

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

+ **FAO No. 103/2016**

% **10<sup>th</sup> November, 2017**

NATIONAL INSURANCE CO. LTD. .... Appellant

Through: Mr. Pradeep Gaur, Advocate.

versus

OMI DEVI & ANR. .... Respondents

**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 Employee's Compensation Act, 1923 impugning the judgment of the Employee's Compensation Commissioner dated 20.8.2015 whereby the claim petition filed by the respondent no. 1 herein, namely Smt. Omi Devi, was allowed and she was granted compensation of Rs.6,25,880/- along with interest at 12% per annum on account of death of her husband late Sh. Ramesh Chand while driving the vehicle as an employee of the respondent no. 1 before the Employee's

Compensation Commissioner, the Vehicle being Mahindra Xylo No. DL-1-VB-6777.

2. The facts of the case are that the deceased Sh. Ramesh Chand was employed by the respondent no. 1 before the Employee's Compensation Commissioner, and who is the respondent no. 2 herein, to drive his Vehicle Mahindra Xylo No. DL-1-VB-6777. It was pleaded that while driving Vehicle Mahindra Xylo on 7.6.2013 there was an accident at about 7:55 a.m. near H-Block, Antriksh Apartment, Vikas Puri, New Delhi. Sh. Ramesh Chand died as a result of injuries suffered because of the accident. An FIR was also registered with the police vide no. 185/2013.

3. The employer, respondent no. 2 herein, appeared before the Employee's Compensation Commissioner and admitted that the deceased was employed as a driver by him. Appellant/insurance company being the respondent no. 2 before the Employee's Compensation Commissioner denied that the deceased was the employee of the owner of the vehicle/respondent no. 2 herein.

4. Respondent no.1/claimant proved the following documents and discussion with respect to these proved documents is

found in paras 5 to 10 of the impugned judgment and which paras read as under:-

“5. The claimant had filed the following documents alongwith the claim petition:-

1. Photocopy of FIR
2. Photocopy of Post Mortem Report.
3. Photocopy of driving license of the deceased.
4. Photocopy of Identity Cards of the applicants/claimants.
5. Photocopy of Ration card.
6. Original Death certificate.
7. Photocopy of R/C Insurance cover note and permit of vehicle.

6. A perusal of copy of FIR No.185 dated 07/6/13 of P.S. Vikaspuri, reveals that an information vide DD No.8A dated 07/6/13 was received at 7.55 A.M. in P.S. Vikaspuri about the said accident near Gate of Antrix Appartment H Block Vikaspuri. After receipt of the information ASI Rajbir Singh alongwith Head constable Ompal No.251/W reached at the spot where they found one car XYLO-D-4 Mahindra bearing No.DL-1VB-6777 collided with a tree on one side of the road at the spot near Gate of Antrix Appartment H Block Vikaspuri. It was told to the ASI that injured driver has been taken to Park Hospital by PCR van. Therefore ASI while leaving the Head Constable at the spot of accident, reached at Park Hospital Khayala where they found that in MLC No.151/13 dated 07/6/13 in respect of injured, the Doctor has recorded that unknown S/o unknown resident of unknown was admitted in the hospital as brought dead. Later on investigation the name and address of the deceased was found to be as Ramesh Chand S/o Sh. Bhure Singh R/o H. No.100, Village Deenpur Najafgarh. As the police officer could not find any eyewitness, the on the basis of MLC found it to be a case of crime u/s 279/304A IPC; sent the dead body to Mortuary of DDU hospital through Constable Pradeep No.1408/W and accordingly registered the FIR.

7. As per Post Mortem Report No.724/13 dated 07/06/13 of DDU Hospital Hari Nagar New Delhi, in the History Column (as per inquest papers), it is recorded: alleged history of road accident on 07/6/13 at around 7.45 A.M. at main road park side near Antrix Apartment H Block Vikaspuri and was brought to Park Hospital in unconscious state at 8.02 A.M. wherein declared brought dead as per MLC No.151/2013 dated 07/6/13. In the column of General Description it is recorded in the PM report, “Clothes worn & their condition: Green half safari suit and grey underwear”. In the column of Chest (Thorax) under the sub-column Lungs it is recorded, “Both Lungs adherent to chest wall. On C/s & D/s both lungs exudating pus mixed with blood”. In the column of Heart and Pericardial Sac/Large Blood Vessels, it is recorded “Enlarged, Thickened

and hard in consistency. Hardening and Narrowing of the bilateral right and left coronary artery (left coronary artery blockage more than 90% and right coronary artery blockage more than 70%). White patches present on anterior aspect of heart of varying sizes". As per opinion of the department of Forensic Medicine DDU Hospital, the cause of death in respect of said Sh. Ramesh Chand age 45 years S/o Sh. Bhure Singh is "due to cardiac arrest subsequent to myocardial insufficiency". Time since death is mentioned as approx. 6 hours prior to post mortem examination. Autopsy in this case was started by DDU Hospital at 2.15 P.M. and completed at 3.15 P.M. on 07/6/13; therefore, the time of death may be between 8.15 A.M. to 9.15 A.M. on 07/06/13.

8. As per copy of DL filed by claimant, the deceased Sh. Ramesh Chand (DOB: 01/05/1964) was holding Driving License No.DL-0919860087532 valid till 28/7/13 issued by South West Zone of Transport Department, Govt. of Delhi.

9. As per family Ration Card No.APL 28100939 dated 17/5/5 of Sh. Ramesh Chand S/o Sh. Bhure Singh R/o V&PO Dinpur, Najafgarh, New Delhi-43, Sh. Ramesh Chand (1964) has his wife named Omi Devi (1970) and two sons named Pradeep Shokeen (1987) and Navish Shokeen (1991).

10. As per copy of Insurance Policy filed by the claimant the said vehicle was insured for the period 16/9/12 to 15/9/13 under policy No.360400/31/12/6300007519 with National Insurance Co. Ltd., Sector-3, Rohini, Delhi-85."

5. Learned counsel for the appellant/insurance company argued that the respondent no.1/claimant had failed to prove the relationship of employer and employee between her husband deceased Sh. Ramesh Chand and the respondent no. 2 herein, however in my opinion and as held by this Court in myriad occasions, that in private contracts between an owner of a private vehicle and a driver we cannot expect in this country to have written contracts of employment. Depending on case to case courts do arrive at existence of relationship of employer and employee and ordinarily the Employee's

Compensation Commissioner is entitled to take view of existence of relationship of employer and employee once the deceased is found to be driving the vehicle and it is not the facts that the vehicle was stolen and was being driven by the stolen driver who suffers injuries in an accident. Once on the basis of evidence two views are possible and the Employee's Compensation Commissioner arrives at one possible and plausible view of there existing a relationship of employer and employee, then no substantial question of law arises for entertaining of this appeal under Section 30 of the Employee's Compensation Act.

6. In view of the above discussion, no substantial question of law arises, and hence the present appeal is dismissed.

**NOVEMBER 10, 2017**

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**VALMIKI J. MEHTA, J**