

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

+ **FAO No.329/2015 and C.M. No.22799/2015 (stay)**

% **26th October, 2017**

RELIANCE GENERAL INSURANCE CO. LTD. Appellant

Through: Mr. A.K. Soni, Advocate.

versus

ASHOK KUMAR & ANR. Respondents

**Through: Mr. R.K. Nain, Advocate for
respondent No.1.**

**Mr. S.N. Parashar, Advocate
with Ms. Pankaj Kumari,
Advocate for respondent No.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 under Section 30 of the Employee's Compensation Act, 1923 (hereinafter referred to as 'the Act') is filed by the insurance company impugning the judgment of the Employee's Compensation Commissioner dated 15.6.2015 by which the Employee's Compensation Commissioner has allowed the claim petition which was filed by the claimant/respondent no.1 herein and

has granted compensation of Rs.5,16,672/- along with interest at 12% per annum from the date of the accident till realization.

2. The facts of the case are that the respondent no.1/claimant pleaded that he was employed as a co-driver by the respondent no.2 herein (respondent no.1 before the Employee's Compensation Commissioner), on the truck/vehicle owned by him being HR-38M-8225. It was pleaded by the respondent no.1/claimant that on 14.11.2009 he was on a business trip from Delhi to Calcutta and when the subject truck reached police station Nawab Ganj near Allahabad at 7A.M. there was an accident on account of another vehicle coming from the opposite direction and hitting the said truck HR-38M-8225. It was pleaded that on account of the accident, the respondent no.1/claimant was caught in the steering and he had to be extricated by cutting the steering whereby his arms and legs were crushed. It was also pleaded that respondent no.1/claimant suffered injuries in his ankle and also that his teeth were broken. It was pleaded that the respondent no.1/claimant was taken to the hospital and plate was fitted in his arm and where he remained admitted for four days, and thereafter, the respondent no.1/claimant was shifted to

his native place at Punjab where he took treatment. It was pleaded that the respondent no.1/claimant was earning Rs.6,000/- per month plus Rs.100/- per day as diet money and was 25 years of age at the time of accident. It was pleaded that notice was served by the respondent no.1/claimant upon the respondent no.2/employer under Section 10 of the Act. It was pleaded that due to injuries caused by the accident; the respondent no.1/claimant had become totally disabled and was not in a position to carry on any work. Hence the claim petition was filed pleading 100% disability.

3.(i) The employer/respondent no.2 herein, appeared and admitted to the claim petition. It was admitted by the respondent no.2 that he was the owner of the vehicle. It was also admitted by the respondent no.2 that there was a relationship of employer and employee between him and the respondent no.1/claimant. It was also admitted that the accident was caused out of and in the course of employment and that the vehicle was insured at the time of the accident.

(ii) The appellant/insurance company contested the case. It was denied that there was a relationship of employer and employee. It was

pleaded that the claim petition is an abuse of process of law to extract money and that no documents were filed of an FIR or a police report that in fact an accident as alleged ever happened. It was pleaded that no accident had taken place and therefore the petition be dismissed.

4. The Employee's Compensation Commissioner framed the following issues:-

- “1. Whether claimant sustained injuries during and out of the course of the employment, if so to what amount of injury compensation, claimant is entitled so?
2. Relief if any?”

5. Respondent no.1/claimant thereafter led evidence and proved seven documents. This is recorded in sub-para 4 of para 5 of the impugned judgment and which para reads as under:-

“4. Petitioner Sh. Ashok Kumar filed his statement by way of affidavit exhibit AW-1/A. The contents of affidavit are corroborative of those claim petition. Petitioner has also filed documents exhibit AW-1/1 to AW-1/7 i.e. copy of disability Certificate, copy of police report, copy of insurance policy of the vehicle, certificate of registration of vehicle, copy of fitness certificate, copy of national permit and medical documents. He was also cross examined by counsel for petitioner. Petitioner has also filed affidavit of Sh. Bikramjit Singh co-driver as a witness but he was not examined by the petitioner as such his statement is not considerable.”

6. Employee's Compensation Commissioner for allowing the claim petition has held that there was a relationship of employer and employee. Employee's Compensation Commissioner also held

that injuries were caused to the respondent no.1/claimant on account of an accident arising out of and in the course of employment. The relevant portion of the impugned judgment of the Employee's Compensation Commissioner holding that the respondent no.1/claimant was entitled to compensation reads as under:-

“After hearing arguments of the Ld. Counsel for petitioner and respondent no.2 accordingly on the basis of admission of respondent no.1 owner of vehicle factum of employee and employer relationship, accident caused out of and in course of his employment and not leading any evidence by respondent no.2 Insurance Company all these evidence and documents are suggestive of the factum of employment and confirm the occurrence of the accident. The stand taken by the respondent no.1 also confirms the occurrence of the accident out of and during the course of his employment. As such I hold that petitioner Sh. Ashok Kumar met an accident out of and in the course of his employment. The arguments led by Ld. Counsel for respondent no.2 that petitioner is not entitled for 100% disability in the light of judgment relied by them. In this case petitioner was co-driver and he received grievous injuries in arms and legs and on account of this accident his four fingers of right hand were amputated as such he is not able to perform further work as a driver as such he lost his 100% earning capacity and become 100% disability compensation from respondents, jointly or severely, in view of this facts of case narrated I am disagree with the view of assessment of board assessing 29% disability of petitioner. The argument lead by Ld. Counsel for R.2 is not proving his case regarding not entitled 100% disability compensation. As held that petitioner is entitled for receiving compensation accordingly for calculation of compensation age of petitioner has been taken 26 years on the basis of disability certificate and relevant factor 215.28 and 60% of last drawn wages of Rs.4377/- (Minimum Wages fixed for skilled category at that time by Delhi Govt.) restricted by Rs.4000/-. Accordingly compensation is calculated as under:-

i) 60% of wages of Rs.4377+2400

ii) Age 26 years and relevant factor 215.28

$$\frac{2400 \times 215.28}{100}$$

$$= \text{Rs.} 516,672/-$$

In view of above calculation petitioner is entitled to receive Rs.516,672/- as a injury compensation from respondents jointly or severely.”

