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

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Judgment delivered on: 20.04.2018

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FAO 530/2016

NATIONAL INSURANCE CO LTD

..... Appellant

Through: Ms. Shantha Devi Raman and Mr.
Arihant Jain, Advocates.

versus

ARVIND KUMAR & ANR

..... Respondents

Through: Mr. R.K. Nain, Advocate for R-1.
Mr. Kundan Kumar, Advocate for R-2.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

FAO 530/2016 & CM Nos. 42350/2016, 42352/2016 & 42353/2016

1. The appeal impugns the order of compensation dated 17.08.2016 passed by the Commissioner, Employees Compensation, on the ground that the amount has been awarded to respondent no. 1 a person who has not proven his employment by the R-2 the owner of insured motor vehicle. The learned counsel for the appellant relies upon the deposition of respondent no.1- the injured, who has himself stated that he was employed by his father, an employee of respondent no. 2. Furthermore, respondent no. 2 has stated that respondent no. 1 (his injured son) was never his employee. Therefore, the injury suffered by respondent no.1, in the insured vehicle would not be indemnifiable, if any, by the appellant insurer.

2. The second ground is that there is no document or material to show that the respondent no. 1 was ever employed by respondent no. 2 or that he was paid any remuneration for his services by respondent no.2. Also, no driving licence was produced by respondent no. 1. Therefore, even if he were an employee of respondent no.2, the absence of a valid driving licence would disqualify him indemnity under the Insurance Act, 1938.

3. Thirdly, the appellant contends that the injury was not caused in a motor vehicle accident but on account of a fall from stairs as has been recorded in the MLC Report dated 10.10.2015 issued by Guru Nanak Eye Centre (a government hospital). The respondent recorded the history of the accident as: trauma to left eye “due to a fall from the stairs at 11.00 pm”. This time would obviously mean that injury has been caused earlier in the night. The learned counsel for the appellant emphasises that there is no mention of the injury by or in a road/motor vehicle accident. Therefore, by the claimant’s own statement: (i) no case is made out for the establishment of an employer- employee relationship, and (ii) in the statement made before the doctor, immediately after the accident when he would have been in immense pain, suffering and shock due to the severe damage to his eye, that the injury was on account of a fall from stairs and not in a motor accident; clearly establishes that there was no employment of the injured by the vehicle owner and the injury was not suffered in an accident involving the insured motor vehicle. Therefore, there was no case for compensation under the Employees Compensation Act, 1923.

4. The learned counsel further refers to the deposition of respondent no. 1, which reads as under:-

“I do not have any documentary proof that I was

working with M/s Mehta Transport. This is correct that my father was employed in the establishment. And it is also correct that I was not employed as a driver to the employer i.e. R-1 in the application for claim. I do not have any appointment to prove that I was employed. I do not have any documentary proof to prove that I was employee to drive vehicle and I never received any salary or wages from the employer. Voluntary because this was my first trip. The burst of tyre on accident. I was accompanied by my father when I received injury my father also received injury in the accident. Father received minor injuries so that he was not examined because I do not have any medical record of my father treatment. My father was employed with the employer for the last 5 years. It is correct to suggest that due to my father employment the employer helped due to injury.”

5. She also relies upon the statement of the employer who averred in the Written Submission, that the claimant was never employed by him as a driver for his vehicle bearing no. No.HR-55-F-1841, he had also denied that the claimant had sustained injury during the course of employment. Ergo, the employer had sought dismissal of the claim petition. Furthermore, the father of the claimant himself deposed that the accident happened around at 09.00 pm on the return journey near Khurja Railway Fatak, District Bulandshahr. The son who was driving the vehicle, stopped it near the said place, got down from it since he suspected that one of the tyres of the vehicle had got punctured. When he got down to check the tyre, it burst and a particle therefrom hit his left eye with force. He suffered a severe injury and was taken by an ambulance to a government hospital in Bulandshahr, where the doctors were unable to assist. Hence, he was brought to Guru Nanak Eye Hospital at Delhi; the doctors here asked for a police report. But since the injury was too serious, he was facilitated admission in a private

medical enterprises, Dr. Shroff Charity Eye Hospital by “employer’s people”. Later, his disability was assessed and he was declared 100% disabled to drive a vehicle in future.

6. Insofar as the father had stated that he had brought his son to a Delhi hospital, then he must have made a statement about the fall from the stairs. The MLC Report records that the injury has been caused due to a fall from the stairs. This cannot be brushed aside as it is an important piece of evidence that demolishes the entire case of the respondent. The appellant’s contention that no driving licence has been shown also cannot be overlooked. The impugned order errs insofar as it has, despite the aforesaid statements and lack of evidence, held that the claimant was an employee of respondent no. 2.

