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

% *Judgment delivered on: 08.02.2018*

+ **FAO 91/2017 & CM APPL. 7158/2017**

TATA AIG GENERAL INSURANCE CO LTD Appellant

Through: Mr. Rudra Kahlon, Advocate.

versus

ARUNA DEVI AND ORS Respondents

Through: Mr. Anil Kumar Singh and Mr. Dilip Singh, Advocates.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

CM APPL. 7160/2017

For the reasons mentioned in the application, the delay of 61 days in filing the appeal is condoned, subject to the cost of Rs. 3,000/- to be paid to the respondent.

The application is disposed-off.

FAO 91/2017 & CM APPL. 7158/2017

1. This appeal impugns the compensation award passed on 17.10.2016 by the Commissioner Employees' Compensation, North West District, New Delhi awarding an amount of Rs. Rs.8,31,920/- along with simple interest @ 12% per annum w.e.f 03.02.2014 till the date of regularization. This amount has been deposited in the Court. The grounds of challenge are that:- i) the appellant/insurer of the vehicle is not liable for the compensation claim

because the alleged employer/employee relationship between the deceased, Mr. Subodh Dass and respondent no. 7 Mr. Sunny Kapoor was never established; ii) after impleadment of the appellant in the compensation proceedings on 16.03.2015, an opportunity was not granted to cross-examine the witnesses were produced by the claimants.

2. The learned counsel for the appellant states that there is an error in procedure prescribed in law and resultant denial of natural justice inasmuch as the appellant has not been heard. It was the claimant's case that Mr. Subodh Dass was employed by Mr. Sunny Kapoor to carry out loading and unloading of building material which was to be delivered at various places in Delhi. The said employment is stated to have been for almost a decade, however, since the wages/remuneration for the work had been done in cash and no salary slip or other documents were issued by the employer, the same could not be adduced in the claim petition.

3. On the cold night of 03.01.2014, four persons were employed by the respondent no. 1 along with the driver of the insured vehicle for ferrying bricks from Sonapat (Haryana) to CC Colony, Delhi. During the process of unloading the bricks in Delhi, Mr. Subodh Dass is stated to have started feeling unwell, however, since they were required to undertake another trip, Mr. Subodh Dass did not take the risk of losing his continued employment.

4. The learned counsel for the appellant submits that there was no untoward incident or accident during the period of employment which could be said to have caused the demise of Mr. Subodh Dass. However, the learned counsel for the respondent relies upon the judgment of the Supreme Court in *Param Pal Singh vs. National Insurance Co. Ltd. and another*

2013 ACJ 526 which held that an untoward incident or accident would be that which is not anticipated in the ordinary course. It held as under:-

“19. On behalf of the first respondent its Divisional Manager filed his proof affidavit while on behalf of the second respondent one Anil Sharma was examined. As far as the employment of the deceased was concerned, the Commissioner has noted that the FIR which was marked as Exhibit AW1/1 disclose that the second driver Bhure Singh himself admitted therein that the deceased was the senior driver who was driving the vehicle at the time of his death. As regards the said piece of evidence contained in AW1/1 nothing was brought out in his evidence either by way of trip sheet or attendance register or payment of wages register or any other document to show that the deceased was not in the employment of the second respondent at any point of time or on the fateful day. The Commissioner also noted that there was no cross-examination of WW1/A Santokh Singh on that issue. On the other hand RW.1 Anil Sharma in his cross-examination admitted that a sum of Rs.10,000/- was given to the family of the deceased for cremation purposes. Therefore, the issue relating to the employment of the deceased by the second respondent as found to have been established before the Commissioner cannot be assailed.

20. Once we cross the said hurdle only other question to be considered is whether death of the deceased was in an accident arising out of and in the course of his employment with the second respondent? It is common ground that the vehicle which was driven by the deceased did not meet with any road accident on 17.07.2002. As a matter of fact, the deceased while driving the vehicle from Delhi to Nimiaghat when reached near the destination, namely, Nimiaghat felt giddy and thereafter stated to have collapsed as he was

found in a faint condition in the vehicle which he managed to park on the road side.

21. The entitlement to claim compensation is therefore dependent on fulfillment of the stipulations contained in Section 3(1) of the Workmen's Compensation Act, which read as under:

“3. Employer's liability for compensation.-(1) If personal injury is caused to an employee by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter:

Provided that the employer shall not be so liable –

a) ”

b) ”

i) ”

ii) ”

iii) ”

22. However, there are decisions of the English Court as early as of the year 1903 onwards stating that unlooked-for mishap or an untoward event which is not expected or designed should be construed as falling within the definition of an “accident” and in the event of such “untoward” “unexpected” event resulted in a personal injury caused to the workman in the course of his employment in connection with the trade and business of his employer, the same would be governed by the provisions of Section 3 of the Workmen's Compensation Act. Such a legal principle evolved from time immemorial got the seal of approval of this Court and for this purpose we can refer to the

celebrated decision in Ritta Farnandes (supra). After referring to the decision of House of Lords in Clover Clayton & Co. V. Hughes reported in 1910 A.C. 242 this Court referred to the relevant passage in the decision of House of Lords in paragraph 4, which reads as under:

