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

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Date of Decision: 04th JULY, 2019

+ **FAO 227/2016 & CM APPLN. 18786/2016**

BAJAJ ALLIANZ GENERAL INSURANCE CO LTD..... Appellant

**Through: Mr.Siddharth and Mr.Amit Kumar
Agrawal, Advocates**

versus

JARINA BEGUM & ORS

..... Respondents

Through: Mr.S.N. Parashar, Advocate

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT

1. The appellant has challenged the order dated 25th January, 2016 whereby the Commissioner, Employees' Compensation awarded compensation of Rs.3,38,880/- along with interest at the rate of 12% per annum to the respondents.

2. Respondents No.1 to 10 are the widow, mother, four sons and four daughters of late Nisar Ahmad @ Nisar Khan who was working as a cleaner/helper with respondent No.11 on his vehicle. Respondents No.1 to 10 filed an application for compensation before the Commissioner, Employees' Compensation on the averments that Nisar Ahmad was in the employment of respondent No.11 as a cleaner/helper on truck No. HR-38-N-4678; Nisar Ahmad was aged 45 years and was getting salary of Rs.4,200/- per month; Nisar Ahmad was ill and was taking rest at his home on 05th July,

2009 when he was called by his employer to attend the duty on the aforesaid truck for going to Saleem; Nisar Ahmad told his employer that he was not feeling well but was told to do duty on the ground that there was no other person to work; when the truck reached Tumkur, Karnataka, the condition of Nisar Ahmad deteriorated due to work stress whereupon the driver, Pradeep took him to doctor who examined and declared him dead.

3. Respondent No.11 is the owner of the truck insured with the petitioner. Respondent No.11 filed the written statement and admitted the employment of the deceased with him as a helper/cleaner on salary of Rs.4,200/- per month plus Rs.200 per day for food/meals allowance. The petitioner admitted the insurance of the vehicle at the time of the accident.

4. The Commissioner, Employees' Compensation held that the deceased Nisar Ahmad died during the course of his employment with respondent No.11 and the vehicle was validly insured with the appellant. The Commissioner held that the deceased died due to the work stress and was entitled to compensation. The Commissioner determined the compensation of Rs.3,38,880/- according to the last drawn wages and the age of the deceased.

5. Learned counsel for the appellant urged at the time of the hearing that the deceased died due to septicemia and lobar pneumonia as per the forensic report which cannot be said to be accidental injuries. It was further submitted that there was no casual connection between duty assigned and the lung infection suffered by him. Reliance was placed on *Malikarjuna G. Hiremath v. Branch Manager, The Oriental Insurance Co. Ltd*, AIR 2009 SC 2019 ; *Saurashtra Salt Manufacturing v. Bai Valu Raja*, AIR 1958 SC 881; *Regional Director, E.S.I Corpn. v. Francis De Costa*, 1992 SCR (3)

23; *Shakuntala Chandrakant Shreshti v. Prabhakar Maruti Garvali*, (2007) 11 SCC 668, *Delhi Transport Corporation v. Manju*, 2013 SCC Online Del 4487. It is further submitted that the driving license and permit were invalid and, therefore, the appellant was entitled to recovery rights against respondent No.11.

6. Learned counsel for the respondents No.1 to 10 urged at the time of hearing that the deceased died due to work stress which arose out of and during the course of his employment which is an accident. Reliance was placed on *Param Pal Singh v. National Insurance Company Ltd.*, (2013) 3 SCC 409 and *National Insurance Company Limited v. Dhani Devi*, 2017 ACJ 2239.

7. In *Param Pal Singh* (supra), the Supreme Court held that the nature of work of the employee has to be considered. The Supreme Court further held the long distance driving from Delhi to Jharkhand would definitely give strain and stress. The Supreme Court held the cardiac failure to be an accident considering the nature of work of the employee and the stress and strain during the course of the employment. Relevant portion of the aforesaid judgment is reproduced hereunder:

