

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

**RESERVED ON : 4th DECEMBER, 2017
DECIDED ON : 9th JANUARY, 2018**

+ FAO 555/2016 & CM 44448/16
MAGMA HDI GENERAL INSURANCE CO LTD
..... Appellant
Through : Mr.Ved Vyas Tripathi, Advocate.

versus

RAO MOHSIN & ANR Respondents
Through : Mr.R.K.Nain, Advocate for R1.

**CORAM:
HON'BLE MR. JUSTICE S.P.GARG**

S.P.GARG, J.

1. Present appeal has been preferred by Magma HDI General Insurance Co. Ltd. (hereinafter 'the appellant') to challenge the legality and correctness of an order dated 20.07.2016 (18.07.2016) whereby claim petition filed by respondent No.1 seeking compensation under Employees Compensation Act, 1923 (hereinafter 'the Act') was allowed and the appellant was directed to pay compensation amount of ₹8,56,752/- within 30 days. The appeal is contested by the respondents.

2. I have heard the learned counsel for the parties and have examined the file including the written submissions on record.

3. Claim petition was filed by respondent No.1 Rao Mohsin before the Commissioner seeking injury compensation caused to him in an accident which arose out of and during the course of his employment with his brother respondent No.2 Mohd.Yunus. It was averred by the complainant Rao Mohsin that he was employed as a driver on vehicle Mahindra & Mahindra, 595 Turbo Tractor owned by his brother Mohd.Yunus. He met with an accident on 22.08.2013 while driving the tractor on its business trip. It was further averred that the said tractor was loaded with bricks from Dadheru (Muzaffarnagar to Jwalapur). When it reached near puliya at Batedhi, its 'gulla' got broken and the tractor fell down in the pit. The claimant sustained injuries and remained entrapped for half an hour. One passerby admitted him in a hospital in his car; he remained admitted at Luthra Hospital for 6 days and incurred ₹1.5 lacs as expenses. It was further claimed that subsequent to that, the claimant continued to get treatment and incurred substantial amount. It was urged that due to the injuries sustained, the complainant became 100% disabled and his earning capacity was reduced. It was further informed that the claimant was getting wages @ ₹8,000/- per month and he was aged around 42 years.

4. The claim petition was contested by the appellant. The appellant denied if there was relationship of employer and employee between the respondent No.1 and respondent No.2. It was further averred that the accident had not taken place in the manner as alleged. The insurance company was not at all liable to pay any claim / compensation.

5. To prove his case, the claimant examined himself as AW-1. Mohd.Yunus also appeared as a witness before the Commissioner. The appellant examined Abhinav Tiwari. After considering the rival contentions of the parties and on appreciation of the evidence, the learned Commissioner came to the conclusion that the appellant insurance company was liable to pay the compensation. Aggrieved by the said orders, the present appeal has been filed.

6. The burden was upon the claimant to establish that there was relationship of employer and employee between him and respondent Yunus at the time of alleged accident. On perusal of the evidence adduced before the Commissioner, this Court finds no credible evidence on this aspect. Both the claimant and Yunus are real brothers. The tractor in question was purchased by claimant's brother Yunus on 22.08.2013; it was insured on that very date i.e. 22.08.2013. The claimant did not place on record any valid licence throughout the entire proceedings. Contradictory statements have been given by the claimant and his brother regarding his employment on the said tractor. It has come on record that prior to the purchase of the tractor in question, Yunus did not have any other vehicle except a motorcycle. Apparently, Yunus had no occasion to employ his brother - the claimant as a driver prior to the purchase of the tractor in question on 22.08.2013. It falsifies the claim of the claimant in the cross-examination that he was employed with his brother as driver for the last 1.5 – 2 years. No document whatsoever has been placed on record if the claimant was employed any time as a driver by Yunus, and if so, on which date and for what salary / wages. No proof regarding

payment of any salary as driver by Yunus to the claimant has been placed on record. Yunus in the cross-examination admitted that he did not see claimant's driving licence. He was unable to respond as to since when the claimant was working with him. During further cross-examination, he expressed ignorance as to when the claimant was engaged as a driver. He, however, informed that it was in August, 2013. He further elaborated that the claimant used to work as driver on the tractor of others in the village before his engagement as a driver on his tractor. Neither he nor the claimant divulged the name of any such individual with whom the claimant was in employment as driver prior to the August, 2013. No such individual has been examined.

7. No credible evidence has emerged on record to infer if the claimant had sustained injuries due to an accident while driving on the tractor in question. The time when the accident had taken place has not been disclosed in the claim petition. It is averred that the tractor was loaded with bricks. It was, however, not revealed as to when and from which brick kiln the bricks were loaded; it was also not disclosed as to for whom the bricks were meant. The receipt for transportation of the bricks to any individual was not produced on record. After the alleged occurrence, no intimation was conveyed to the police or the insurance company. No FIR or DD entry has been recorded. Inconsistent version has been given by the claimant and his brother Yunus as to who had taken the victim to hospital. The claimant claimed that he remained entrapped in the pit for about half an hour and subsequently was taken in a car to the hospital by a passerby. The name of such passerby has not been informed. Yunus,

on the contrary in the cross-examination stated that after coming to know about the accident he visited the place of accident along with one Shamim and they both took the claimant to the hospital in Alto car. Yunus was unable to disclose the name of the hospital. The claimant stated that he remained admitted at Luthra Hospital for around 6 days. AW-Yunus contrary to that informed that the claimant remained admitted in the hospital for 15 days. The concerned doctor from where the victim had got treatment has not been examined. Only a discharge ticket (Ex.AW-1/2) of Luthra Nursing Home at Haridwar has been placed on record. The prescription and receipts regarding payment of expenses have not been placed. The medical document does not reflect if the victim had sustained injuries in an accident while driving the tractor in question at a particular spot away from Haridwar. Though the amount spent for medical treatment is stated to be to the tune of ₹1.5 lacs, however, no receipt for its payment has been placed on record.

8. No explanation has been offered as to why the matter was not reported to the police or the insurance authorities promptly soon after the alleged incident. No photographs of the tractor in accidental condition were taken. It was not disclosed how the broken tractor was removed from the spot, if so, when and by whom. It is not clear if the bricks purportedly loaded in the truck were delivered at its destination, and if so, when and by what mode. Yunus did not claim if any insurance claim was raised for damage to the tractor in question. It is highly unbelievable that soon after the purchase of the tractor on 22.08.2013, the registered owner would get an order for transportation

of bricks and it will be taken by the claimant on his alleged employment on that very date. The verbal assertions have not been corroborated by any evidence / material on record.

9. The claim petition was filed within the jurisdiction of Delhi though the occurrence had taken place out of it. No material document has been placed on record to show if the registered owner has any residence in Delhi. The registration certificate (Ex.R2W1/1) is of the Transport Department, Uttarakhand, where the address of the respondent - registered owner – Yunus has been shown to be Village Badhedhi Rajputan, Haridwar. The tax invoice (Ex.R2W1/2) again is in the name of registered owner Yunus and the address has been shown as Village Badhedhi Rajputan, Haridwar; it is dated 22.08.2013. There is no material on record to show if the vehicle in question was delivered to the registered owner Yunus on 21.08.2013 as claimed by him in his cross-examination.

10. Considering the above deficiencies in the claim of the claimant, the compensation awarded by the learned Commissioner cannot be sustained. The appeal is allowed and the impugned order dated 20.07.2016 (18.07.2016) is set aside.

11. Pending application also stands disposed of.

12. Trial Court record be sent back forthwith with the copy of the order.

(S.P.GARG)
JUDGE

JANUARY 09, 2018 / tr