“4. Even if a workman dies from a pre-existing disease, if the disease is aggravated or accelerated under the circumstances which can be said to be accidental, his death results from injury by accident. This was clearly laid down by the House of Lords in Clover Clayton & Co. v. Hughes where the deceased, whilst tightening a nut with a spanner, fell back on his hand and died. A post mortem examination showed that there was a large aneurism of the aorta, and that death was caused by a rupture of the aorta. The aneurism was in such an advanced condition that it might have burst while the man was asleep, and very slight exertion or strain would have been sufficient to bring about a rupture. The County Court Judge found that the death was caused by a strain arising out of the ordinary work of the deceased operating upon a condition of body which was such as to render the strain fatal, and held upon the authorities that this was an accident within the meaning of the Act. His decision was upheld both by the Court of Appeal and the House of Lords:

“No doubt the ordinary accident,” said Lord Loreburn, L.C. “is associated with something external: the bursting of a boiler or an explosion in a mine, for example. But it may be merely from the man’s own miscalculation, such as tripping and falling. Or it may be due both to internal and external conditions, as if a seaman were to faint in the rigging and tumble into the sea. I think it may also be something going wrong within the human frame itself, such as straining of muscle or the breaking of a blood vessel. If

that occurred when he was lifting a weight, it would properly be described as an accident. So, I think, rupturing an aneurism when tightening a nut with a spanner may be regarded as an accident.” With regard to Lord Macnaghten’s definition of an accident being “an unlooked for mishap or untoward event which is not expected or designed” it was said that an event was unexpected if it was not expected by the man who suffered it, even though everyman of commonsense who knew the circumstances would think it certain to happen.”

5. Mr. Subhodh Dass became ill during the course of unloading of bricks, post which he was taken to the hospital, where he passed away.

6. It is recorded that the “*Death is due to coronary artery disease and its sequelae- a natural cause of death*”. Evidently, the cause of the heart failure was due to heavy cold, to which the workman/employee was exposed on a cold wintry night in the course of his employment, i.e loading bricks onto a truck, travelling with it to another city and unloading it at the destination before the night ended. And all this perhaps without the requisite protective work equipments or gear- no gloves or footwear or helmets to protect the limbs and head from injury, as well as from the cold bricks; which would be piled up row-upon-row, brick-by-brick onto the truck and then unloading similarly. This entire procedure-the discharge of duty during employment is *ex facie* extremely hard labour, exhausting and fraught with risks. It becomes all-the-more so when the work has to be discharge on a cold winter night, while being exposed to the thousands of cold bricks being picked by bare hands and the chilling winds on the back of the transport vehicle. Such strenuous labour, coupled with the harsh element and being opposed to the circadian rhythm of the human species, perhaps without adequate food or

hot beverages, could well induce the serious health and adverse medical conditions, which in the present case proved fatal for the unfortunate employee. The employer has not lead any evidence to prove that he provided the requisite protective gear and other provisions to his workmen/employees either on that fateful night or otherwise in general, to protect them from injuries or from adverse exposure to extreme weather conditions-the chilly winter night. Therefore, adverse inference will be drawn against him, that he failed to provide such facilities or to take care of the deceased workman as he ought to have.

7. In the circumstances, the same would be classified as an untoward incident and is therefore covered under the Act. The learned Commissioner has rightly reasoned and concluded as under:

“14 It is therefore, held that the claimant/s is/ are entitled to receive an amount of Rs.8,31,920/- from the respondent no-2 i.e. TATA AIG General Insurance Co. Ltd. on account of the Death Compensation of deceased Sh. Subhodh Dass.

15 That as per the provisions of the Act, the respondents should have made the payment of compensation within one month from the date it fell due i.e. 03.01.2014, but the respondent failed to do so. Therefore, as per the provisions of Clause (a) of Sub Section (3) of Section 4A of the Act, the claimant is also entitled for simple interest @ 12% p.a. on the amount o compensation i.e. Rs.8,31,920/- w.e.f. 03.02.2014 till the date of realization of the compensation amount by the Respondent No- 2.

16 That as decided above, the Respondent No-2 i.e. TATA AIG General Insurance Co. Ltd. hereby directed to deposit the above amount of Rs. 8,31,920/- alongwith simple interest @ 12% per annum w.e.f. 03.02.2014 till the date of

payment of the same by Draft / Pay Order in favour of "Commissioner Employees Compensation-VII within 30 days from the date of this order, failing which proceedings to recover the amount of compensation as well as the interest and penalty, as an arrears of land revenue, shall be initiated as per the provisions of Section 31 of the Act.

17 That as far as penalty upon the respondents u/s 4-A of the Act, after examination/ consideration of all the facts of this case, it is found that the delay caused in making the payment is not intentional but procedural, therefore, this Authority is of the considered opinion that this is not a fit case for imposing penalty upon any of the respondent.

8. In the circumstances, the Court finds no reason to interfere with the impugned order. The appeal is without merits and accordingly it is dismissed.

9. An amount of Rs. 1 lac shall be released to the respondent and the remaining amount shall be kept in an FDR of Rs. 1 lac each that matures every successive year, which upon maturity along with the interest shall be released to the mother of the minor children. The said amount shall be deposited in her account which would be maintained near the place of her residence.

10. The appeal stands disposed-off in the above terms.

11. The Trial Court Records be returned.

NAJMI WAZIRI, J

FEBRUARY 08, 2018

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