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

% *Judgment delivered on: 28.05.2018*

+ **FAO 62/2017, CM APPL. 4938/2017**

M/S SHRI RAM GEN INS CO LTD. Appellant

Through: **Mr. Mohd. Mustafa, Advocate.**

Versus

SHAHAJAHAN & ORS Respondents

Through: **Mr. R.K. Nain, Advocate.**

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

This appeal impugns an order dated 16.11.2016 passed by the Commissioner, Employees Compensation allowing the claim of respondent no. 1 for compensation for the demise of one Mr. Abrar. It is the appellant's case that Mr. Abrar was employed with respondent no. 2 as a driver. R-2 has denied any such employment, he said that Mr. Kala was his driver and the vehicle was being driven by the latter. The vehicle had suffered extensive damages and damages which was paid by the appellant – insurance company.

Apropos the employment of Mr. Abarar by respondent no. 2, the respondents have relied upon the police compliant made after his demise in the alleged accident on 15.07.2009. Strangely though, no driving licence of

Mr. Abrar was produced by the respondent. The driving licence would have been the first step towards establishing that the deceased was employable as a driver. The police complaint relied upon is actually an intimation that Mr. Abarar had died in a motor vehicle accident in a motor vehicle bearing no. HR 38 G5469. However, the said intimation does not bear a DD entry nor was the document proven through summoning of records from the Police Station concerned. Therefore, by itself, the said police compliant would not prove the accident nor does it prove the employer-employee relationship with the respondent. No further document has been produced on record to establish any link of employment between respondent no. 2 and the deceased.

The learned counsel for respondent no. 1 contends firstly, that the onus of disproving the employer-employee relationship is on the alleged employer; once a claimant makes a statement that he was employed by him. In this regard, he relies upon the judgment in ***Shriram General Insurance Co. Ltd. vs. Babu & Anr.*** FAO 361/2013 decided on 19.03.2014, which held:-

“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”.

The Court is unable to see how the said judgment is applicable to the facts of this case because the insurance company has neither sought an MLC Report nor a DD entry. The police complaint itself is doubtful and it should have been proven that it was lodged.

Secondly, he relies upon the judgment in ***M/s Mackinnon Mackenzie & Co. Pvt. Ltd. vs.*** 1969 ACJ 419 to contend that when there is a causal connection between the death of the workman and his employment then it could be examined that the death had occurred on account of the employment. However, the said judgment is of no assistance to the respondent because employer-employee relationship has to be established in the first place and if an injury or death occurred to the workman then only the causal connection with the employer would need to be examined.

Thirdly, the learned counsel relies upon the judgment of this Court in ***Management of Best Roadways Ltd. vs. Smt. Darshna Devi & ors.*** FAO 267/2008 decided on 17.12.2009, to contend that oral evidence of both the parties are to be treated on equal footing and that in a case where the employer had denied the employment of the deceased, the Court still went on to hold that the employment did exist. In that case, the Court had drawn such inference from the oral evidence because the deceased was taken to Rajiv Gandhi Hospital and his medical expenses of Rs. 35,000/- were paid by the management.

The facts of the aforesaid three judgments are entirely different, therefore, neither of them are of any assistance to R-1.

Finally, the learned counsel for the respondent relies upon the decision of the Supreme Court in *Babbu Miyan & Anr. vs. New India Assurance Co. Ltd. & Anr.* 2017 ACJ 721, which held that the Commissioner did not err in relying upon the evidence adduced i.e. the report of the Surveyor and the First Information Report (FIR) etc. because the Surveyor's report, commissioned at the behest of the Insurance Company had recorded that the deceased was in the employment of the owner of the truck as a cleaner and was getting a salary of Rs.4,000/- per month.

In the present case, however, there is no such Surveyors Report nor is there an FIR registered, therefore the case is clearly distinguishable. He also relies upon a decision of the Supreme Court in *Mackinnon Mackenzie & Co. Pvt. Ltd. vs. Ibrahim Mahmood Issak*, 1969 ACJ 422 to contend that the Commissioner must not surmise, conjecture or guess but he may draw an inference on the proved facts so long as it is a legitimate inference. There cannot be any doubt apropos the said proposition of law, however, whether it will be applicable in the present facts of the case is the question to be seen. As has been clear from the preceding discussion, there were no affidavits or evidence led by the claimant and there was nothing worthwhile on the record, for the Commissioner to have inferred that there was an employer-employee relationship. This cited case too is of no assistance to R-1.

In view of the above, for the impugned order to have inferred that Mr. Abarar was employed by respondent no. 2, is unsustainable since it is not based on any record, data or supporting evidence.

In the circumstances, the impugned order is liable to be and is set aside. The appeal is allowed.

NAJMI WAZIRI, J.

MAY 28, 2018

RW/Sb

