

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

+ **FAO No. 327/2017**

% **1st August, 2017**

NATIONAL INSURANCE CO. LTD. Appellant

Through: Mr. Amit Gaur, Mr. Pradeep
Gaur, Advocates

versus

SH. PARDEEP KUMAR & ANR. Respondents

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

CM No. 27286/2017 (Exemption)

Exemption allowed subject to all just exceptions.

Applications stands disposed of.

**FAO No. 327/2017 and CM No. 27285/2017 (for condonation of
delay of 334 days), CM No. 27284/2017 (Stay)**

1. This appeal under Section 30 of the Employees Compensation Act, 1923 is filed by the Insurance Company against the impugned judgment of the Employees Compensation Commissioner dated 15.6.2016 whereby the claim petition filed by the

respondent no. 1 herein has been allowed and by applying the statutory formula compensation of Rs.10,55,760/- has been awarded along with interest as per Section 4A of the Employees Compensation Act.

2. The facts of the case are that respondent no. 1 herein, claimant before the Employees Compensation Commissioner, pleaded that he was a Driver appointed by the respondent no. 2 herein, to drive the vehicle bearing registration no. HR-38-N-8549. Respondent no. 1 pleaded that he was getting a salary of Rs.10,000/- per month. It was further pleaded in the claim petition that on the night of 14/15.10.2012 at about 1.00 am when the respondent no. 1 was proceeding from Faridabad to Dehradun, Uttrakhand, and when he reached at Khatauli Bye-pass, suddenly a wild animal came in front of the truck and to save the same his truck collided with another truck. As result of the accident, the left leg below the knee of the respondent no. 1 was amputated. The claim petition was therefore filed.

3. Appellant and the respondent no. 2 herein on being served appeared in the proceedings before the Employees Compensation Commissioner. Respondent no. 2 herein admitted the

employment of the respondent no. 1/claimant. It was also admitted that accident happened during the currency of the policy. Respondent no. 2 however pleaded that respondent no. 1/claimant was only being paid Rs. 6000/- per month and not Rs. 10,000/- per month.

4. In the proceedings before the Employees Compensation Commissioner after the respondent no. 2 appeared, she thereafter stopped appearing and hence was proceeded *ex-parte*. Appellant after initially not appearing again thereafter appeared. Appellant completed cross-examination of the respondent no.1/claimant on 17.3.2016. Appellant however has admittedly not led any evidence before the Employees Compensation Commissioner.

5. Employees Compensation Commissioner has allowed the claim petition by observing as under:-

“CONCLUSIONS

The Applicant/Claimant has proved that he was injured in an accident arising out of and during the course of employment with Respondent no. 2 as driver. The respondent no. 2 has admitted the employment of the Applicant/Claimant as driver and has also admitted the accident and that he sustained injury due to the accident. The Respondent No. 1 has not denied the factum of Insurance, therefore it is admitted and since the Applicant/Claimant had injured out of and during the course of his employment, therefore Respondent No. 1 i.e. National Insurance Company Ltd. being the insurer of the said vehicle is liable to pay the compensation. The Applicant/Claimant became 75% permanent disabled person which will be counted as 100% disability due to nature of job as whole life he cannot drive any vehicle. Ld. Counsel of the Claimant argued that as the workman

was working as driver which he was doing prior to this accident, hence this is a case of 100% loss in earning capacity. Finding the nature of his work, it should be accepted that it is a case of 100% disablement and in this regard the counsel for the Applicant has relied on the ruling of the Hon'ble Supreme Court of India – *Pratap Narain Singh Dev vs. Srinias Sabata* – cited 1976 ACJ 141 whereby the apex court has held that the workman was no more in a position to take up and do that work which he was doing hence the disablement was assessed 100% Apex Court in a Judgment – *K. Janardhan v. United India Insurance Co. Ltd. (Supreme Court of India)* 2039 (ACJ 2008):-

“Whether the tanker driver who was suffered amputation of right leg from knee has suffered total disablement and 100 per cent loss in his earning capacity—Held: yes; he is even disqualified from getting a driving licence; Commissioner’s order restored [1976 ACJ 141 (SC) followed].”

In view of the pleadings of the Applicant/claimant claiming un rebutted, I am of the opinion that Applicant/Claimant Sh. Pardeep Kumar has multiple(full line is not legible).....employment with Respondent No. 2 as owner and the Applicant/Claimant is entitled for the compensation under *Employee’s Compensation Act, 1923*. Therefore Rs. 8,000/- was the maximum limit of salary as per Act on the date of accident i.e. 14/15.10.12 and the age of the Applicant/Claimant was of 23 years of age and the relevant factor for the age of 23 years is 219.95. Calculation of amount of compensation in the case comes as under:

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|------|-------------------------------------|-----------------|
| i) | Relevant factor for 23 years of age | : Rs. 219.95 |
| ii) | 60% of Rs. 8,000/- i.e. | : Rs. 4800 |
| | Maximum limit under the Act | |
| iii) | Amount of compensation | : 219.95 X 4800 |
| | | : 10,55,760/- |

6. The applicant/Claimant is also entitled to interest as per Section 4A of the Act @ 12% per annum from one month after the accident.

7. The Applicant is entitled to receive injury compensation from Respondent No. 2 but as the said Respondent has taken an insurance coverage hence in spirit of indemnifying the insured, Respondent No. 1 i.e. National Insurance Company Ltd., is directed to deposit in this court an amount of Rs. 10,55,760/- (rupees Ten Lakh Fifty Five Thousand and Seven Hundred Sixty Only) on account of compensation payable to the Applicant/Claimant along with interest @ 12% p.a. w.e.f. 14.11.2012 till its realization through pay order in favour of “Commissioner Employee’s Compensation – VIII” within a period of thirty (30) days from the pronouncement of this order for disbursement to the Applicant/Claimant. Given under my hand and seal of this court on this 15th day of June 2016.

Sd/-

(A.V. PREM NATH)

COMMISSIONER, EMPLOYEE’S COMPENSATION”

6. Learned counsel for the appellant only argued one aspect before this Court that once the respondent no. 2/employer pleaded that the salary was Rs. 6,000/- per month then the Employees Compensation Commissioner ought not to have taken the salary of the respondent no. 1/claimant as Rs. 8,000/- per month. In my opinion, the argument urged on behalf of the appellant is misconceived because Section 4(1B) was introduced by Act 45 of 2009 w.e.f. 18.1.2010 in the Employees Compensation Act whereby the minimum wages are taken for calculating compensation and which provision was added because there were considerable disputes with respect to the evidence led in each case as to the salary of an employee. Learned counsel for the respondent no.2 could not point out any plea in the written statement or even in the grounds of appeal filed in this Court that the amount of Rs. 8,000/- per month salary figure taken by the Employees Compensation Commissioner in the impugned judgment is not as per the minimum wages under the Minimum Wages Act as on October 2012. Once there is no specific ground raised on behalf of the appellant that the figure of Rs. 8,000/- per month is not the minimum wages, no substantial question of law arises under Section 30 of the

Employees Compensation Act. A first appeal under Section 30 of the Employees Compensation Act is entertained only if a substantial question of law arises and once there is no substantial question of law, an appeal cannot be entertained.

7. Dismissed.

AUGUST 01, 2017
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VALMIKI J. MEHTA, J