7. Learned counsel for the appellant/insurance company has argued that substantial questions of law arise for entertaining this appeal because in terms of the documents filed by the respondent no.1/claimant it does not at all stand proved that any accident whatsoever had happened when the subject truck was being driven by the respondent no.1/claimant or that the respondent no.1/claimant was in the subject truck owned by the respondent no.2 herein when the accident happened. It is argued that there is no DD entry or any FIR or any MLC report, and in fact there are no details whatsoever, as to what is the vehicle with which the subject truck met with an accident or of the subject truck being at all involved in the accident. It is argued that the substantial question of law arises because no doubt entitlement to arrive at a finding of facts on the basis of evidence on record is of the Employee's Compensation Commissioner, however the finding which is arrived at by the Employee's Compensation Commissioner cannot be a finding which could not be arrived at from the evidence led by the respondent no.1/claimant on record, and inspite of complete lack of evidence which a reasonable man can believe yet a finding of accident happening is arrived at, then such

perverse finding raises a substantial question of law for setting aside the impugned judgment.

8. Learned counsel for the respondent no.1/claimant has in response has placed reliance upon the judgments of the Supreme Court in the cases of ***Golla Rajanna and Others Vs. Divisional Manager, United India Insurance Co. Ltd. and another 2017 ACJ 1*** and ***T.S. Shylaja Vs. Oriental Insurance Co. Ltd. and another 2014 ACJ 480*** to argue that this Court should not entertain the appeal under Section 30 of the Act inasmuch as the court of Employee's Compensation Commissioner is the final fact finding authority and once findings of facts are arrived at then, this Court should not entertain the appeal against such findings under Section 30 of the Act. Learned counsel for the respondent no.1/claimant has also placed reliance upon para 6 of the judgment of the Supreme Court in the case of ***Machinnon Mackenzie & Co. Pvt. Ltd. Vs. Ibrahim Mahmmud Issak 1969 A.C.J. 422*** and which para again states that once findings of facts are arrived at on the basis of the evidence on record, then, the High Court should not interfere. This para 6 of the judgment in the case of ***Machinnon Mackenzie (supra)*** reads as under:-

“6. In the case of death caused by accident the burden of proof rests upon the workman to prove that the accident arose out of employment as well as in the course of employment. But this does not mean that a workman who comes to Court for roll of must necessarily prove it by direct evidence. Although the onus of proving that the injury by accident arose both out of and in the course of employment rests upon the applicant these essentials may be inferred when the facts proved justify the inference. On the one hand the Commissioner must not surmise, conjecture or guess; on the other hand, he may draw an inference from the proved facts so long as it is a legitimate Inference. It is of course Impossible to lay down any rule as to the degree of proof which is sufficient to justify an inference being drawn, but the evidence must be such as would Induce a reasonable man to draw it. Lord Birkenhead, L.C., in *Lancaster v. Blackwell Colliery Company, Ltd.*, observed:

“If the facts which are proved give rise to conflicting inferences of equal degrees; of probability so that the choice between them is a mere matter of conjecture, then of course, the applicant falls to prove his case, because it is plain that the onus in these matters is upon the applicant. But where the known facts are not equally consistent, where there is ground for comparing and balancing probabilities as to their respective value, and where a reasonable man might hold that the more probable conclusion is that for which the applicant contends then the arbitrator is justified in drawing an inference in his favour.” (underlining added)

9. Learned counsel for the respondent no.1/claimant has further placed reliance upon a judgment delivered by this Court in the case of *Shriram General Insurance Co. Ltd. Vs. Babu and Anr.* in FAO No.361/2013 decided on 19.3.2014 for arguing that there is no requirement of there compulsory being registered an FIR or a DD entry before it is held that there is an accident which arises out of and in the course of employment. Para 8 of the judgment, which is relied upon, reads as under:-

“8. So far as the first argument that there has to be a DD entry with the police and a MLC report, the argument is totally misconceived because this is not a medico legal case nor is the case where a police enquiry is required. The simple case is that while affixing the jack to wheel out the punctured tyre, all of a sudden the jack got de-affixed and as a result of which the vehicle fell down and respondent no. 1 suffered injuries on his legs and also suffered a crack in his backbone. In such circumstances, it is absurd for an Insurance Company to argue that there has to be a medico legal case and a report must be registered with the police. After all, in such a case the complaint with the police will be filed against whom inasmuch as it is not the case that a person has deliberately shifted the jack. This argument is therefore rejected.”

