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

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Date of Decision: 30th July, 2018

+ **FAO 234/2012 & CM APPLs. 28073-28074/2017, 46014/2017**

HI LINE AIRTEL CONNECT

..... Appellant

Through: **Mr. Pankaj Gupta, Advocate with Mr.
Jatinder Bhalla, proprietor of
Appellant**

versus

SHILPI DAS BARMAN & ORS

..... Respondents

Through: **Mr. Piyush Sachdev, Advocate for R-1
Mr.R.K. Nain, Advocate for LR's of R-
1 & R-2**

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

J U D G M E N T

CM No. 28074/2017

1. Delay is condoned. Application disposed of.

CM No. 28073/2017

2. Application allowed. The daughter of deceased respondent nos.2 and 3 is substituted in place of respondent nos. 2 and 3.

FAO 234/2012

3. The appellant has challenged the order dated 09th May, 2012 whereby the Commissioner, Employees Compensation awarded compensation of Rs.4,15,960/- and funeral expenses of Rs.2,500/- to the respondents.

4. On 08th April, 2003, Abhijit Das Burman met with an accident while

driving a scooter which resulted in fatal injuries. Abhijit was survived by his widow and parents who claimed compensation before the Commissioner, Employees Compensation on the averments that Abhijit was working as a fieldsman-cum-salesman with designation of sales promoter with the appellant since 16th August, 2001; on 08th April, 2003 at 06:30 PM, Abhijit was on duty in connection of sales of cellular phone when he met with a road accident near Sector-1, Police Station, Noida ; Abhijit was taken to Kailash Nursing Home, Noida from where a message went to his office and the office informed his wife; three employees of the appellant-management namely Gaurav, Nidhi and Sumit went to the house of Abhijit at 09:20 PM and they took his wife (respondent No.1) to the hospital; Abhijit was shifted to AIIMS and then to Safdarjung Hospital; on 11th April, 2003, Abhijit was shifted to New Life Hospital in the state of coma; on 15th April, 2003, Abhijit was shifted to Sehgal Nursing Home, Kailash Colony where he underwent brain surgery; Abhijit expired on 30th April, 2003 and was cremated on 01st May, 2003; Abhijit was aged 30 years and was drawing wages of Rs.5,500/- along with conveyance charges of Rs.500/- per month.

5. The appellant admitted the relationship of employment with Abhijit, hereinafter referred to as 'deceased'. The appellant contested the claim on the ground that the accident did not take place during the course of the employment as the job of the deceased was to promote the sales in the showroom and he was not authorized to work outside the office. According to the appellant, the deceased was not on duty at the time of accident.

6. The respondent examined Aftab Alam who deposed that on 08th April, 2003, he had gone to the residence of the deceased at about 05:30PM but the deceased had not reached home. The witness talked to the deceased on his

mobile who told him that he was with a customer and the deceased would meet him the next day.

7. The appellant examined its sole proprietor who deposed that the deceased was working as sales promoter in the showroom and the deceased was authorized to work in the showroom only and he further deposed that the deceased left the showroom on 08th April, 2003 at 05:30PM and was not on duty at the time of the accident.

8. The Commissioner, Employees Compensation held that the deceased was on duty at the time of accident and the accident occurred during the course of employment with appellant. The Commissioner, Employees Compensation computed the compensation by taking the wages of Rs.4,000/- per month and applied the factor of 207.98 according to the age of the deceased. The Commissioner computed the compensation of Rs.4,15,960/-. The Commissioner also awarded funeral expenses of Rs.2,500/-

9. Learned counsel for the appellant urged at the time of the hearing that the deceased was working in the showroom of the appellant and was not required to work outside the showroom. It was further submitted that the deceased was not on the duty at the time of the accident and therefore, the accident did not arise during the course of the employment of the deceased. It was further submitted that respondent No.1 has not signed the claim petition and she had remarried. It was further submitted that respondent No.2 and 3 were not dependent upon the deceased and were not entitled to compensation. It was further submitted that the Commissioner had no jurisdiction to entertain and try the petition. Reliance was placed on *Saurashtra Salt Mfg. Co. v. Bai Valu Raja*, AIR 1958 SC 881, *Mackinnon*

Machenzie & Co. (P) Ltd. v. Ibrahim Mahmmed Issak, 1969 (2) SCC 607, *Regional Director, E.S.I. Corporation v. Francis De Costa*, (1996) 6 SCC 1, *Daya Kishan Joshi v. Dynemech Systems (P) Ltd.*, (2018) 11 SCC 642 and *B.M. Habeebullah Maricar v. Periaswami*, AIR 1977 Mad 402.

10. Learned counsel for the respondents urged at the time of hearing that the deceased was on duty at the time of accident with the customer and the accident arose during the course of the employment with the appellant. It was further submitted that all the respondents were dependent on the deceased at the time of the accident. It was further submitted that the re-marriage of the widow of the deceased would not affect her claim for compensation as she was fully dependent on the deceased at the time of the accident. It was further submitted that the respondents were residing in Delhi at the time of filing of this claim petition and therefore, the objection of territorial jurisdiction was misconceived. Reliance is placed on *Kaveri Structurals v. Bhagyam*, 1976 (2) KarLJ 39, *Pratap Narain Singh Deo v. Srinivas Sabata*, 1976 AIR 222, *Messrs. Mackinnon Mackenzie v. Ritta Farnandes*, 1969 ACJ 419 and *Kerala State Electricity Board v. Valsala K*, AIR 1999 SC 3502.

