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

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Judgment delivered on: 05.07.2019

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FAO 366/2014

RELIANCE GENERAL INSURANCE CO. LTD.

..... Appellant

Versus

RESHAM SINGH & ANR.

..... Respondents

Advocates appeared in this case:

For the Appellant:

Ms. Shanta Devi Raman & Mr. Arihant Jain, Advocates.

For the Respondents:

Mr. R.K. Nain, Adv. for R-1.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J

FAO 366/2014 & CM. Appl. 18957/2014

1. This appeal impugns an Award dated 21.08.2014 whereby the Employees Compensation Commissioner has directed payment of compensation to respondent no.1.

2. Respondent no.1 had stated that he was employed by respondent no.2 Mr. Tilak Raj @ Kale, as a second driver, on the latter's truck bearing No. HR-38-K-7145, which was insured with the appellant-insurance company. He claims to have met with an accident on 06.10.2010 during the course of his employment. He had claimed that on the said date while, on a business trip, when the vehicle reached near Bijapur in Karnataka, he got off from the vehicle for a regular check of the tyres "*then his left foot was caught*

underneath the one of the tyre, when vehicle suddenly started moving. The first driver left the place with the vehicle. The applicant became unconscious and he was taken to the Distt. Hospital Bijapur. He was got admitted in the hospital and remained admitted for the period 06.10.2010 to 10.10.2010. The claimant could not continue his treatment in this hospital as he was running short of money. The applicant asked R-1 for money but he flatly refused to take care of his medical need and therefore, the claimant had to leave the hospital without further treatment. After leaving the hospital, he bagged (sic) for lift and he reached Taboorni hotel and remained there for about a week. From Taboorni he reached Fauji Punjabi Dhaba, Ahmednagar and one gentleman got him admitted in General Hospital, Ahmednagar, Maharashtra and remained admitted in the hospital for a period of 04.03.2011 to 09.04.2011. After this accident, the applicant was not in a position to do any work for his capacity and has become 100% disabled for the purpose of his employment as a driver as his foot has been amputated....”

3. The claimant contended that he was not in a position to continue working as a driver as he had become 100% disabled, on account of amputation of his left foot. Consequently, the vehicle being insured with the appellant, the appellant was liable for indemnification for the said loss.

4. Respondent no.2, Mr. Tilak Raj-the owner of the vehicle, had disputed that the accident took place on 06.10.2010. However, he admits that he had received information of an accident having occurred on 29.12.2010, in which the claimant claimed to have suffered physical injuries, on a trip to Karnataka in course of discharge of his duties. He further admitted that the salary of the claimant was fixed by the first driver at Rs. 5500/- per month, plus Rs. 100

daily allowance for food, and not at Rs. 6500/- per month plus Rs. 100 daily allowance for food, as claimed by the claimant. Respondent no.2 went on to say that if the Court finds that the claimant is entitled to compensation, the same should be paid by the appellant- the insurance company.

5. The appellant - insurance company had disputed the claim on various grounds, such as: (i) the claim is a collusive petition between the claimant and the alleged employer, (ii) the claimant was not employed as a driver by Respondent no. 2, (iii) the manner of the accident was unbelievable, (iv) the claimant was a resident of Karnataka, (v) the medical certificate (Ex. AW1/5) could not be relied upon as it was manipulated and fraudulent.

6. Referring to the evidence, the impugned order accepted the claimant's version that he had lost his driving license during the accident and/or treatment at the hospital. That due to trauma he could not remember the date of accident. Earlier, the claimant had mentioned the date of the accident as 29.12.2010, but the medical record produced (Exhibit as AW1/1) showed that he was admitted to a government hospital for treatment in Karnataka for a foot injury. It also showed records from General Hospital, Ahmednagar of his further treatment. It also refers to a statement given, by way of affidavit, of one Mr. Suresh Kumar Sah, confirming the date of accident and admission of the claimant for treatment in a government hospital in Karnataka. It further held that earlier the claim was withdrawn on technical grounds, with liberty to file a fresh one as there was some confusion apropos facts relating to the claim.