10.(i) Finally, counsel for the respondent no.1/claimant has placed reliance upon Regulation 9 of the Insurance Regulatory and Development Authority (Protection of Policyholders’ Interests) Regulations, 2002 (hereinafter referred to as the IRDA Regulations, 2002) along with the ratio of the judgment of the Supreme Court in the case of *Babbu Miyan and another Vs. New India Assurance Co. Ltd. and another 2017 ACJ 721* to argue that in the present case the appellant/insurance company ought to have appointed a surveyor and if there was a survey report, then, on the basis of the survey report, the Court could have come to a finding with respect to the occurrence of the accident. Regulation 9 of IRDA Regulations, 2002 reads as under:-

“9. **Claim procedure in respect of a general insurance policy** -(1) An insured or the claimant shall give notice to the insurer of any loss arising under contract of insurance at the earliest or within such extended time as

may be allowed by the insurer. On receipt of such a communication, a general insurer shall respond immediately and give clear indication to the insured on the procedures that he should follow. In cases where a surveyor has to be appointed for assessing a loss/claim, it shall be so done within 72 hours of the receipt of intimation from the insured.

(2) Where the insured is unable to furnish all the particulars required by the surveyor or where the surveyor does not receive the full cooperation of the insured, the insurer or the surveyor as the case may be, shall inform in writing the insured about the delay that may result in the assessment of the claim. The surveyor shall be subjected to the code of conduct laid down by the Authority while assessing the loss, and shall communicate his findings to the insurer within 30 days of his appointment with a copy of the report being furnished to the insured, if he so desires. Where, in special circumstances of the case, either due to its special and complicated nature, the surveyor shall under intimation to the insured, seek an extension from the insurer for submission of his report. In no case shall a surveyor take more than six months from the date of his appointment to furnish his report.

(3) If an insurer, on the receipt of a survey report, finds that it is incomplete in any respect, he shall require the surveyor under intimation to the insured, to furnish an additional report on certain specific issues as may be required by the insurer. Such a request may be made by the insurer within 15 days of the receipt of the original survey report.

Provided that the facility of calling for an additional report by the insurer shall not be resorted to more than once in the case of a claim.

(4) The surveyor on receipt of this communication shall furnish an additional report within three weeks of the date of receipt of communication from the insurer.

(5) On receipt of the survey report or the additional survey report, as the case may be, an insurer shall within a period of 30 days offer a settlement of the claim to the insured. If the insurer, for any reasons to be recorded in writing and communicated to the insured, decides to reject a claim under the policy, it shall do so within a period of 30 days from the receipt of the survey report or the additional survey report, as the case may be.

(6) Upon acceptance of an offer of settlement as stated in sub-regulation (5) by the insured, the payment of the amount due shall be made within 7 days from the date of acceptance of the offer by the insured. In the cases of delay in the payment, the insurer shall be liable to pay interest at a rate which is 2% above the bank rate prevalent at the beginning of the financial year in which the claim is reviewed by it.”

(ii) Para 7 of the judgment in the case of *Babbu Miyan (supra)*

which is relied upon reads as under:-

“7. We have heard learned counsel for the parties and gone through the surveyor’s report and other evidence on record. It is mentioned in the surveyor’s report, who was appointed by the insurance company, that Ubed, the deceased, was in employment of the owner of truck as a cleaner and was getting Rs.4,000 as salary. Though the surveyor’s report also mentioned that vehicle was sold to someone else but that will not change the nature of the employment of the deceased. The Commissioner was justified in relying on the report and other evidence to hold that the deceased died in course of employment.”

11. Before I proceed to decide this case and discuss the issues addressed on behalf of the parties, I would like to note that I have already expressed my displeasure at the working and passing of illegal judgments by the Employee’s Compensation Commissioners who are functioning under the Employee’s Compensation Act, and have passed two judgments in this regard. The first judgment was in the case of ***Oriental Insurance Company Limited Vs. Baldev Singh & Anr.*** in FAO No.47/2016 decided on 17.8.2017 and the second judgment was the judgment in the case of ***Oriental Insurance Company Limited Vs. Mohd. Anwar & Anr.*** in FAO No.424/2016 decided on 22.8.2017. In the case of ***Mohd. Anwar (supra)***, in view of gross illegality in the cases being decided by the Employee’s Compensation Commissioner under the Employee’s Compensation Act although no jurisdiction exists under Section 21(1) of the Act, I have therefore directed that a committee be constituted headed by a retired Judge of this Court to

look into the illegalities committed by the Employee's Compensation Commissioners in entertaining cases where neither the accident takes place in Delhi, nor the claimant resides at Delhi and that even the employer is not the resident of or works for gain at Delhi. Paras 16 to 19 of the judgment in the case of *Mohd. Anwar (supra)* read as under:-

“16. In the judgment delivered by this Court on 17.8.2017 in FAO No.47/2016 in the case of *Oriental Insurance Company Limited Vs. Baldev Singh and Another*, I have set aside the impugned judgment which has been passed by the Employees Compensation Commissioner, and the Employees Compensation Commissioner in this case is also the same Employees Compensation Commissioner. Even the Advocates who have appeared for the respondent no.1/claimant in FAO No.47/2016 in this Court as also before the Employees Compensation Commissioner in the said case, are the same Advocates M/s R.K. Nain & Associates who have appeared for the respondent no.1/claimant before this Employees Compensation Commissioner in this case. In spite of service of the respondent no.1/claimant for today no one appears for the respondent no. 1/claimant and the reasons for non-appearance of the respondent no.1/claimant are thus not far too seek as to why respondent no.1/claimant is not represented by his Advocate today in this Court.

