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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 30th September, 2019

+ **FAO 27/2017**

LEELAWATI AND ORS

..... Appellants

Through: **Mr. Vipin Kumar Mishra & Mr.
Manoj Kumar, Advs.**

versus

RAMESH SINGH TARIYAL & ANR

..... Respondents

Through: **Mr. Vikas Mishra, Adv. for R-
1.
Mr. Ankit Kalra, Adv. for R-2.**

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The claim case (no. CWC-D/NDD/22/2016/3013) under Employees' Compensation Act, 1923 instituted by the appellants was dismissed by the Commissioner, Employees' Compensation by the impugned judgment 04.08.2016, observations having been recorded as to the deficiency of evidence with regard to the factum of accident, the place of death and, what is crucial, on the question of employee-employer relationship between the deceased Shesh Narain Chaupal and the first respondent herein, who admittedly is the registered owner of truck bearing registration no. DL-1L-0271.
2. Feeling aggrieved by the rejection of the case for compensation, the present appeal was filed.

3. On perusal of the pleadings brought before the Commissioner, Employees' Compensation, it emerges that the relationship of the first claimant with the deceased as wife and of the other appellants being the other legal heirs (children and mother respectively) of the deceased is not in dispute. It also seems to be undisputed fact that the deceased was driving the truck on 03.06.2014 on way from Lucknow to Patna, it having met with an accident in the area of police station Kotwali Rudauli of district Faizabad, Uttar Pradesh. From the averments in the written statements of the respondents, it is clear that the factum of death of Shesh Narain Chaupal on account of injuries suffered in the said accident is not disputed, this being expressly admitted by the first respondent in his pleadings.

4. Against the above backdrop, the observations with regard to discrepancy in the death certificate as to place of death and also about there being no evidence in the nature of MLC or record of treatment as Faizabad are found to be unnecessary. The claimants were expected to adduce evidence restricted to the questions of fact which arose on the basis of averments, the prime issue being as to whether an employer-employee relationship existed between the first respondent and the deceased at the relevant point of time.

5. On the issue of employer-employee relationship, there seems to be some confusion prevailing. The claimants had examined only the widow (first appellant) who statedly was not in a position to prove the formal terms of engagement. The claimants clearly were depending on the admission by the first respondent in his written statement about the employment. But then, the second respondent (the insurer) claims

to have made some verification through some investigator who, it is stated, had recorded the statement (R2W1/2) of the first respondent which was introduced in evidence through the testimony of Dheeraj Malik (R2W1), Manager (Legal). The said document (Ex.R2W1/2) is described as a statement made by the first respondent to the investigator indicating the terms of engagement of the deceased to be on daily hire charges. The insurance company did not examine the investigator. Its witness (R2W1) was not properly cross-examined by the counsel for the claimants, a few questions asked being neither here nor there, not the least an effective exercise to test the veracity or bring out the entire truth. The first respondent neither cross-examined the said witness nor offered his own testimony. In these circumstances, the Commissioner, Employees' Compensation accepted evidence of the insurer as untrammelled and unchallenged.

6. Against the above backdrop, the counsel for the appellants submitted that the impugned judgment may be set aside and since there has been a deficiency in the proper prosecution of the matter by all sides, the inquiry may be remitted so that the claimants can examine the first respondent as a witness such that the entire facts may be brought out. He also submitted that he may be given additional opportunity to further cross-examine the insurer's witness (R2W1) in which regard the counsel for the first respondent also joins in the request.

7. The counsel for insurance company, while conceding the above requests, submitted that Mr. Dheeraj Malik (R2W1) has already left the services of the insurance company and, therefore, he will have to

be summoned from his present address which the counsel undertakes to supply. At the same time, he also submitted that the right of the insurance company to lead evidence in rebuttal may also be reserved. Ordered accordingly.

8. In above view, the impugned judgment is set aside. The inquiry into the claim case is revived on the file of the Commissioner, Employees' Compensation, who shall give an opportunity to the claimants to summon and examine additional witness(es) and also afford to them additional opportunity, as indeed to the first respondent, to cross-examine R2W1, whereafter an opportunity shall be afforded to the insurance company, and indeed to the first respondent, to adduce further evidence, if any.

9. The parties are directed to appear before Commissioner, Employees' Compensation for further proceedings in accordance with law on 31st October, 2019.

10. The appeal is disposed of in above terms.

R.K.GAUBA, J.

SEPTEMBER 30, 2019

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