7. In support of the claimant and for the correctness of the impugned order, particularly to establish the proof of employer-employee relationship between respondent no.2 and respondent no.1, the learned counsel for the claimant refers to the address of the patient mentioned in the medical report of Doctor Shroff Charity Eye Hospital, which reads as: Arvind s/o Raghunanad at C-G 192 Sanjay Gandhi Nagar TSP. Nagar Delhi, North East Delhi. This is the address of the employer as mentioned in the latter’s Written Statement. The Court is however unable to see as to how the mere chance mention of the address of R-2 could be proof of R-1’s employment by R-2. The learned counsel then refers to the presence of employer–Shri Pravesh at the time when the R-1 was taken to the Doctor Shroff Charity Eye Hospital. The learned counsel for the claimant contends that there is no relevance of a driving licence under the Employees’ Compensation Act, 1923. In support of this contention, he relies upon the judgment of the

Supreme Court in *National Insurance Company vs. Mastan & Anr.* I (2006) ACC 1 (SC). He submits that there would be no relevance for examining whether the employee/driver ever possessed a driving licence. The said judgment held:-

"6. Upon consideration of various provisions of the 1988 Act including Sections 143, 167 and 149 thereof, the Full Bench held :

"Under the circumstances, under the W.C. Act, the Insurance Company can only agitate violation of any condition of the policy to make substantial question of law, and therefore, the question of raising other defences available in terms of Sec. 149(2) of the M.V. Act does not arise."

It was also held:

"Under the provisions of Workmen's Compensation Act a statutory appeal is provided under Section 30 of the Act to the High Court on the orders enumerated therein. The proviso to that Section makes it very clear that no appeal shall lie against any order unless a substantial question of law is involved in the appeal. As stated earlier negligence or contributory negligence of the offending vehicle is not a ground to be considered at all while awarding compensation under the Workmen's Compensation Act. Therefore, the insurer cannot prefer any appeal either challenging the quantum of compensation or on any other grounds except the ground available to him under Section 149(2) of the 1988 Act."

8. The learned counsel for R-1 then relied upon the judgment of the Supreme Court in *Maghar Singh vs. Jashwant Singh* 1997 ACJ 517 to contend that the nature of documents or evidence apropos the employer-employee relationship has to be examined in the context of the unorganized sector in which such employment takes place. It held:-

"3. We have carefully examined the evidence in this connection and we are satisfied beyond any manner of doubt

that at the relevant point of time when the accident occurred in which the appellant lost both his hands above the wrists he was operating the "toka" machine belonging to the respondent. That is not a matter in controversy. There is also the evidence showing the respondent having taken the appellant to the hospital after he sustained the injuries which is a factor which could not have been overlooked. There is also no reason to believe that the appellant would wrongly point a finger at the respondent as his employer. When seasonal work of this type is taken on farms it is not unusual for the employer not to issue a letter of appointment or make entries in the register regarding payment of salary to avoid certain legal consequences. We have, therefore, no difficulty in concluding that the appellant's contention that he was employed by the respondent and that he suffered the injury in question while operating the "toka" machine of the respondent in the course of employment need not be doubted".

9. In view of the aforesaid judgment, the learned counsel for the claimant claims that a mere mention of the name of the employer on the hospital bed of the patient was sufficient to establish that he was an employee of the said person. The Court disagrees. The Court further, is unable to see as to how **Maghar Singh** (supra) would assist the claimant because in that case, the injury had been caused in a 'toka' machine owned by the employer and the latter had taken the injured to the hospital, both these factors alongwith the peculiar facts of that case led the Court to infer that there was an employer-employee relationship. In the present case, the son himself had clearly deposed that he was never employed by respondent no. 2 nor was any salary or remuneration paid to him by R-2. Furthermore, his father too has deposed that the son had not been employed by R-2.

Lastly, the learned counsel for the claimant submits that no substantial question of law has been raised in the appeal hence it ought to be dismissed.

10. However, the issue to be determined in this case is: whether on the basis of the evidence considered, in the impugned order, one could reasonably conclude that respondent no. 1 was indeed an employee of respondent no. 2.

In the context of the preceding discussion, the question of law can only be answered in the negative. The impugned order suffers from the errors as discussed hereinabove. It is accordingly, set aside.

11. The appeal is allowed.

APRIL 20, 2018

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NAJMI WAZIRI, J



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