17. While allowing FAO No.47/2016, I had directed drawing out a complaint by the Registrar General of this Court under Section 340 Cr.P.C and sending the complaint to the competent court of jurisdiction. The relevant para of the judgment dated 17.8.2017 in FAO No.47/2016 is para 18 and this para 18 reads as under:-

“18. In the facts of the present case I exercise my powers under Section 340 Cr.P.C. and direct the Registrar General of this Court to draw out a complaint against the fraudulent and collusive claim petition which has been filed by the respondent nos. 1 and 2 herein and in terms of the present judgment the complaint so drawn be sent to the Competent Court for prosecution of the respondents herein.”

18. I have also directed by para 19 of the judgment dated 17.8.2017 in FAO No.47/2016 that the judgment dated 17.8.2017 be put before the Minister of Law of GNCTD as also the Law Secretary of the GNCTD and this para 19 reads as under:-

“19. I also direct that a copy of this judgment along with the impugned judgment of the Employees Compensation Commissioner dated 27.11.2015 be sent to the Minister of Law, Government of National Capital Territory of Delhi (GNCTD), as also the Law Secretary, GNCTD, to show as to how certain Employees Compensation Commissioners appointed by GNCTD are acting in a complete perverse fashion and allowing completely undeserving claim petitions which are in fact the result of collusion and an endeavor to defraud the insurance companies of their moneys. On receipt of the judgment by the Law Minister as also by the Law Secretary of GNCTD, an affidavit shall be filed on behalf of these persons by authorized persons that the relevant departments have taken note of the present judgment as also of the concerned Employees Compensation Commissioner who in the present case has completely and most illegally and perversely allowed a totally undeserving claim petition. Affidavit in this regard be filed within a period of six weeks from today.”

19. While allowing this appeal I pass the same directions in this case as per paras 18 and 19 of the judgment dated 17.8.2017 in FAO No. 47/2016 except that the complaint which will be made in this case will only be against the respondent no.1/claimant in this case. In fact on account of the arguments urged on behalf of the appellant/insurance company that it is high time that for preventing further frauds upon the insurance companies, that an Enquiry Committee be constituted, I direct that a one person Enquiry Committee be constituted by the GNCTD to look into the judgments which are passed by any and every Employee Compensation Commissioner for the last three years in which the Advocates for the claimants are the Advocates M/s R.K. Nain and Associates and where as per the claim petition and/or defence the Employees Compensation Commissioners at Delhi would have no territorial jurisdiction on application of Section 21(1) of the Employees Compensation Act. Enquiry Committee be headed by a retired Judge/retired Chief Justice of this Court and who would be nominated by the competent authority in the GNCTD within four weeks from today. Enquiry Committee will have extensive jurisdiction to examine if any offence has been committed by any person as per laws applicable. The Enquiry Committee will have powers to call for all necessary documents from any and every person in order to determine the issue as to whether any fraud, cheating, mis-appropriation etc etc or any other offence(s) have been committed by any person(s). The GNCTD is also requested that it should co-operate with the Enquiry Committee so that the Enquiry Committee should give its report as expeditiously as possible and preferably within six months of the constitution of the Enquiry Committee. Remuneration of the Enquiry Committee be fixed by the GNCTD in consultation with the retired Judge/Chief Justice who will be appointed as the one person committee. If the Enquiry Committee of the retired Judge/Chief Justice of this Court comes to a finding of existence of culpability of any person with respect to

any offence which is committed, then, necessary action will be taken by the GNCTD against all such persons in accordance with law and within a period of six weeks of the report being submitted by the Enquiry Committee.”

12. I have made the aforesaid observations because this Court also intends to pass very strict directions in the facts of the present case and as are given hereinafter. Let me now turn to the issues which are involved in the present case.

13. There are two issues which arise in the present case. One is as to whether accident at all happened of the respondent no.1/claimant as alleged by him in the claim petition and that as to whether the accident happened out of and in the course of employment. The second issue is as to whether there was a relationship of employer and employee between the respondent no.2 herein and the respondent no.1/claimant.

14. As regards the second issue of existence of relationship of employer and employee, I have already held in various judgments that in this country it is not practical to expect written contracts of employment as between the individual employers of private vehicles and the employees of such vehicles who work as drivers or cleaners or co-drivers. Once it is established by leading evidence on record that

the employee was driving the vehicle of the owner then ordinarily the Courts can hold that there was a relationship of employer and employee because there is no reason why the employee is found to be driving the vehicle belonging to a third person when the accident is caused except on account of employment. Therefore, in my opinion, to the extent that there is a relationship of employer and employee between the respondent no.2 and the respondent no.1 herein, this Court cannot upset the findings of facts of the Employee's Compensation Commissioner as arrived at in the impugned judgment dated 15.6.2015.

15. The other issue is that whether at all an accident took place as alleged in the claim petition on 14.11.2009. In this regard, in my opinion, a substantial question of law arises because one thing is that two views are possible out of the evidence which has come on record and the Employee's Compensation Commissioner takes one possible and plausible view including by inferences which arise from proved facts and in which situation no substantial question of law arises because the Employee's Compensation Commissioner is entitled to take one possible and plausible view from the facts proved

on record. However, when from the evidence led only one conclusion can be arrived at but the Employee's Compensation Commissioner instead reaches a totally different conclusion which no reasonable person can arrive at, then, there is a clear perversity in the finding and which results in arising of a substantial question of law vide the ratio of *Machinnon Mackenzie's* case (*supra*).

