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

% *Judgment delivered on: 8th May, 2018*

+ **FAO 128/2018, CM APPL. 13398/2018**
ABDUL GAFFUR @ ABD. GAFUR & ANR Appellants
Through: **Mr. R.K. Nain, Advocate.**

versus

SACHIT BHAGAT Respondent
Through: **Mr. Akhilesh Kumar, Advocate.**

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

1. This First Appeal under section 30 of the Employee's Compensation Act, 1923 (in short 'the Act') impugns an order dated 27.09.2017 passed by the Commissioner, Employee's Compensation dismissing the appellants' claim for compensation, for want of jurisdiction, as the claimants were ordinarily residents of Bihar where the accident happened, while the motor vehicle involved was registered in Gurgaon, Haryana.

2. The brief facts of the case are that the deceased Sarfaraj Alam S/o Abdul Gafur @ Agr. Gafur, was employed with the respondent as a "cleaner" for the latter's motor vehicle bearing no. HR-55-J-5589. On 17.05.2016, Sarfaraj Alam met with an accident arising out of and during the course of his employment that resulted in his death on 26.05.2016; under the

respondent's directions, the deceased was transporting fruits on the said vehicle from Azadpur Mandi to Muzaffarpur (Bihar). The vehicle was unloaded at Muzaffarpur; it was then taken to leechi orchards to get it loaded with the leechi fruit. On 17.05.2016 when the vehicle reached the leechi orchards, it came into contact with a high tension electric wire. Sarfaraj was electrocuted, hence, could not escape from the vehicle, his body sustained severe burn injuries. He was taken to a hospital where, after a period of five days he succumbed to the injuries. He was drawing wages of Rs. 9000/- per month and Rs. 200/- per day as food allowance.

3. It is the appellants' case that the employer-respondent ordinarily carries out his business at Azadpur in Delhi. He relies upon the latter's affidavit dated 13.04.2017 filed before the Commissioner, Employees' Compensation showing his address at Village Bharola, Near New Subzi Mandi, Delhi-110033. The Court would note that the said address is shown as a 'residential address' and not as a place from where the respondent carries on his business.

4. The learned counsel for the appellant submits that affidavit sworn on 13.04.2017 clearly shows that respondent no. 1-employer resides in Delhi and has stated that he carries on his business in Delhi, therefore, the claim petition would be maintainable in Delhi. It is another matter though, that R-1 may have disputed the employment of the deceased Mohd. Sarfaraj Alam but that determination would be subject to trial. The learned counsel for the respondent contends that under section 21(1)(c) of the Act, a claim petition would be maintainable only when the employer has his registered office in Delhi. The said provision of the statute reads as under:-

*“21. Venue of proceeding and transfer of the Act.- (1)
Where any matter under this Act is to be done by or before a
Commissioner, the same shall, subject to the provisions of this
Act and to any rules made hereunder, be done by or before the
Commissioner for the area in which—*

*(a) the accident took place which resulted in the injury;
or*

*(b) the [employee] or in case of his death, the dependant
claiming the compensation ordinarily resides; or*

(c) the employer has his registered office”

5. The Court is of the view that the Employees’ Compensation Act being a socially beneficial legislation, a more accommodative and liberal interpretation enhancing the objective of Act, has to be accorded to its provisions. Its Preamble encapsulates its objective, i.e. “to provide for the payment by certain classes of employers to their employees of compensation for injury by accident”. The types of employment covered under the Act are enumerated in Schedule II of the Act read with section 2(dd). These employees may be employed by persons who may not have a registered office. But in the event of an injury, they cannot be denied the benefits the statute secures for them. The stipulation regarding registered office would ordinarily be applicable only to juristic entities and not to an individual employee or natural persons, who may shift their place from one place to another and are not required by statute to have a registered office. The employer in the unorganized sector may not always have a registered office. Therefore, the expression ‘registered office’ would have to include the place of business of the employer who otherwise does not have a registered office.

6. In the present case, the office of the sole proprietor/employer is not shown to be any place other than his place of residence. In the circumstances, the said address would be taken as the registered office of the employer. Accordingly, the claim petition would be maintainable in Delhi.

7. It would be open for the Commissioner to examine the place of business of the employer by way of relevant data, such as, business transactions from that address, bank account details, income-tax returns, receipts and vouchers, GST registration, etc.

8. In view of the above, the appeal is allowed and the case is remanded to the Commissioner concerned, for adjudication on merits.

NAJMI WAZIRI, J

MAY 08, 2018/RW

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