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

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Judgment delivered on: 23.05.2018

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FAO 358/2017 & CM. APPL. 31455/2017

MAGMA HDI GENERAL INSURANCE CO LTD Appellant

Through: Mr. Ved Vyas Tripathi, Advocate.
(Mob.-9910065069)

versus

SHIV KUMAR @ SHIV SINGH & ANR Respondents

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

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J

1. The appellant has impugned an order dated 05.06.2017 granting the compensation of Rs. 10,33,344/- to the respondent/claimant/workman on account of disability suffered by him during the course of his employment with respondent no. 2. It was the workman's case that while in the employment of respondent no. 2 as the driver of truck bearing Registration No. HR-38P-8880, he met with an accident on 19.09.2013, while on a business trip from Faridabad to Haridwar. The truck was loaded with aluminium, when it reached near Village Chhapar, District Muzaffarnagar (Uttar Pradesh) all of a sudden a stray animal came in front of the vehicle, in his effort avoid colliding with the animal, the driver swerved the vehicle to one side but lost control of it; and his vehicle was hit by another vehicle and ultimately he collided with a road-side tree. The truck was damaged, he sustained injuries. He remained trapped inside the vehicle for about an hour;

people from nearby area came and extracted him from it by breaking the cabin of the damaged vehicle. He was immediately taken to Govt. Hospital, Muzaffarnagar, where he remained for about 2-3 days but since the treatment was not “up to the mark”, he was taken to another hospital in Meerut. Here also no improvement in his condition was seen, so assessing the gravity of his injuries and his failing health, he was shifted to a hospital in Agra by an ambulance. His leg was operated upon – it was eventually amputated. He remained there for about 20-22 days. He incurred about Rs. 3 lacs on his treatment.

2. A case was registered under Police Station Chappar, District Muzaffarnagar on 20.09.2013. He claimed 100% disability apropos his vocation as a driver. He also relied upon a General Diary entry dated 20.09.2013 recorded at the aforesaid Police Station, it is his case that the entry had been made evidently at the behest of respondent no. 2-Rajendra Mawai-the alleged employer, who had admitted that the driver-Shiv Kumar had sustained injuries and was admitted to the hospital; Mr. Shiv Kimar stated that the accident took place by chance and the driver was stable. However, in the compensation proceedings, the said employer did not participate nor did the insurance company lead any evidence in this regard. The appellant states that the case was never maintainable before the Commissioner, Employees Compensation, Delhi, since neither the accident happened in Delhi, nor the employer had his registered office in Delhi nor did the employee/ workman ordinarily reside in the city. The Claim Petition records the address of the claimant as “Mathura, Uttar Pradesh” and “at present at Shop No. 23, Khanna Market, Delhi- 110052”. The claimant has argued that persons such as him would be considered migrant workers and

would be covered by the judgment of the Supreme Court in ***Morgina Begum vs. Managing Director, Hanuma Plantation Ltd.*** 2008 (I) TAC 439 (SC). The Court would however note that ***Morgina Begum vs. Managing Director, Hanuma Plantation Ltd.*** dealt with a migrant worker who had shifted from Nagaon to Tezpur, whereas in the present case, the claimant was not a migrant worker but allegedly in the employment of respondent no. 2 in Haryana.

3. The appellant had questioned the maintainability of the Claim Petition in Delhi as: (i) the accident happened outside Delhi; (ii) the injured-workman was a resident of an area outside Delhi, and (iii) so was his employer. According to the appellant no cause of action arose in Delhi. Hence, the petition would not qualify under any of the clauses conferring jurisdiction under section 21 of the Act. It is argued that the respondent no. 2-Rajendra Mawai chose not to contest the claim and further there was no documentary evidence of the claimant's residence in Delhi except for an endorsement on a MTNL landline telephone bill issued to M/s RTC Road Carrier (P) Dharminder Kumar. It is argued that therefore, the Commissioner in Delhi would have no jurisdiction to entertain the claim petition.