16.(i) Let us therefore examine the evidence in this case and the facts of the present case as to whether the Employee's Compensation Commissioner could have at all arrive at a finding that an accident took place on 14.11.2009 with respect to truck bearing no.HR-38M-8225 with another vehicle and which resulted in injuries to the respondent no.1/claimant.

(ii) In this regard it is seen that admittedly there is no FIR or a DD entry or an MLC report that the accident happened as is pleaded by the respondent no.1/claimant. After all when there is a head on collision between two vehicles and serious injuries are caused to a person, such as the respondent no.1/claimant as alleged in the claim petition, then this Court refuses to believe that an FIR would not have been lodged. After all the respondent no.1/claimant pleaded that accident was so

severe that it took two hours for cutting the steering and then extricating the respondent no.1/claimant from the said truck. It was pleaded in the claim petition that legs and arms of the respondent no.1/claimant were crushed and the respondent no.1/claimant besides suffering injuries to his ankle also had his teeth broken.

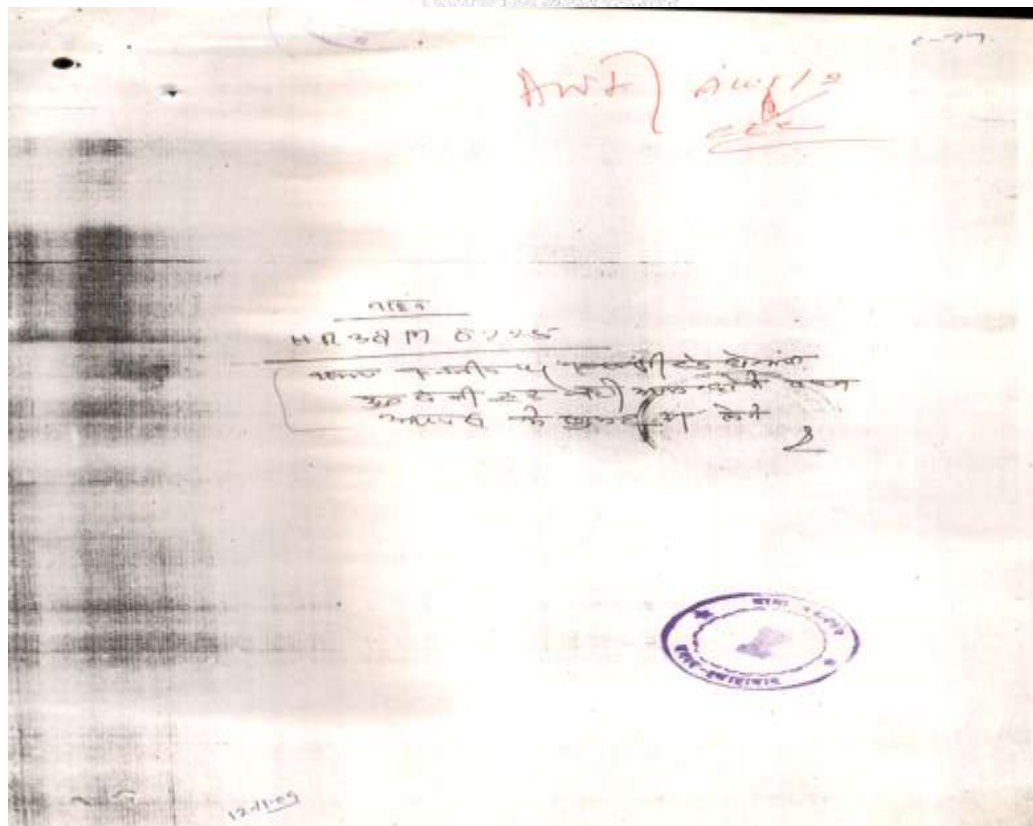
(iii) Even if an FIR was not registered then surely at least a DD entry with respect to the alleged accident would have been recorded.

(iv) Even for the sake of argument I take that there is no FIR or DD entry or MLC, then surely with respect to the injuries which are alleged a report of the hospital and prescriptions of the hospital and various documents of the hospital ought to have been proved showing that such injuries as pleaded were caused, however it is seen that the only documents which are filed by the respondent no.1/claimant are a disability certificate, copy of the “police report” (what is report is commented upon immediately), insurance policy and some slips of some unknown treatment at two hospitals, one at Allahabad and the other at Jalandhar and which slips make no mention of the accident or the type of injuries as alleged by the respondent no.1/claimant in the claim petition. In fact the documents being two passes filed of the

Nehru Chikitsalaya, Allahabad are only that the respondent no.1/claimant is described as a “rogi/patient” without in any manner these passes at all describing the injuries or the treatment etc etc. So far as the slips of paper of the Sacred Heart Hospital at Jalandhar is concerned, it is seen that they are only prescriptions of some medicines including one slip which is not on the letter head of the hospital referring to a particular X-ray of the right leg and right ankle. And most surprisingly it is noted that the disability certificate filed in this case has nothing to do with any injuries to the legs of the respondent no.1/claimant because the disability certificate proved as Ex.AW1/1 talks of disability because of the right upper limb i.e not of any injury to the legs or fracture to the legs of the respondent no.1/claimant.

