substantial question of law arises under Section 30 of the Employees Compensation Act for this appeal to be entertained on this ground.

9. There is no merit in the appeal. Dismissed.

OCTOBER 11, 2017

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VALMIKI J. MEHTA, J

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