4. The learned counsel for the respondents, refutes these arguments with a reference to the order of the learned Commissioner passed on 15.09.2016 holding, *inter alia*, that the claimant had produced a statement on an MTNL Bill of Mr. Dharmender Kumar c/o Shop No. 23, Khanna Market, Delhi-110052, Tis Hazari, Delhi, in which he had stated that the claimant Mr. Shiv Kumar was residing in the aforesaid shop. The claimant further deposed to

the effect that the address in Delhi as being his temporary address. He was neither cross-examined in this regard nor was Mr. Dharmender Kumar, at whose shop he is stated to have resided. The Court would note the photocopy of the MTNL Bill on which Mr. Dharmender Kumar allegedly authorised the claimant to be used as the latter's address was not proven nor is it clear as to who and in what capacity had written or signed the said authorization. However, the learned counsel for the respondent relies upon the judgment of the Supreme Court in **Malati Sardar vs. National Insurance Co. Ltd.** 2016 ACJ 542 which held as under:-

“14. The provision in question, in the present case, is a benevolent provision for the victims of accidents of negligent driving. The provision for territorial jurisdiction has to be interpreted consistent with the object of facilitating remedies for the victims of accidents. Hyper technical approach in such matters can hardly be appreciated. There is no bar to a claim petition being filed at a place where the insurance company, which is the main contesting parties in such cases, has its business. In such cases, there is no prejudice to any party. There is no failure of justice. Moreover, in view of categorical decision of this Court in Mantoo Sarkar (supra), contrary view taken by the High Court cannot be sustained. The High Court failed to notice the provision of Section 21 CPC.”

4. Be that as it may, insofar as the claimant had deposed by way of an affidavit that he was residing at the said address and had produced the relevant document as well as authorization, if the appellant had any doubt about the same, it was open to them to cross-examine the same. However, despite repeated opportunities, they chose not to do so. In the circumstances, the learned Commissioner had no option but to rely upon the unrebutted

deposition. It was so held on 15.09.2016. As a consequence, the erroneous jurisdiction of Delhi having been assumed and the injury as a result of the accident having been accepted as proven the compensation amount was awarded.

5. It is the appellant's case that the respondent/claimant has relied upon a General Diary entry in the Police Station, Chhapar on 20.09.2013 to the effect that while driving the truck he had swerved it to one side to avoid colliding with a *Neel Gai* (Blue Bull) which suddenly jumped in front of the truck, but the vehicle went-off the highway into sugarcane fields and finally hit against a tree, resulting into the alleged injuries to the driver. However, the report further records that although the driver had sustained injuries, his condition was alright; it also records that the owner of the vehicle alongwith the driver had reached the hospital and his condition was alright, although, the vehicle had suffered extensive damage. It is questionable that if the vehicle was extensively damaged and insured by the appellant, then the 'own damage claim' ought to have been filed by its owner but it was not so done. It is odd and unexplainable why would a vehicle owner, duly indemnified under an insurance policy, not claim re-imbursement for damages from the insurer. More importantly, why would he suffer the loss himself? There is something amiss here. Perhaps there was no such damage. At least, there is no proof of the extensive damage. Furthermore, the learned counsel submits that there is no proof apropos the nature and extent of injuries suffered by the driver in the alleged accident. The documents annexed to the Claim Petition do not make out a case of amputation of leg, especially in view of the statement of the owner of the vehicle that the condition of the driver was alright. If the General Diary

entry is taken out from the documents, there is nothing on record to show that any accident happened or any injury whatsoever, had been sustained by the driver in a road accident.

6. The Court has perused the medical documents attached with the petition. There is no reference in them of any injury having been sustained by the claimant on account of a motor accident. Therefore, there is no document to link the alleged injury with an accident having been caused by driving the insured vehicle.

7. Lastly, the learned counsel for the respondent refers to the judgment of the Supreme Court in **Maghar Singh vs. Jashwant Singh** 1997 ACJ 517, which held as under.

"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”.

8. In effect, the learned counsel for the respondent argues that the employment of drivers, helpers and cleaners in the transport sector by individual truck owners is unorganised, i.e. employers do not ordinarily issue letters of appointment or maintain any register of payment of salary etc. primarily to avoid legal and taxation consequences, that may flow from maintenance of such records. This contention, however, does not assist the respondent/claimant in proving his case. What is to be ascertained in the first instance, is whether any injury was caused to an employee of Mahender Singh in a motor accident involving the truck owned by the latter, and that the accident led to the amputation of a leg of the claimant. No evidence whatsoever, has been brought on record either by the claimant or his alleged employer, who after having admitted that the claimant was his employee, has placed nothing on record to substantiate the same so as to make out a case for award of the claim and payment of monies by the insurance company.

9. For the aforesaid reasons, the award cannot be sustained. Accordingly, it is set aside. The appeal is allowed.

NAJMI WAZIRI, J.

MAY 23, 2018

Sb/RW