(v) So far as the “police report” is concerned, let us understand what this “police report” is and which is filed by the respondent no.1/claimant as document Ex.AW1/2. This document Ex.AW1/2 is an undated document containing three lines in hand in Hindi language on a blank sheet of paper and all that it contains in the three lines is that there is an accident involving HR-38M-8225 and that the

concerned parties will sort out the matter. This Court really fails to understand as to how this so called “police report” can at all be called as a police report. In fact, the stamp of the police station is almost completely illegible and this Court cannot even read the same and nor can anyone also read as to this report is given by which police station, being signed by which person and having what designation. In order to appreciate the total lack of credibility and lack of genuineness of this “police report” Ex.AW1/2 I scan and reproduce the same as under:-



(vi) It is therefore seen that the case for compensation filed by the respondent no.1/claimant is clearly and only a fraudulent case. The Employee's Compensation Commissioner legally could not have arrived at a finding that an accident took place of the subject truck on 14.11.2009 on the basis of the so called three lines imaginary police report which is in fact not a police report. Even the medical documents are of no value because two medical documents are only passes of entry to a chikitsalaya/hospital at Allahabad calling the respondent no.1/claimant as a patient without giving any details of any injuries or treatment, and the three medical documents of the Sacred Heart Hospital Jalandhar are only prescriptions of some medicines without at all stating the injuries or the nature of the treatment. One slip of paper alleged to be of the Sacred Heart Hospital is a slip of paper which is not on any letter head of the hospital and which talks of injuries to the right leg and right ankle of the respondent no.1/claimant and these injuries are not even injuries of the respondent no.1/claimant as per the disability certificate filed for seeking compensation under the subject claim petition.

(vii) All in all there is a complete lack of credibility and there exist irreconcilable contradictions in the case pleaded by the respondent no.1/claimant and the evidence which has come on record. The main contradiction is that in the claim petition it was pleaded that legs and arms were crushed and teeth were broken but there is no evidence whatsoever on record before the Employee's Compensation Commissioner of the legs and arms being crushed or the teeth being broken, and, as already stated above, the disability certificate makes no reference to any injuries to the legs of the respondent no.1/claimant or any fracture or any crushing of the legs and the disability certificate only talks of the injuries to the right upper limb and headache caused to the respondent no.1/claimant. In my opinion therefore on the basis of the documents Ex.AW1/1 to Ex.AW1/7B, no reasonable person, much less the Employee's Compensation Commissioner acting under the Employee's Compensation Act, could at all have arrived at a finding that there was an accident of the subject truck which was allegedly driven by the respondent no.1/claimant and that injuries were caused to the respondent no.1/claimant as pleaded and contended by the respondent no.1/claimant. To complete the narration, I am

kjsscanning below the so called medical documents filed by the respondent no.1/claimant as Ex.AW1/7, 7A and 7B:-

C-34
Ex AW1/7
8/25/15
CEL

19109

परिचारक पास		19312
(एक व्यक्ति के वास्ते)		
रोगी का नाम	:	Ahlok
वार्ड/शैय्या	:	E.H.W
निर्गत करने की तिथि	:	14/11/09
स्वरूप रानी नेहरु चिकित्सालय इलाहाबाद		निर्गत अधिकारी P. Singh

19109

परिचारक पास		19313
(एक व्यक्ति के वास्ते)		
रोगी का नाम	:	Ahlok
वार्ड/शैय्या	:	E.H.W
निर्गत करने की तिथि	:	14/11/09
स्वरूप रानी नेहरु चिकित्सालय इलाहाबाद		निर्गत अधिकारी P. Singh

1402 SW 0-2
 Sacred Heart Hospital, Jalandhar
 Name: Ashok Masih Hospital No: 139004

W. pulmocef cv 75mg 2
 W. Dloxider 101 - 2
 W. Amikacin 500mg - 2
 10 cc saline 2
 5 cc saline - 2

Date: 27/11/19

Signature

PH - IV - Ashok kr
 ABS - 28/11

~~with 10~~

with 10 28/11

S/L - Dr V K Pandey (mr)
 sdr

X-ray Rt leg AP
 full leg 14 } Afternoon
 Rt Ankle AP } 12/11
 full leg

EP

W

C-32
7 B
25/11/15
ECC

Phone: 2670984, 2671942

Sacred Heart Hospital, Maqsudan

G.T. ROAD, JALANDHAR CITY - 144 008

Name: Harokh Mann

Hospital No. 139004 Age 28 Sex FM

Tab. Voveran 50 mg 1.50
T. Refill c 1.50
X 2 wks

PAID

Dr. Anil Pal Singh
M.S. (Ortho)
Joint Specialist
Sacred Heart Hospital
G.T. Road, Jalandhar City - 144 008

Date: 28/11/15

17.(i) Learned counsel for the respondent no.1/claimant argued that once the employer has admitted to the relationship of employer and employee and the factum of accident, the Employee's Compensation Commissioner was entitled to arrive at a finding that there was an accident and this Court should not interfere because no substantial question of law arises under Section 30 of the Act.

(ii) In my opinion, this argument is wholly misconceived because if this argument is accepted, then, even where this Court finds that grave frauds are being perpetrated and totally false claim petitions are filed and the Employee's Compensation Commissioner has decided such cases on the basis of evidence which no reasonable person can believe, then, this Court would be required to hold that no substantial question of law arises simply because an employer 'admits' everything. After all an 'admission' is only one aspect which has to be examined with all other evidence which has come on record, and further that a Court is entitled to always examine the weight which ought to be given to a convenient 'admission'.

