

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

+ **FAO No. 584/2016 & CM Appl. Nos. 46591/2016 (stay),
46593/2016 (for condonation of delay of 43 days in filing
appeal)**

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7th September, 2017

BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD.

..... Appellant

Through: Mr. Navneet Kumar, Advocate

versus

NISHA & ANR.

..... Respondents

Through: Mr. Anshuman Bal, Advocate
for R-1
Mr. Aatreya Singh and
Mr. Rajiv Trivedi, Advocates
for R-2

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 impugning the judgment of the Employees Compensation Commissioner dated 11.08.2016 by which the Employees Compensation Commissioner has allowed the claim petition which was filed by the respondent no.1 herein/widow of

deceased Lalit Dass @ Monu and awarded compensation of Rs.8,47,160/- along with interest at 12% per annum w.e.f. 20.12.2013 being the date of the accident.

2. The facts of the case are that the deceased husband of the respondent no.1/claimant Lalit Dass @ Monu was employed as a driver by the respondent no.2 herein, respondent no.1 before the Employees Compensation Commissioner, to drive the vehicle bearing no. DL-9CU-5837 at wages of Rs.12,000/- per month. On 20.11.2013 the vehicle met with an accident when the deceased Lalit Dass @ Monu was driving the vehicle. The accident took place at Ring Road, New Bypass Flyover, IGI Stadium, New Delhi. Lalit Dass @ Monu died on the spot and FIR in this regard was registered in Police Station I.P. Estate. At the time of the accident, deceased Lalit Dass @ Monu was holding a valid driving licence and was 29 years of age. The claim petition was filed pleading that the deceased died on account of an accident arising out of and in the course of his employment.

3. The claim petition filed by the respondent no.1/claimant was contested by the appellant/insurance company. The contention of the appellant/insurance company was that the employer/respondent no.2 herein has stated that no doubt the deceased Lalit Dass @ Monu

was employed by the respondent no.2 herein as a driver for his vehicle, however, the respondent no.2 had on the said date given his vehicle to the deceased Lalit Dass @ Monu for going to Mathura, Uttar Pradesh to attend the marriage ceremony of a friend. It was contended by the appellant/insurance company that once the deceased did not die in an accident arising out of and in the course of employment because the deceased had gone for a personal work to Mathura, the impugned order wrongly holds that the deceased died on account of an accident arising out of and in the course of employment.

4. The following issues were framed by the Employees Compensation Commissioner:-

- I. Whether there exists employer-employee relationship between deceased Sh. Lalit Dass alias Monu and respondent no-I?
- II. Whether the accident in which the deceased died occurred out of and in the course of his employment and if so, to what amount of compensation the claimants are entitled and what directions are necessary in this regard?
- III. Relief, if any?"

5. The Employees Compensation Commissioner had held that there existed a relationship of employer and employee and that the accident happened arising out of and during the course of employment in terms of paras 5 to 7 of the impugned judgment and these paras read as under:-

“5. That the petitioner Smt. Nisha W/o Late Sh. Lalit Dass filed her evidence by way of affidavit dated 19.01.2016 exhibited as PW-1/A which she tendered on 04.02.2016. She has also filed documents such as copy of FIR, copy of Driving License of deceased, copy of PMR report, copy of ration card, copy of election card, copy of marriage card, copy of police verification report, etc. alongwith her affidavit which are placed in the file as PW-1/1 to PW-1/5. The ARR-1 and ARR-2 cross examined the petitioner but nothing adverse has been come out from the cross examination.

6. That the respondent no.1 Sh. Krishan Kant S/o Sh. Subhash Chand has also filed his evidence by way of affidavit dated 27.04.2016 exhibited as R-1W-1/A which he tendered on 28.04.2016. He has also filed documents i.e. copy of reply of D.A.R., certified copy of D.A.R., certified copy of evidence of Sh. Laxman Singh and Sh. Daya Shankar led before MACT, etc. which are also exhibited as Ex. RW1-1/1 to Ex. RW1-1/3. He was cross examined by the counsel for petitioner. In the cross examination, it has been admittedly proved that the deceased was employed as a Driver by the Respondent No-I and at the time of accident, the deceased was driving the vehicle with his consent. The petitioners and respondent no-2 filed their written arguments alongwith judgments of various courts in support of their contention which are taken on record. After hearing the arguments and going through the pleadings and documents on records, it was decided to conclude the proceedings of this case for passing necessary orders.

