

\$~29

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

% *Judgment delivered on: 16th March, 2018*

+ **FAO No. 105/2018**

FULLA DEVI & ORS. Appellants

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

Versus

M/S NATIONAL INSURANCE COMPANY
LTD. & ANR.

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

FAO No. 105/2018 & CM APPL. 10337/2018, CM APPL. 10338/2018

1. This appeal impugns the order dated 11.01.2018 passed by the Commissioner, Employees Compensation dismissing the appellants' claim for compensation under the Employees' Compensation Act, 1923 (in short the Act). It is the case of appellant no.1 that her husband-late Mr. Manoj Kumar, was employed by respondent no.2 - Mahender Singh, to drive his motor vehicle - a truck, bearing no. HR-63-0849 for a monthly wage of Rs. 4000/- along with Rs. 100 per day of food allowances. He was 26 years old. It is the appellant's case that Mr. Manoj Kumar, while on a business trip on 27.02.2018, from Delhi to Dehradun was driving the truck owned by respondent no. 2. His co-driver Mr. Nasiv Sah, was sitting beside him but enroute, the vehicle met with an accident, 1 Km before Shamli, Uttar Pradesh. They both received fatal injuries. Mr. Manoj Kumar was shifted

to a hospital in Delhi where he succumbed to his injuries on 09.03.2008, while still under treatment. According to appellant no.1, the employer/owner of the vehicle, i.e. respondent no. 2 was informed of the accident on the same day and a claim for compensation against him ensued, even otherwise a notice under Section 10 of the Act had been served upon him. However, there was a lapse of over 7 years and 9 months in the filing of the claim petition. As per section 10 of the Act, a claim would not be entertained unless it is filed within two years from the date of accident. The delay of five years nine months is sought to be explained by the appellant by relying on the judgment of the Supreme Court in *Trustees, Bombay Port vs Premier Automobiles, AIR 1974 SC 923* and *Mangal Chand vs Forest Department (1985) ILLJ 369 HP*

2. The aforesaid vehicle, owned by respondent no.2 was insured by respondent no.1. In his written statement before the Commissioner, the employer-respondent no.2 had stated that after the accident, the claimant never contacted him. Although he had objected to the maintainability of the application for condonation of delay he went on to state that the said Manoj Kumar was employed by him as a driver and had succumbed to the fatal motor accident which occurred on 27.02.2008 and that the employer had filed a police complaint on the next day i.e. 28.02.2008.

3. The insurance company-respondent no.1 objected to the said claim on the ground that there was no employer-employee relationship between respondent no.2 and the deceased Manoj Kumar. The driving license of Manoj Kumar was never produced; medical documents regarding his injury, subsequent treatment in a hospital in Delhi and his death certificate also, were never produced. Furthermore, the employer-respondent no.2 had shown no documents on records to establish that Manoj Kumar was

employed by him i.e. to substantiate the date of commencement of such employment, the wages paid, the expenses incurred during the business trip of the vehicle from Delhi to Dehradun, details of the consignment being delivered or the purpose for which the vehicle was going from Delhi to Dehradun. Additionally, there is absolute silence about Mr. Nasiv Sah, who is claimed to be co-driver and another employee of respondent no.2.

4. The claimants had not filed a single document to prove their averments or claim. The impugned order found that the claimants had filed no proof of identity of Mr. Manoj Kumar; nothing to prove that he was in the vehicle, which met with the accident. Apropos the complaint filed with the Shamli Police Station, the impugned order notes that the name of the driver was mentioned as Mr. Raj Kumar and not as Mr. Manoj Kumar-the deceased husband of the appellant. No medical records were filed to show that Mr. Manoj Kumar had suffered grievous injuries in a motor vehicle accident, while he was driving a truck, as would have been recorded in the medical reports if it were the case. Respondent no.2 admitted that Mr. Manoj Kumar was his employee but this admission was disregarded in the impugned order because he failed to produce any details regarding Manoj Kumar's employment- such as office ledger of salary, expenses, daily allowances to drivers, driving licence of Manoj Kumar or other drivers, identity proof of Manoj Kumar, tenure of his employment, etc.; instead Respondent no.2 mentioned that the deceased driver was one Mr. Raj Kumar. Interestingly, respondent no.2 had denied that Mr. Manoj Kumar was drawing a salary of Rs. 4,000/- and further, failed to prove the amount which was due to the deceased.

5. The impugned order has taken into consideration all the above facts and concluded that in the absence of any proof of employer-employee

relationship, a valid driving licence, the very identity of Manoj Kumar himself, absence of proof of any accident having occurred on 27.02.2008 in which he was involved, the silence about Nasiv Sah, the co-driver, it concluded that the claim was bogus and ought to be dismissed. The impugned order also notes that while respondent no.2 accepts Manoj Kumar as his employee, in his police complaint on 28.02.2008, he does not mention the name of Manoj Kumar. Instead his complaint to the Shamli Police Station in Uttar Pradesh, the name of one Mr. Raj Kumar is mentioned. There is no reference to any Manoj Kumar or Nasiv Sah. The respondent no.2 is also silent about Raj Kumar, who was allegedly the driver of the truck at the time of accident, yet he goes on to submit that Manoj Kumar was the driver. It is odd that two persons could be driving the truck simultaneously. The claim of the appellant that Nasiv Sah too died in the fatal road accident is not made out. The respondent no.2 did not appear in the witness box nor offered himself to be cross-examined by the other parties.

6. Accordingly, the impugned order concluded that the evidence remained untested and hence, the inference drawn would be that the averments in the affidavit were not correct. A mere statement of the vehicle owner without any supporting evidence cannot be presumed to be correct. In the absence of the aforesaid relevant documents, the impugned order rightly concluded that the claimant had failed to prove that Mr. Manoj Kumar, who allegedly passed away in a fatal motor vehicle accident, was employed by Mr. Mahender Kumar- respondent no.2.

7. The claim is otherwise liable to be dismissed on the ground of non-compliance of Section 10 of the Act which reads as under:-

“10. Notice and Claim- (1) No claim for compensation shall be entertained by the Commissioner unless notices of the accident has been given in the manner hereinafter provided as soon as practicable after the happening thereof and unless the claim is preferred before him within two years from the date of death.”

8. The alleged accident took place on 27.02.2008, however, no notice was given by the insured, i.e. respondent no. 2 regarding the death of the driver. The appeal is not maintainable as the appellants had not given sufficient cause/ satisfactory explanation for the delay of 5 years and 9 months. The Supreme Court vide judgment dated 22.08.2013 in ***Basawaraj & Ors. Vs. The Spl. Land Acquisition Office***, Civil Appeal No. 6974/2013, observed as follows:

“15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the “sufficient cause” which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bonafide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of

the statutory provisions and it tantamounts to showing utter disregard to the legislature”.

9. In ***New India Assurance Company Ltd. Vs. Balbir Singh & Ors***, decided on 27.05.2014 in FAO No. 209/2006, this Court observed as follows:

“8. The aforesaid paras show that there is no necessary discussion with respect to condonation of delay on the period of limitation provided under the Act and only a lip service is done to the requirement of sufficient cause. Therefore I hold that there is no sufficient cause for condonation of the huge delay of more than 20 years in the facts of the present case.”

10. The learned counsel for the appellants insists that a case for compensation is made out and the impugned order is erroneous. This Court is not persuaded by such bald submissions, unsupported by any rationale.

11. For the aforesaid reasons, the Court finds no reason to interfere with the impugned order. The appeal is without merit and is, accordingly, dismissed.

NAJMI WAZIRI, J

MARCH 16, 2018

P/RW