(iii) The contention of the counsel for the respondent no.1/claimant as argued before this Court that this Court must record the entitlement of the respondent no.1/claimant at least against the owner of the vehicle, is an argument in my opinion a very desperate attempt to create some sort of case because there is no appeal which is filed by the respondent no.1/claimant against the impugned judgment, and this Court is not called upon to adjudicate any appeal against a judgment only holding the insurance company/indemnifier to be liable but not

holding the owner of the vehicle liable. I fail to understand whether at all this argument of the respondent no.1/claimant can have any meaning because if the Employee's Compensation Commissioner by the impugned judgment only imposed liability upon the appellant/insurance company and has not imposed any liability upon the owner/respondent no.2 herein then why did not the respondent no.1/claimant file an appeal against the impugned judgment. In law the liability of the insurance company is as a substitute of the liability of the owner and on account of the indemnifying by the insurance company of the owner of the vehicle who has taken an insurance policy and there is an implicit finding by the impugned judgment of the liability of the owner/respondent no.2 and it is only for that reason that the insurance company is held to be liable because actual payments will have to be made by the appellant/insurance company on account of the insurance policy issued by it.

18. Reliance placed by the counsel for the respondent no.1/claimant upon the observations made by this Court in the case of *Shriram General Insurance (supra)* that there is no FIR required and yet the court can hold that an accident took place arising out of and in

the course of employment is an argument which has to be rejected because in the facts in *Shriram General Insurance's* case (*supra*) it was held that there is no requirement of any FIR or DD entry as there was no head on collision between two vehicles and the only accident which is referred to in the case of *Shriram General Insurance (supra)* to have occasioned is that at the time of affixing of jack to the vehicle the jack got de-fixed resulting in falling of the vehicle and suffering of injuries to the employee and therefore obviously in such a case it is not expected that there should be an FIR lodged or even a DD entry filed. Argument of the respondent no.1/claimant by placing reliance upon the judgment in the case of *Shriram General Insurance (supra)* is therefore rejected.

19. So far as reliance placed by the counsel for the respondent no.1/claimant upon the judgment in the case of *Mackinnon Mackenzie (supra)* is concerned, in fact the para which is relied upon in the case of *Mackinnon Mackenzie (supra)*, and already reproduced above, goes against the respondent no.1/claimant because it is seen that in para 6 the Supreme Court has observed that an inference can be arrived at only if facts are established before the

Employee's Compensation Commissioner from which inference can be drawn. Supreme Court has further clarified that inference can be drawn only from proved facts and that also only when it is a legitimate inference. Of course, when is a fact proved and when is an inference to be drawn has to necessarily depend on the facts of each case but the Supreme Court has clearly clarified that evidence must be such as would induce a reasonable man to draw the inference. Supreme Court has additionally clarified that if two views are possible of two equal degrees and there is a probability of choice out of the two views, then, taking of one probable view will not be taken as an illegal or incorrect conclusion. I have already in this regard observed above that if the Employee's Compensation Commissioner takes one possible and plausible view, then, no substantial question of law arises but surely a substantial question of law does arise when the findings are completely perverse and such findings and conclusions as arrived are those which no reasonable man could have arrived at in the facts of the present case.

20.(i) The next argument which is urged on behalf the respondent no.1/claimant is by placing reliance upon Regulation 9 of

IRDA Regulations, 2002 and the observations of the Supreme Court in the case of ***Babbu Miyan (supra)***. Even this argument in my opinion is completely without substance for various reasons.

(ii) Firstly, the appellant/insurance company in this case would have come to the picture at the time of the accident for appointment of the surveyor to make his report only if the appellant/insurance company was notified or informed in the first place. There is no evidence worth anything on record of the Employee's Compensation Commissioner that the appellant/insurance company was ever informed either by the respondent no.1/claimant or by the owner/respondent no.2. Learned counsel for the respondent no.1/claimant before this Court during the course of arguments has argued that an oral intimation was given, but clearly once again this argument of the oral intimation is nothing but only a desperation which has to be rejected because it is not even the pleading of the respondent no.1/claimant that there was oral intimation and even if this case of oral intimation was pleaded and deposed to no reasonable person/court can believe and accept the same as discharge of onus of proof. Therefore I hold that the appellant/insurance company having

not been informed, had no occasion in the facts of the present case to appoint any person for making a survey report.

(iii) Secondly, not only that no intimation was given to the appellant/insurance company, even a cursory reading of the Regulation 9 of the IRDA Regulations, 2002 shows that there is no necessary mandate on the insurance company that it has to appoint a surveyor in all cases. This becomes clear from the expression ‘in cases where a surveyor has to be appointed’ i.e meaning thereby that an insurance company has first to be convinced as also notified that there did take place really an accident. In fact the expression ‘in cases where a surveyor has to be appointed’ is preceded by expression of the notices being given to the insurer of the loss arising under the contract of insurance at the earliest and admittedly, as discussed above, there is no evidence at all on record of any intimation of either the accident or loss caused, either by the respondent no.1/claimant or by the respondent no.2/owner, to the appellant/insurance company. I therefore reject the argument urged on behalf of the respondent no.1/claimant by placing reliance upon Regulation 9 of the IRDA Regulations, 2002 and the judgment of the Supreme Court in the case

of *Babbu Miyan (supra)*. I may note that in the case of *Babbu Miyan (supra)* there is only a general observation in para 7 that the survey report when filed can be used to arrive at a conclusion of existence of relationship of employer and employee and in the present case this Court has already held that there is a relationship of employer and employee but the real issue is that whether an accident happened or did not happen arising out of and in the course of employment as is alleged by the respondent no.1/claimant.