7. That in view of above facts and examination of pleadings/documents, written statements of respondents, evidence of petitioner and hearing of arguments in this case, the above issues are decided here below:-

I. As per the statement of respondent no-I, it has been admittedly established beyond doubt that the deceased was in his employment as driver and on the date & time of accident, the deceased was driving the said vehicle in question with his consent, therefore, it is established that there has been employer-employee relationship between the respondent no-I and the deceased and as such, Issue No-I stands decided accordingly.

II. From the documents and statement of respondent no.-I, it is established/proved that the deceased had taken the vehicle in question for driving with the consent of respondent no-I, as such it can be construed without any doubt that there is a casual connection of employment and the accident has occurred while driving the vehicle. Therefore, the claimant/dependents of the deceased are entitled for receiving compensation for the death of deceased under the provisions of the Employees Compensation Act, 1923 and therefore, Issue No-II stands decided accordingly.”

6. Learned counsel for the appellant very vehemently argued that since it has come on record that the deceased Lalit Dass @ Monu had gone along with his friends to attend the marriage ceremony of their friend at Mathura, the accident occurred not during the course of employment of the deceased Lalit Dass @ Monu with the respondent no.2 herein. Learned counsel for the appellant has invited the attention of this court to the evidence led by the employer/respondent no.2 that the deceased Lalit Dass @ Monu, with the permission and authorization of the respondent no.2, had gone to Mathura along with his friends to attend the marriage of his friend, namely Vikas @ Golu. Learned counsel for the appellant has also drawn the attention of this Court to cross-examination of the eye-witness PW-2 Daya Shankar and who admitted that they had gone to Mathura to attend the marriage of their friend Vikas @ Golu and the vehicle was driven by the deceased Lalit Dass @ Monu and who was also a friend of Vikas @ Golu. Learned counsel for the appellant has also drawn attention of this Court to the FIR dated 20.11.2013 registered at the Police Station I.P. Estate and which FIR again talks of the deceased Lalit Dass @ Monu along with the informant Daya

Shankar going to Mathura to attend the marriage of their common friend Vikas @ Golu.

7. A first appeal lies to this Court under Section 30 of the Employees Compensation Act only when there arises a substantial question of law. In my opinion, merely because the deceased Lalit Dass @ Monu had gone to Mathura to attend marriage of his friend Vikas @ Golu along with Daya Shankar/PW-2 and other friends would not mean that the deceased was not employed as a driver on the vehicle in question. It is not the case of the appellant, and nor of the respondent no.2 herein/employer that the deceased was not paid as an employee/driver for taking his friends to Mathura to attend the marriage of their common friend Vikas @ Golu. Surely a person can wear two hats at one point of time, one being a person to attend the marriage of his friend and yet other simultaneously being driving the vehicle as an employee for taking other occupants of the vehicle to the marriage of the common friend Vikas @ Golu at Mathura. There is no case which is pleaded by the appellant that the deceased Lalit Dass @ Monu had gone without having received any payment for driving the vehicle to Mathura. Merely because Vikas @ Golu was a friend of the

deceased Lalit Dass @ Monu would not necessarily mean that the deceased Lalit Dass @ Monu had given his services free to the other occupants of the vehicle including Daya Shankar for travelling to Mathura.

8. The contention of the learned counsel for the appellant placing reliance upon preliminary objection in the written statement of the employer/respondent no.2 that the car/vehicle was taken by the deceased Lalit Dass @ Monu for personal use and hence there was no employment is a misconceived argument because taking vehicle with friends will not mean that the deceased Lalit Dass @ Monu would not have charged his friends any charges for taking them to Mathura. Not only it is not the case of the employer/respondent no.2 that the deceased did not take any charges from the other occupants of the vehicle, even if this stand was taken the same cannot be believed by this Court because employer/respondent no.2 in his cross-examination conducted on 28.04.2016 admitted that in reply to notice issued by the police under Section 133 of the Motor Vehicles Act, employer/respondent no.2 had not stated that the vehicle had been borrowed by the deceased Lalit Dass @ Monu for attending the

marriage of his friend. Once the two views are possible as per the evidence on record, then no substantial question of law arises under Section 30 of the Employees Compensation Act for this Court to interfere in this first appeal against the finding of the Employees Compensation Commissioner with regard to existence of relationship of employer and employee and accident arising out of and in the course of his employment.

9. Therefore, in my opinion, the Employees Compensation Commissioner has committed no illegality in holding that there was a relationship of employer and employee between the deceased and the respondent no.2 herein and that the accident happened during the course and arising out of employment.

10. Appeal is dismissed.

SEPTEMBER 07, 2017

VALMIKI J. MEHTA, J

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