11. This Court has examined the evidence led by both the parties to ascertain whether the deceased was on duty and the accident arose during the course of employment of the deceased. PW-1 talked to the deceased on his mobile before the accident when the deceased told him that he was on duty. The statement of deceased is in the nature of a dying declaration and this Court does not find any reason to disbelieve it. On the other hand, contrary statement of sole proprietor of appellant does not pass the judicial belief and is not believable. Even assuming that the deceased was required to

work only in the showroom, it does not preclude the management from entrusting a work outside the showroom and the deceased could not have refused to do the assigned work merely on the ground that he would work only in the showroom. This Court is of the view that the deceased was on duty at the time of the accident and the accident arose during the course of his employment with the appellant. The judgments relied upon by the appellant are in the facts of those cases.

12. With respect to the appellant's objection to the dependency of the respondent's, this Court is of the view that the respondents are "dependent" within the meaning of Section 2(1)(d) of the Employees Compensation Act.). Vide order dated 22nd July, 2016, this Court directed the respondents to remain present in Court on 23rd August, 2016. On 23rd August, 2016, counsel for the respondents submitted that respondent No.3 (mother of the deceased) was paralyzed and respondent No.2 (father of the deceased) was unable to come as he was the only person to look after respondent No.3. Respondent No.2 and 3 were resident of West Bengal and this Court directed the DCP of the concerned district to verify the condition of respondent No.2 and 3 and submit a report. Relevant portion of the order dated 23rd August, 2016 is reproduced hereunder:

- “2. Respondents No.1 to 3 are not present in Court. Learned counsel for the respondents submits that respondent No.3 is paralysed and respondent No.2 is unable to come as he is the only person to look after respondent No.3. Learned counsel for respondents further submits that she has no instructions from respondent No.1.
3. Before proceeding further, this Court would like to be satisfied with respect to the condition of respondents No.2 and 3. The DCP of the concerned district is directed to have the condition of respondents No.2 and 3 verified

by deputing a senior officer to visit them and submit a report. The concerned officer shall also collect the photographs and the medical record of respondents No.2 and 3 and submit the same along with the report.

4. *The address of respondents No.2 and 3 is as under: -
“Q. No.T-1, 44/3, V.K. Nagar,
Durgapur, Distt. Burdwan,
West Bengal – 713210.”*

13. On 11th January, 2017, the report was received from the Deputy Resident Commissioner, Government of West Bengal, according to which respondent No.3 (mother of the deceased) had suffered serious cerebral attack turning her invalid and making her completely bed ridden and she had no means of sustenance. Relevant portion of order dated 11th January, 2017 is reproduced hereunder:

- “6. *The appellant as well as his counsel submits that the parents of the deceased namely respondents No.2 and 3 were not dependent on the deceased and, therefore, are not entitled to any compensation under the Employee’s Compensation Act.*

7. *The arguments made by the appellant present in Court as well as his counsel is highly irresponsible inasmuch as a report has been received from the Deputy Resident Commissioner, Govt. of West Bengal which records that respondent No.3, mother of the deceased has suffered a serious cerebral attack turning her invalid and making her completely bed ridden and she has no means of sustenance. The relevant portion of the report is reproduced hereinunder:-*

“The loss of their only son created a deep shock on the minds of Respondent No.2 & 3. On 06th December, 2013 at about 06:00 hrs Smt. Shyamashri Das Barman (Mother of Late Abhijit Das Barman & Respondent No.3) got a serious cerebral attack turning her invalid

and making her completely bed ridden. Till date, she has to live with much physical disability. Shri Madhusudan Das Barman (Husband of Smt. Shyamashri Das Barman & Respondent No.2) was an employee of MAMC, Durgapur. Due to closure of MAMC, he did not get full retirement benefits as an employee of MAMC. Besides, a huge amount of money has to spend every month towards the treatment of his wife Smt. Shyamashri Das Barman (Respondent No.2) which he cannot afford. There is no other person to look after Smt. Shyamashri Das Barman (Respondent No.3) except Shri Madhusudan Das Barman (Respondent No.2). As a result they have to live in a very miserable condition.

At present, they have to live depending on the monetary help of their daughter Smt. Rinku Sen Chowdhury and Son-in-Law Shri Pradip Sen Chowdhury, who is a Teacher residing at Teachers' Colony, Baishali, Durgapur-14, PS-NTS, Dist-Burdwan, WB."

- 8. The report further records that respondent No.2 was working with MAMC, Durgapur which has been closed and no retirement benefits have been given by MAMC to respondent No.2. Respondent No.2 has no financial means to look after respondent No.3 and there is no other person other than respondent No.2 to look after respondent No.3. Despite the said report being read over in Court today, the appellant present in Court submits that he has no sympathy with respondents No.2 and 3 and he again repeats that respondents No.2 and 3 were not dependent on the deceased son and they are not entitled to any compensation.*
- 9. Considering the report of the Deputy Resident Commissioner, Govt. of West Bengal, the Registrar General is directed to instruct UCO Bank, Delhi High Court Branch to discharge the FDR in W.P.(C)*

19537/2005 in respect of the amount deposited by the appellant and instruct UCO Bank to release a sum of Rs.50,000/- to respondent No.2 by transferring the said amount to his savings bank account near the place of her residence. UCO Bank shall keep balance amount in FDR in its name till further orders. This is subject to the final outcome of this petition.”

14. The appellant’s objection to the dependency of respondent No.1 to 3 is a highly irresponsible argument and is rejected.

15. There is no merit in the appellant’s objection to the territorial jurisdiction of the Commissioner. The Commissioner rejected the appellant objection vide detailed order dated 28th September, 2010. The Commissioner also noted that this objection was not raised in the written statement and was raised after two rounds of litigation. There is no infirmity in the finding of the Commissioner in this regard.

16. There is no merit in this appeal which is hereby dismissed. Pending application is disposed of.

17. List for disbursement of the compensation amount on 03rd August, 2018.

JULY 30, 2018
ds

J.R. MIDHA
(JUDGE)