7. The contentions of the appellant were summarily dismissed as being based on presumption. On the basis of the above, the impugned order

concluded that the claimant had proved that the accident had occurred during the course of his employment with respondent no.2. It then went on to consider the disability certificate issued by Dr. K.B. Gupta, Certifying Surgeon, North-West Distt., Govt. of NCT of Delhi, who had concluded that the claimant had lost his earning capacity as a driver, a function he was capable of discharging at the time of the accident. The said doctor further opined that the claimant had become 100% disabled for the purpose of his employment as a driver as his left foot was amputated and he could not move without help, reducing his earning capacity, and therefore, he was entitled to 100% permanent disability compensation. The age of the claimant was taken based on a medical certificate issued by the aforesaid Certifying Surgeon since a dispute had been raised regarding the age of the claimant. Furthermore, as there was no proof of the wages as claimed i.e. at Rs. 9500/- (Rs. 6500 + Rs. 3000), wages were restricted to Rs. 8000/- as per the Act, and an award of Rs. 8,84,016/- was passed in favour of the claimant, to be paid within 30 days by way of a Demand Draft failing which the same would be recovered by way of land revenue under Section 31 of the Act.

8. The appellant has impugned the Award on various grounds, inter alia, that there was no evidence to establish that the accident took place on 06.10.2010 especially when the complainant himself written to the police of date of the accident as 29.12.2010. No FIR was registered by the police of either date of accident. Interestingly, no complaint was lodged by the complainant immediately after the accident took place, nor did the alleged employer Mr. Tilak Raj ever intimate the police about the alleged accident on 06.10.2010 or on 29.12.2010. Mr. Tilak Raj himself admits that the accident took place on 29.12.2010 and not on 06.10.2010. It stands to reason that if the

first driver had driven away the vehicle after having injured the claimant, it was expected that he would inform either the police or the employer on the said date or on any other date immediately thereafter; there is no chain of documents showing medical treatment of the claimant from 06.10.2010 to 09.04.2011, nor is there any evidence of surgical amputation of his left foot resulting in his alleged 100% disability. The report of Dr. K.B. Gupta records that the injury of the claimant is an “*amputated left foot through tarso-metatarsal joints except fifth toe*”, and not of his entire foot.

9. According to the appellant as per Entry 24 of Part II of Schedule I of the Employees’ Compensation Act 1923, compensation would be only 20% of the loss of earning capacity, for loss of all toes of one foot through the metatarsophalangeal joint. Therefore, there was no reason for the said doctor to conclude that the claimant had suffered 100% disability apropos his earning capacity. He was only required to assess the extent of physical disability and not about the loss of earning capacity. The appellant contended that while in the claim petition the claimant has claimed himself to be a trained driver, possessing a license for heavy motor vehicle, the Case-Sheet prepared by the District Hospital Bijapur, Karnataka records his occupation as “*Coolie*”. In the absence of the claimant producing a driving license, his claim of being a licensed driver could not be accepted, and therefore, the impugned order has erred in this regard. Likewise, the impugned order also erred in taking an arbitrary figure of Rs. 8,000/- as the salary of the claimant without reference to any evidence on record.

10. The appellant also argues that the affidavit in evidence of Mr. Suresh Kumar Sah dated 16.04.2013 is highly suspect and unbelievable because his so

called Investigation Report was filed 11 days after filing of the second claim petition on 05.04.2013. Interestingly, the address of the said Investigating Officer is the same as the address of the counsel for the claimant, which shows evidence has been procured.

11. In view of the above, it is argued that the impugned order has erred both in fact and law and the claim petition ought to have been set aside.

