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

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Date of Decision:07th September, 2017

+ **FAO 510/2016 & CM Nos.39518/2016, 39521/2016**

UMA SHANKER GUPTA & ANR

..... Appellants

Through: **Mr. Gaurav Gaur, Mr.Anwar Ali Khan, Advocates.**

versus

RAJ KISHORE MANJHI & ORS

..... Respondents

Through: **Mr.Akarsh Bhalla, Advocate for respondent no.1.**

Mr. Narendra Gautam, Mr. Nitin Kumar, Advocates for respondent no.2 along with respondent no.2 in person.

Mr. A.K. Soni, Advocate for respondent no.3.

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. The appellant has challenged the order dated 29th February, 2016 whereby compensation of Rs.1,86,854/- has been awarded to respondent No.1.

2. On 17th January, 2015 at 04:00 A.M., respondent No.1 was driving Canter bearing No. DL-1LT-3297 when the said vehicle met with an accident at Bherod, Jaipur, Rajasthan which resulted grievous injuries to respondent No.1. Respondent No.1 was admitted in Kailash Hospital,

Bherod, Jaipur. The respondent suffered fracture of both bones of right leg which resulted in 20% permanent disability in relation to right lower limb. Respondent No.1 filed an application for compensation before the Commissioner, Employees' Compensation claiming that respondent No.1 suffered an accident during the course of the employment with respondent No.1.

3. Learned counsel for the appellant submits that the vehicle bearing No. DL-1LT-3297 is owned by his brother, Shiv Sharan (respondent No.2) and validly insured with Reliance General Co. Ltd. (respondent No.3). It is submitted that respondent No.3 is liable to make the payment of the compensation amount to respondent No.1.

4. Learned counsel for respondent No.1 submits that appellant appeared before the Claims Tribunal and admitted the relationship of employment with respondent No.1 and the Commissioner, Employees' Compensation has passed award on the basis of the statement made by the appellant.

5. Learned counsel for the appellant urged at the time of hearing that his statement was recorded by the Commissioner, Employees' Compensation on 29th February, 2016 without affording any opportunity to the appellant to file the written statement. It is submitted that the appellant did not even receive the copy of the claim application and the appellant gave the statement without understanding the claim raised by respondent No.1.

6. Learned counsel for respondent No.2 submits that respondent No.2 is the owner of the vehicle in question and further that the vehicle is validly insured with respondent No.3. Learned counsel for respondent no.2 further submits that respondent No.2 raised an own damage claim in respect of the offending vehicle on respondent No.3 which was settled.

7. Learned counsel for respondent No.3 submits that respondent No.3 was not impleaded before the Commissioner, Employees' Compensation. Learned counsel for respondent No.3, however, confirms the settlement of own damage claim of respondent No.2 in respect of the insured vehicle.

8. Learned counsel for the appellant submits that the appellant has deposited the compensation amount of Rs.1,86,854/- as well as interest amount of Rs.58,000/- with the Registrar General of this Court in terms of orders of this Court and the appellant be granted recovery rights to recover the said amount from respondent No.3.

9. After hearing the parties, this Court is of the view that so far as respondent No.1 is concerned, he is entitled to the compensation for the injuries suffered by him during the course of his employment. In that view of the matter, the award of compensation of Rs.1,86,854/- and interest thereon to respondent no.1 is upheld. An additional issue is framed as to whether the appellant is entitled to recover the compensation and interest amount from respondent no.3 and the same is remanded back to the Commissioner, Employees' Compensation. The Commissioner, Employees' Compensation shall adjudicate the appellant's contention that respondent no.2 was the employer of respondent no.1 and the offending vehicle was validly insured with respondent no.3 and therefore, respondent no.3 is liable to pay the compensation and interest amount.

10. The Commissioner, Employees' Compensation has not imposed any penalty in this matter. A show cause notice is hereby issued to the appellant as well as respondent no.2 to show cause as to why the penalty be not imposed under Section 4A(3) of the Employees' Compensation Act. The appellant as well as respondent no.2 accept notice and submit that they shall

file the reply before the Commissioner, Employees' Compensation.

11. The parties shall appear before the Commissioner, Employees' Compensation on 22nd September, 2017 when respondents No.2 and 3 shall file their written statement and appellant as well as respondent No.2 shall file the reply to the show cause notice to impose the penalty.

12. The Commissioner, Employees' Compensation shall endeavour to pass a fresh order after affording an opportunity to the parties to lead the evidence, within six months.

13. The appeal is disposed of in the above terms. The pending applications are also disposed of.

14. It is clarified that the appellants have paid the compensation and interest without prejudice to their rights and contentions. In that view of the matter, the deposit made by the appellant shall not be construed as their admission of the liability.

15. The compensation amount of Rs.1,86,854/- deposited by the appellant has already been disbursed to respondent No.1 vide order dated 28th July, 2017. The appellant has deposited interest amount of Rs.58,000/- with the Registrar General of this Court. The Registrar General is directed to release Rs.18,000/- to respondent No.1 by instructing UCO Bank to transfer the same to the savings bank account No.1434010023977 of respondent No.1 with United Bank of India, Dwarka Branch, Delhi (IFSC: UTBI0DWK743). The balance amount of Rs.40,000/- be kept in four FDRs of Rs.10,000/- each respectively for the period 17 months to 20 months with cumulative interest.

16. The maturity amounts of the FDRs along with interest shall be transferred to the aforesaid savings bank account of the respondent no.1 with

United Bank of India, Dwarka Branch, Delhi.

17. All the original FDRs shall be retained by UCO Bank, Delhi High Court Branch. However, the statement containing FDR number, FDR amount, date of maturity and the maturity amount be furnished to the respondent no.1.

18. No loan or advance or pre-mature discharge shall be permitted without the permission of this Court.

19. No cheque book or debit card be issued to respondent without the permission of this Court. However, in case, the debit card/cheque book have already been issued, United Bank of India, Dwarka Branch, Delhi shall cancel the debit card and/or cheque book.

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

21. Copy of this judgment be sent to United Bank of India, Dwarka Branch, Delhi and UCO Bank, Delhi High Court Branch for compliance.

22. Copy of this judgment be given *dasti* to counsel for the parties under the signature of the Court Master.

SEPTEMBER 07, 2017
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J.R. MIDHA, J.