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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO 224/2016**
JIVENDER KUMAR & ANR Appellant
Through: Mr. Anshuman Bal, Adv.

versus

RUBAL SAXENA & ANR Respondent
Through: Mr. SP Rana, Adv. for R-1.
Mr. Ankit Chaturvedi, Adv. for R-2.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% **09.08.2018**

The appellant assails the impugned order dated 17.02.2016 of the Commissioner Employee's Compensation vide which the claimant application dated 11.03.2015 filed by the claimant/parents of the deceased Deepanshu Verma under Section 22 of the Employee's Compensation Act, 1923 was declined, it having been observed to the effect that in view of the documents placed on the record and the record produced it has nowhere been proved that the deceased Deepanshu Verma was employed as a driver with Shri Rubal Saxena, the respondent no.1, owner of the vehicle No. DL8C-AE-2383, a Santro Car, insured in his name vide Policy No. OG valid for 11.12.2013 to 10.12.2014 and covered under the insurance policy and that though the claimants have mentioned that the deceased had died whilst driving the car which met with an accident. The respondent no.1 had also specifically denied the employee-employer relationship with the deceased Deepanshu Verma. The impugned order indicates that the respondent no.1

had claimed that there existed no employee-employer relationship between himself and the deceased and that the deceased is/was a stranger for him and he was the neighbour of the friend of his brother, who had accompanied his brother to visit Nainital and Ranikhet.

The TCR which has been requisitioned and perused has on record Ex.PW1/A, the statement of Jivender Kumar, s/o Shri Prahalad Singh i.e. the appellant-1 herein, the father of the deceased, who claimed that the claimants were entitled to get compensation under the EC Act as their son had died during the course of employment with the respondent no.1. The cross-examination of this witness shows variant statements made by the father of the deceased who stated initially that his deceased son late Deepanshu Verma was working with Shri Goldy and not with Shri Rubal Saxena, the respondent no.1 arrayed on record qua which the averments made in the affidavit of the witness are to the effect that his deceased son was employed with Shri Rubal Saxena. He further went on to state that there was no documentary evidence with him to prove the employment of his deceased son with Shri Goldy and then volunteered further that his deceased son Deepanshu Verma was working with Shri Rubal Saxena and not with Shri Goldy. He stated further that he had not filed any document in relation to tour and travels business of the respondent no.1 i.e. Rubal Saxena and that he did not know whether the respondent no.1 was running a business of tour and travels. He admitted that the vehicle bearing no. DL8C-AE-2383 was not a taxi and was a personal vehicle. He admitted that the family members, relatives and friend of the respondent no.1 Shri Rubal Saxena and his deceased son were going to visit Nainital and Ranikhet, Uttarakhand and that

there was no documentary proof to show employee-employer relationship between his deceased son and the respondent no.1 and that he did not know whether his deceased son was employed with the respondent no.1 at any point of time but his deceased son used to say that he was employed with the respondent no.1. He further stated that he did not know whether his deceased son was known to the respondent no.1 Shri Rubal Saxena. He also admitted that his son was a neighbour to the friend of the brother of the respondent no.1 i.e. Shri Rubal Saxena and admitted that his deceased son met with an accident while accompanying his friend Shri Pramod, Sapan Saxena and Yashpal etc. to visit Ranikhet and Nainital.

Ex.MW1/A, the affidavit of Shri Rubal Saxena, the respondent no.1 categorically avers to the effect that there existed no relationship of employee-employer between him and the deceased Deepanshu Verma at any point of time and that the said Deepanshu Verma was a stranger to him. The cross-examination of Shri Rubal Saxena dated 28.01.2016 also categorically states that there was no relationship of an employee and employer with the deceased Deepanshu Verma and that the deceased Deepanshu Verma was a neighbour of his brother's friend and that he did not even know to him.

Significantly, the father of the deceased also stated in his cross examination that he was not aware that the deceased Deepanshu Verma even knew Shri Rubal Saxena, the respondent no.1. Shri Rubal Saxena further stated to the effect that he had never seen the deceased and had never appointed him as a driver of vehicle No. DL8C-AE-2383. During cross-examination of the said witness conducted on behalf of the claimant who as a witness in his statement dated 28.01.2016 also categorically denied that

Deepanshu Verma was driving the car at the time of the accident and significantly stated that “it is correct that on the date of the accident, the said vehicle was driven by his brother Sapan Saxena.”

Taking into account the record placed before the Commissioner of Employees’ Compensation and the testimonies on the record, it is held that there is no infirmity in the impugned order dated 17.02.2016 with the observations to the effect that the relationship of employee and employer between the deceased Deepanshu Verma and Rubal Saxena qua the incident whilst driving the car bearing no. DL8C-AE-2383 on 06.10.2014 had not been established.

The appeal is thus declined.

It is essential to observe however that a submission was made on behalf of the appellant that even an FIR was not registered. In relation to the same it is essential to observe as indicated vide impugned order itself that the accident was reported at PS Garh Mukteswar, Distt. Hapur, UP on 07.10.2014. Learned counsel for the appellant seeks to seek redressal under the Motor Vehicles Act and may so seek, if any, in accordance with law.

ANU MALHOTRA, J

AUGUST 09, 2018

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