12. The learned counsel for the respondent refutes the aforesaid argument and contends that: firstly a substantial question of law is to be framed for disposal of the appeal, and secondly, Sections 32B and 32C of the Insurance Act, 1938 would be applicable. He relies upon the judgment in the case of *Chiman Surakhia Vasva vs Ahmed Musa Ustad & Ors. 1987 ACJ 161*, wherein it was held that strict principles of the Evidence Act would not be applicable apropos proof of employment of a workman in an unorganized sector such as one engaged in lifting stones and filling the same in the truck. He also contends that under Sections 32B & 32C of the Insurance Act, 1938 every insurer is required to undertake percentages of life insurance business and general insurance business in the rural and social sectors, as has been specified in the Official Gazette of IRDA and further discharge their obligations specified under section 32B to provide life insurance or general insurance policies to the persons residing in the rural sector, workers in the unorganized or informal sector or for economically vulnerable or backward classes of the society and other categories of persons as may be specified by the Authority and such insurance policies shall include insurance for crops. Be that as it may, the Court is unable to see how the reference to Section 32B and 32C of the Insurance Act, 1938 has any relevance to the facts of this case.

13. The issue to be determined in this appeal is whether the impugned order ignored the allegations of connivance between the claimant and his alleged employer, based on a fraudulent and manipulated disability certificate and whether the accident happened on the date mentioned.

14. Apart from, (i) the confirmation by the alleged employer Mr. Tilak Raj, that the claimant was employed by him as a driver for which he was being paid Rs. 5500 per month plus Rs. 100 per day as allowance, there is nothing on record, not even a ledger or any account book which may have been maintained by him, to show payments to the claimant, (ii) the date on which the claimant was employed is not specified, (iii) copy of the alleged driving licence for HMV is neither produced by the employer nor by the claimant. Interestingly, according to Mr. Tilak Raj, the claimant's salary of Rs. 5500/- was fixed by the first driver and not by him. It is odd that the salary of an employee is fixed by another employee, (iv) the various business trips that the claimant undertook in discharge of his employment, have not been disclosed; therefore, in the aforesaid circumstances, the acceptance of employment of the claimant as a driver by Mr. Tilak Raj is suspect, (v) the name of the first driver too is not mentioned in his reply, (vi) it is also not explained as to why Mr. Tilak Raj did not ask the first driver of the vehicle why he drove away from the *dhaba* without his colleague – the second driver – after crushing the latter's foot under the truck tyre. Such an enquiry from Mr. Tilak Raj would be natural, at least, after he received intimation of the accident dated 29.12.2010. Nor is there any explanation by Mr. Tilak Raj as to what he did apropos the non-reporting for duty by the claimant after 06.10.2010.

15. In his cross-examination the Legal Executive of the appellant company had disputed the date of occurrence as 06.10.2010 and instead stated it to be 29.12.2010, on the basis of the letter of the claimant sent to the police concerned. The aforesaid letter by the claimant was sent by way of speed post dated 11.02.2012 to the Superintendent of Police, Bijapur stating, inter alia, that he had suffered injury at about 9.00 p.m. near Bijapur, Karnataka when he got off the vehicle to check its tyres etc. and his left foot was caught underneath the tyre of the vehicle when it was started instantly by the first driver, who left the place with the vehicle. He claimed to have been admitted for a long period in a Govt. Hospital etc.

16. The Court would note that the Case Sheet issued by the District Hospital, Bijapur on 06.10.2010 “shows soft tissue injury to the left foot” thereafter the doctor’s scribble is illegible. The claimant’s occupation is recorded as ‘*coolie*’ and the Court cannot read it as ‘driver’. In the column ‘Physical Signs and Conditions on Admission’ the Duty Surgeon has recorded that while it was a history of road traffic accident, the claimant was ‘*alcoholic intoxicated* (sic)’. He was prescribed medicines, x-ray, etc. In the progress note (reverse side of page 56/c of the LCR), the doctor ticked on ‘Not Immediate/ Not Urgent/ Routine Only’. A note is addressed to the orthopedic doctor that the patient is a case of RTA with crush injuries to the left foot and the patient may, therefore, be examined. Thereafter, it is noted that there is a crush injury to the left foot with injuries to three toes with lacerated wounds etc. (report is not wholly legible).