21. One final aspect which has to be noted in this case is that although there is no issue raised by the appellant/insurance company as to the territorial jurisdiction however this Court is consistently receiving appeals with respect to the accidents which happened beyond Delhi, claimants do not reside in Delhi, the employer does not reside or carry out business at Delhi, and thus the requirements are not fulfilled with respect to the existence of jurisdiction of Employee's Compensation Commissioners at Delhi as required under Section 21(1) of the Act, yet the Employee's Compensation Commissioners are entertaining petitions and passing judgments awarding

compensations. This is also an aspect which must be looked at by the committee appointed as per *Mohd. Anwar's* case (*supra*).

(ii) I may note that the present counsel for the respondent no.1/claimant was also the counsel for the claimant in the judgment delivered in the case of *Baldev Singh (supra)*, has argued that Employee's Compensation Commissioners at Delhi have territorial jurisdiction in the view of the judgment of the Supreme Court in the case of *Malati Sardar Vs. National Insurance Co. Ltd. and others 2016 ACJ 542*. It is argued that the judgment in the case of *Malati Sardar (supra)* passed under the Motor Vehicles Act should be read even for Section 21 of the Employee's Compensation Act because the provision of Section 166 of the Motor Vehicles Act with respect to territorial jurisdiction is more or less similar to the provision of Section 21 of the Employee's Compensation Act. It was argued that in the case of *Malati Sardar (supra)* though the accident happened in Hooghly in West Bengal, and where the insurance policy was also issued by the branch office at Hooghly but the claim petition under the Motor Vehicles Act was held could be entertained by the Tribunal at Calcutta, and which position has been allowed by the Supreme Court

because there was a registered office of the insurance company at Calcutta where the MACT case was filed.

(iii) In my respectful opinion the judgment in the case of *Malati Sardar (supra)* was passed under the Motor Vehicles Act in the peculiar facts of that case whereby the courts sought to avoid harassment to the claimant only on account of territorial jurisdiction. It is also required to be noted that the judgment in the case of *Malati Sardar (supra)* is a judgment delivered by a Division Bench of two Judges of the Supreme Court but there is an earlier binding judgment of Division Bench of three Judges of the Supreme Court in the case of *Patel Roadways Limited, Bombay vs. Prasad Trading Company (1991) 4 SCC 270* and which holds that merely because a registered office of a company is situated at a place where a case is filed will not give jurisdiction if the cause of action has arisen within the jurisdiction of a branch office of the company and then only at the court where the branch office is situated that the case can be filed i.e the place of the principal office or head office cannot be the basis for creating territorial jurisdiction once there is subordinate office/branch office at a place where the cause of action has arisen. The Division

Bench judgment of three Judges of the Supreme Court in the case of *Patel Roadways Limited, Bombay (supra)* has not been referred to in this judgment of Division Bench of two judges of the Supreme Court in the case of *Malati Sardar (supra)*. I however do not have to observe anything further inasmuch as the issue of territorial jurisdiction does not arise as for some reason it has not been contended by the appellant/insurance company.

22. In the earlier part of this judgment I have referred to the judgments delivered by this Court in the cases of *Baldev Singh (supra)* and *Mohd. Anwar (supra)*. In my opinion the committee which is to be appointed of a retired Judge of this Court in terms of *Mohd. Anwar's* case (*supra*), this committee should also be directed to consider the impugned judgment passed by Sh. S.C. Yadav, Employee's Compensation Commissioner in this case which is dated 15.6.2015 and copy of this judgment and the judgment dated 15.6.2015 be placed by the Government of NCT of Delhi before the committee as will be constituted in terms of the directions in the case of *Mohd. Anwar (supra)* so that the committee is made aware of gross illegalities of the Employee's Compensation Commissioners in

allowing compensation cases resulting in defrauding of crores of rupees of the insurance companies. Copy of the present judgment along with copy of the judgment of Employee's Compensation Commissioner dated 15.6.2015 be sent to the Law Secretary of the Government of NCT of Delhi.

23.(i) Accordingly, this appeal is allowed. Impugned judgment of the Employee's Compensation Commissioner dated 15.6.2015 is set aside. Since the respondent no.1/claimant has already received the amount of compensation as directed by the impugned judgment of the Employee's Compensation Commissioner, the appellant/insurance company will be at liberty to recover the same from the respondent no.1/claimant, in accordance with law, including by filing an application for restitution before the concerned Employee's Compensation Commissioner.

(ii) While allowing this appeal, this Court also directs the Registrar General of this Court to draw out a complaint under Section 340 Cr.P.C. read with Section 209 of the Indian Penal Code against the respondent no.1 herein and the claimant before the Employee's Compensation Commissioner for filing the false case and filing of

false cases being an offence under Section 209 IPC and this complaint be sent to the competent court/authority for proceeding with the same in accordance with law. Necessary action be taken by the Registrar General as expeditiously as possible.

OCTOBER 26, 2017
Ne/ak

VALMIKI J. MEHTA, J

