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

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Date of Decision: 05th October, 2018

+ **FAO 521/2016 & CM No.41336/2016**

HDFC ERGO GENERAL INSURANCE CO LTD Appellant

Through: Mr. Pankaj Gupta, Advocate

versus

JAGRAM & ORS

..... Respondents

Through: Mr. R.K. Nain, Advocate for R1.

**Mr. Yogesh K. Chandna, Advocate for
R2 and R3.**

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. The appellant has challenged the order dated 27th May, 2016 whereby compensation of Rs.10,24,176/- has been awarded to respondent No.1.
2. The respondent No.1 filed an application for compensation before the Commissioner, Employees' Compensation claiming compensation on the averments that he was employed as a driver on the truck bearing No. HR-55E-8474 and was coming from Kartarpur near Jalandhar to Delhi; on 20th May, 2011 at about 11:30 P.M, respondent No.1 was cleaning the glass of his truck when suddenly another vehicle in front reversed and hit respondent No.1 who was crushed between the two vehicles; respondent No.1 suffered grievous injuries as his intestines ruptured and he was taken to Sidhu Hospital Pvt. Ltd. from where he was shifted to Safdarjung Hospital and thereafter, to Dr. Ram Manohar Lohia Hospital; respondent No.1 suffered amputation of his right leg and 100% disability with regard to his right lower

limb; and the accident arose out of and during the course of his employment with respondent No.2.

3. The Commissioner, Employees' Compensation held that the accident arose out of during the course of employment of respondent No.1 with respondent No.2. The Commissioner awarded compensation of Rs.8,70,576/- and medical expenses of Rs.34,282/-.

4. Learned counsel for the appellant urged at the time of hearing that the respondent No.1 has not proved the relationship of employment with respondent No.2. It is submitted that in cross-examination, respondent No.1 admitted that he was not permanently employed with respondent No.2 and was asked to drive the truck in which the accident occurred.

5. Learned counsel for respondent no.1 urged at the time of the hearing that respondent no.1 was an "*employee*" within the meaning of Section 2(1)(dd) of the Employees' Compensation Act. It was submitted that the definition of "*workman*" in Section 2(1) (n) of the Workmen's Compensation Act was amended in the year 2000. It was submitted that Section 2(1) (n) of the Workmen's Compensation Act, 1923 was amended by Workmen's Compensation (Amendment) Act, 2000 with effect from 8th December, 2000 whereby the words "*other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business*" in the definition of '*workman*' in Section 2(1) (n) were omitted. The effect of the omission of words "*other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business*" in the definition of workman in Section 2(1)(n) by the amendment in 2000 is that a person whose employment is of a casual nature and is employed other than

for the purposes of the employer's trade or business, would be covered within the meaning of "*employee*" as defined in Section 2(1)(dd) of the Employees Compensation Act and entitled to compensation against the principal under section 12 of the Employees Compensation Act. Reliance was placed on ***Govind Goenka v. Dayawati***, 2013 ACJ 1897 in which this Court held that after the amendment, the workman whose employment is of casual nature and who is employed otherwise than for the purpose of employer's trade or business, would also be covered within the definition of "*workman*".

6. The definition of '*workman*', as it originally existed in the Workmen's Compensation Act, 1923, excluded the workmen whose employment was of a casual nature and who were employed otherwise than for the purpose of employers "*trade or business*". Section 2 (1) (n) of the Workmen's Compensation Act, 1923 was amended by Workmen's Compensation (Amendment) Act, 2000 with effect from 8th December, 2000 whereby the words "*other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business*" in the definition of '*workman*' in Section 2(1) (n) were omitted. The effect of the omission of words "*other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business*" in the definition of workman in Section 2(1)(n) by the amendment in 2000 is that a person whose employment is of a casual nature and who is employed other than for the purposes of the employer's trade or business is covered within the meaning of "*employee*" as defined in Section 2 (1) (dd) of the Employees Compensation Act.

7. Section 2(1) (n) of the Workmen's Compensation Act, prior to the

Workmen's Compensation (Amendment) Act, 2000 read as under:

“Section 2(1) (n) –

“workman” means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business) who is –

(i)

*(ii) employed ****]² in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of the Armed Forces of the Union; and any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependants or any of them.”*

(Emphasis supplied)

8. Section 2(1)(n) of the Workmen's Compensation Act, after the Workmen's Compensation (Amendment) Act, 2000 reads as under:

“Section 2(1) (n) –

“workman” means any person who is –

(i)

(ia).....

(ii) employed in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of the Armed Forces of the Union; and any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependants or any of them.”

(Emphasis supplied)

9. Workmen's Compensation Act was again amended in 2009 by Workmen's Compensation (Amendment) Act, 2009 with effect from 18th

January, 2010 whereby the words “*workman*” and “*workmen*”, were substituted with the words “*employee*” and “*employees*”. The Workmen’s Compensation (Amendment) Act, 2009 omitted Section 2(1)(n) that defined “*workman*” and replaced it by Section 2(1)(dd) which defined “*employee*”, though the substance of the definition remained the same. The aforesaid amendment also changed the name of the Workmen’s Compensation Act to Employee’s Compensation Act. Section 2(1)(dd) of the Employee’s Compensation Act reads as under:

“Section 2(1) (dd) –

“employee” means a person, who is –

(i)

(ii)

(iii) *employed in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of the Armed Forces of the Union; and any reference to any employee who has been injured shall, where the employee is dead, include a reference to his dependants or any of them;”*

10. In ***Govind Goenka v. Dayawati*** (*supra*), this Court examined the effect of Workmen’s Compensation (Amendment) Act, 2000 and held that, after the amendment, the workman whose employment is of casual nature and who is employed otherwise than for the purpose of employer's trade or business, would also be covered within the definition of “*workman*”. Relevant portion of the said judgment is reproduced hereunder:

“8. So far as the definition of workman envisaged in Section 2(n) of the said Act is concerned, there has been a drastic change in the definition of the "workman" as it stood prior to the amendment and after the amendment. Prior to the amendment,

certainly the workman whose employment was of a casual nature and who was employed otherwise than for the purpose of trade or business of the employer would not fall in the said definition. However, after the amendment of the said definition through the Amending Act 46 of 2000, the Parliament had removed the said mischief which was then prevailing and coming in the way of such casual workmen who met with an accident during the course of the employment unconnected with the employer's trade or business. With the amendment of the said definition, now certainly the workman whose employment is of casual nature and who is employed otherwise than for the purpose of employer's trade or business would also be covered within the definition of workman."

(Emphasis supplied)

11. This Court is of the view that the casual employment of the claimant was sufficient for awarding compensation under the Employee's Compensation Act, in view of the Workmen's Compensation (Amendment) Act, 2000.
12. The appeal is dismissed. Pending application is disposed of.
13. The Trial Court record be returned back forthwith.
14. Copy of this judgment be given *dasti* to counsels for the parties under signatures of the Court Master.

OCTOBER 5, 2018

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J.R.MIDHA, J.