17. The General Hospital, Ahmednagar has issued a Discharge Card showing the petitioner’s date of admission as 04.03.2011 and his date of

discharge as 09.04.2011 for 'non-healing ulcer on left foot'. Interestingly, the period of medication between 10.10.2010 and 04.03.2011, approximately five months, is unexplained, nor is it shown anywhere that his right foot as claimed was amputated as a result of the injury suffered in the alleged accident. The so-called Investigation Report dated 16.04.2013 filed by Mr. Suresh Kumar Sah is to the effect that (i) he had gone to Bijapur, Karnataka on 04.02.2013 in relation to the case of the claimant where he assessed the situation; (ii) that about 10 km before Solapur-Bijapur Highway Mr. Resham Singh had suffered an accident near Bhutna Gaon; (iii) that the accident happened in front of Jammu-Kashmir Dhaba whose owner, Mr. Girdhari Lal and another witness Mr. Prem Singh, also has a barber shop, remember the accident, and these two had called the police, who took the claimant to a government dispensary and got him admitted there. At his request, Mr. Prem Singh took him to the dispensary where the MRO Mr. H.S. Begampalli met him and all details of the claimant were shown to him to the effect that he had been admitted at 8.00 p.m. on 06.10.2010 and was released on 2.10 p.m. on 10.10.2010. He was given a photocopy of all the relevant records.

18. These are a few but important factors which do not corroborate with each other thus rendering the claimant's story unconvincing: (i) that he was found by the attending doctor to be intoxicated by alcohol; (ii) that he was semi-conscious; (iii) that his case was not an "urgent" one and it was only a routine case, albeit he may have been shifted to the trauma ward, his discharge from the hospital on 10.10.2010 does not record his medical condition at that time; (iv) that the X-Ray report is not attached nor are the other reports regarding his blood test, etc. (v) that the report and the treatment at the General Hospital, Ahmednagar, is regarding a non-healing ulcer and it does not record

any history of road accident trauma; (vi) that there is an unexplained lapse of five months between the first treatment from 06.10.2010 to 10.10.2010 and the second treatment from 04.03.2011 to 09.04.2011. Interestingly, if the accident took place in the year 2010, there is no reason why the claimant would not have approached anybody in the interim to claim any relief from his employer Mr. Tilak Raj apropos his dire financial state, as he claims to have been in, or apropos his treatment or amputation of his left foot; (vii) that the amputation was only of four toes of his left foot and not an amputation of the foot itself; (viii) that the claim also does not mention the period of his employment or from when it began with Mr. Tilak Raj; (ix) as to why there is a delay of almost one and a half years in making the complaint to the police about the injury and about the first driver having run away after having injured him; (x) there is also no reference to which police official had taken him to the government hospital. Ordinarily, if he had been taken by a policeman to the government hospital, the hospital would have recorded it as a Medico-Legal Case (MLC) and corollary police proceedings would have ensued. Hence, the statement of Mr. Suresh Kumar Sah in his evidence affidavit dated 16.04.2013, that the complainant had been taken to the government dispensary as stated by Mr. Prem Singh – the barber, remains unverified.

19. What emanates from the preceding discussions is that there is no link between the first treatment of the claimant at Bijapur government hospital in Karnataka, and the second treatment for a ‘non-healing ulcer in left foot’; there is also nothing on record to show that the permanent disability was on account of the injury dated 06.10.2010; there is no proof of the amputation. Even assuming that the amputation was a result of the sore, the response of Mr. Tilak Raj-the alleged employer, is suspect, as discussed in the preceding

paragraphs. It cannot be concluded that the claimant was the employee of the owner of the insured vehicle, which is stated to have crushed the foot of the claimant. Resultantly, (i) the accident by the insured vehicle is not proven; (ii) permanent injury as result of that accident is not established, (iii) nor is the employment of the claimant with the owner of the vehicle. The medical record at Bijapur hospital shows the claimant's occupation as '*coolie*' and not as a driver. A case for compensation is not made out. The impugned order has erred for the aforesaid reasons. It cannot be sustained. It is, accordingly, set aside. The appeal is allowed and disposed off.

JULY 05, 2019
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NAJMI WAZIRI, J



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