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

+ **FAO 234/2017 & C.M.No. 19597/2017**

NATIONAL INSURANCE CO LTD. Appellant
Through: Mr. Pradeep Gaur and Mr. Amit
Gaur, Advocates.

Versus

RAMANK YADAV @ RAJU & ORS. Respondents
Through: Mr. R. K. Nain, Advocate.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **21.02.2018**

1. This appeal impugns the order dated 30.11.2016 passed by the Commissioner, Employees'/Workmen Compensation under the Employees' Compensation Act, 1923, granting compensation to the claimants of Rs. 1,42,223/- alongwith interest @ 12% *per annum* w.e.f. November, 2004 till its realization.
2. The alleged employer-respondent No.2 had denied any relationship of an employer and employee with the respondent No.1-the injured. In particular, he had denied that the vehicle bearing No. HR-38-1899 was owned by him. He claims to be the owner of a Truck bearing Registration No. HR-55B-1889 and not of vehicle bearing No. HR-38-1899. He further stated that his vehicle had met with an accident on 13.08.2004 whereas the appellant's case is that the accident had occurred in October, 2004. Therefore, if vehicle no. HR-38-1899 met with an accident, respondent no. 2 could have had no liability whatsoever. Interestingly, the claimant had not specified the date of the accident. He had neither produced the requisite Driving License to ply a transport vehicle nor did he produce any

documentary evidence of his employment with the assured; furthermore neither any FIR was registered of the alleged accident nor any proof of the nature of the injury sustained or medication administered to him immediately after the alleged motor vehicle accident, which allegedly happened in Durgapur (WB) was placed on record. Even the place of accident is not specified. The manner in which the accident happened is also not disclosed. Certain documents have been put by the claimant in support of his claims of injury, having allegedly occurred as a result of the motor vehicle accident. However, since there is nothing on record to show that the accident happened in the month of October, 2004 in Durgapur (WB), the documents adduced to the claimant's affidavit-in- evidence would be meaningless and of no value. The said documents are Ex. AW1/1 to 1/3: the first one Ex.AW1/1 is a medical prescription issued by a doctor in Patna on 22.11.2005 i.e. after a gap of almost 12 months from the date of the alleged accident, wherein it is recorded that the patient had "complaints of pain in the right shoulder associated with arm due to a chronic accidental (sic) case." The second document Ex. AW1/2 is an X-Ray Report generated on 21.12.2006 of Mr. Ramank Yadav. It records that "Right Shoulder-AP view suggestive of old healed fracture upper 3rd of shaft of humerus". Neither of these documents can be related to the accident of the appellant.

3. However, the impugned order went ahead to conclude that the employer-employee relationship stood proven and a compensation of Rs.1,42,223/- was awarded on account of 'an' injury suffered by the claimant. As discussed hereinabove, there is no evidence for having arrived at that conclusion. The claimant's case is *exfacie* not sustainable. The averments in the claim petition are vague and unsubstantiated. The motor

vehicle numbers are different. There is no reason or justification for respondent no. 2 to pay compensation through his insurer, of an alleged unsubstantiated injury; allegedly sustained in a motor vehicle accident, not owned by respondent no.2; and to a person not employed by respondent no. 2. The claim petition fails on all fronts. It should have been dismissed. The appellant – insurer and respondent no. 2 cannot be held liable to pay any compensation. The impugned order shows that there is clear non-application of mind to the facts of the case. It is a perverse order and cannot be sustained. Accordingly, it is set aside.

4. The appeal is allowed. The pending application stands disposed off. The amount deposited by the appellant be refunded.

5. The Registry is directed to send a copy of this order to the Secretary-cum-Labour Commissioner, Government of NCT of Delhi, so that he be apprised of the order and may take such remedial measures as he may deem appropriate.

NAJMI WAZIRI, J.

FEBRUARY 21, 2018

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