“27. Applying the various principles laid down in the above decisions to the facts of this case, we can validly conclude that there was CAUSAL CONNECTION to the death of the deceased with that of his employment as a truck driver. We cannot lose sight of the fact that a 45 years old driver meets with his unexpected death, may be due to heart failure while driving the vehicle from Delhi to a distant place called Nimiaghat near Jharkhand which is about 1152 kms. away from Delhi, would have definitely undergone grave strain and stress due to such long distance driving. The deceased being a professional heavy vehicle driver when undertakes the job of such driving as his

regular avocation it can be safely held that such constant driving of heavy vehicle, being dependant solely upon his physical and mental resources & endurance, there was every reason to assume that the vocation of driving was a material contributory factor if not the sole cause that accelerated his unexpected death to occur which in all fairness should be held to be an untoward mishap in his life span. Such an 'untoward mishap' can therefore be reasonably described as an 'accident' as having been caused solely attributable to the nature of employment indulged in with his employer which was in the course of such employer's trade or business.

28. Having regard to the evidence placed on record there was no scope to hold that the deceased was simply travelling in the vehicle and that there was no obligation for him to undertake the work of driving. On the other hand, the evidence as stood established proved the fact that the deceased was actually driving the truck and that in the course of such driving activity as he felt uncomfortable he safely parked the vehicle on the side of the road near a hotel soon whereafter he breathed his last. In such circumstances, we are convinced that the conclusion of the Commissioner of Workmen's Compensation that the death of the deceased was in an accident arising out of and in the course of his employment with the second respondent was perfectly justified and the conclusion to the contrary reached by the learned Judge of the High Court in the order impugned in this appeal deserves to be set aside. The appeal stands allowed. The order impugned is set aside. The order of the Commissioner for Workmen's Compensation shall stand restored and there shall be no order as to costs."

8. In the present case, the deceased was working as a cleaner/helper with respondent No.11 and he was unwell on 05th July, 2009 when respondent No.11 compelled him to go on out station duty on the ground that there was no other person. This Court is of the view that forcing an unwell person to go on out station duty would have certainly caused immense stress and strain which would have aggravated the illness suffered by the deceased and

resulted in his death and, therefore, the legal representatives of the deceased are entitled for the compensation from appellant. With respect to the plea of invalid driving license and permit, it is noted that no evidence was lead by the appellant and, therefore, the claim of recovery rights is also rejected.

9. There is no merit in the appeal which is hereby dismissed. Pending application is disposed of.

10. Vide order dated 06th December, 2018, the Commissioner, Employees' Compensation was directed to transfer the amount deposited by the appellant with the Registrar General of this Court along with interest accrued thereon. The Commissioner, Employees' Compensation deposited Rs.6,39,277/- with the Registrar General of this Court in terms of the order dated 06th December, 2018 on 10th January, 2019.

11. On 30th May, 2019 Respondent No.1 was present in Court and she produced the passbook of her savings bank account No. 33500100015204 with Bank of Baroda, Gulawathi, U.P. (IFSC Code: BARB0GULAWT) with necessary endorsement as well as PAN Card and Aadhar Card.

12. The Registrar General is directed to disburse the aforesaid amount to respondent No.1 by instructing UCO Bank, Delhi High Court Branch as under:

- (i) Rs.5,00,000/- be kept in 50 FDRs of Rs.10,000/- each, in the name of respondent No.1 for the period 1 month to 50 months, respectively with cumulative interest.
- (ii) The balance amount, after keeping Rs.5,00,000/- in FDRs, be released to respondent No.1 by transferring the same to her aforesaid savings bank account with Bank of Baroda, Gulawathi, U.P.

13. All the original FDRs shall remain with UCO Bank, Delhi High Court Branch. However, the statement containing FDR number, amount, date of maturity and maturity amount shall be furnished by UCO Bank to respondent No.1.

14. The maturity amounts of the FDRs be released to the respondent No.1 in her aforesaid savings bank account.

15. No loan or advance or pre-mature discharge shall be permitted without the permission of this Court.

16. Bank of Baroda, Gulawathi Branch, U.P. shall permit the respondent No.1 to withdraw money from her savings bank account by means of a withdrawal form.

17. Respondent No. 1 is at liberty to approach this Court for release of further amount in case of any financial exigency.

18. List for reporting compliance on 09th August, 2019.

19. Copy of this judgement be given *dasti* to counsels for the parties under signatures of the Court Master.

JULY 4, 2019

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J.R. MIDHA, J.