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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 13th September, 2019

+ FAO 426/2015

GIRIYA DEVI

..... Petitioner

Through: Mr. Anshuman Bal, Adv.

versus

HARENDER KUMAR & ANR.

..... Respondents

Through: Mr. Anshul Abhishek Kumar,
Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. Dayanand, son of appellant herein was engaged as a driver on a motor vehicle described as three wheeler scooter (TSR) bearing registration no. DL 1RE 7076. On 26.06.2008, at about 5.00 a.m., he suffered injuries while driving the said TSR, it having met with an accident at Khajuri Pusta road, and died in the consequence. A claim case no. CWC-D/ED/10/08/3656 was instituted by the appellant (she being the mother) and her husband Ganesh Yadav (he being the father), the prayer being for compensation under the Employees' Compensation Act, 1923 on the averments that TSR was owned by the respondent, the second respondent (insurer) also being impleaded in the said proceedings on the plea that there was an insurance contract taken out by the former (first respondent). During the pendency of the inquiry into the said claim case before the Commissioner, Employees'

Compensation, Ganesh Yadav (first claimant) died on 05.08.2009. His name stood deleted from the array by order dated 12.10.2011. The claim case was then prosecuted further by the appellant alone.

2. The claim case was contested by the first respondent primarily on the ground that he was not the owner of the TSR, the TSR having been given “on contract basis” through some acquaintance. The second respondent (insurer) took the preliminary objection that it was impermissible under the law, and in terms of permit, for a driver to be employed on the TSR, there being violation of the terms and conditions of the insurance policy.

3. The claim case was decided by the Commissioner, Employees’ Compensation, by judgment dated 09.11.2015, an award of Rs. 8,31,920/- having been granted with interest @ 12 % per annum in favour of the appellant, the interest being leviable from 26.06.2008 till realization. The Commissioner, Employees’ Compensation fastened the liability against the first respondent absolving the insurer on the ground that the vehicle had been given on contract to the deceased, the terms of the insurance policy clearly stipulating that there would be no liability against the insurer in respect of “*any claim arising out of any contractual liability*”.

4. Feeling aggrieved with the said direction absolving the insurer, the present appeal was filed by the claimant.

5. The first respondent, inspite of notice, has not appeared to contest. The second respondent (insurer) though set *ex-parte* earlier appeared later to put in contest reiterating the objections taken in reply submitted before the tribunal. When the matter came up for hearing

today there was no appearance on behalf of any of the respondents. In view of the nature of the objections that had been taken by the insurer, the matter was kept in wait, the counsel for the appellant requested to communicate to the counsel for the insurance company to appear. It is only pursuant to the request made by the counsel for the appellant that the counsel for insurance company has appeared later in the day at 3.30 p.m.

6. The submissions of both sides having been heard and the record perused. This Court is of the view that the appeal must succeed, the insurance company bound to be directed to discharge its responsibility under the insurance contract. The reasons may be set out herein below.

7. On being asked to clarify as to what is the basis of the preliminary objection taken by the insurance company that no driver can be employed as a driver under the Motor Vehicles Act, or the permit, the counsel for insurance company submitted that those were general objections taken in the written statement, there being nothing in the law or contract to create any such inhibition. If it were so, it is a matter of lament that the insurance company chose to come up with such irresponsible objections.

8. There is inherent contradiction in the view taken by the Commissioner Employees' Compensation. While dealing with the claim against the first respondent, a clear finding was arrived at, on the basis of evidence, that the deceased had suffered the fatal injuries during the course of "his employment" with the first respondent. If it were so, it naturally follows that the plea of vehicle having been given "on contract" was being rejected. In this view, the subsequent

observation that the insurance company cannot be called upon to indemnify because the claim had arisen out of “contractual liability” is wholly inappropriate.

9. For the foregoing reasons, the impugned order of the Commissioner, Employees’ Compensation to the extent of absolving the insurance company of its liability in the case at hand is set aside. The claimant has not been able to recover any money under the award from the first respondent. It is the responsibility of the insurer to indemnify the first respondent. The second respondent (insurer) is, thus, directed to discharge its liability by depositing the requisite amount in terms of the award of the Commissioner, Employees’ Compensation within thirty days hereof. Such deposit must be inclusive of the principal amount as indeed the amount payable towards interest. The amount, upon deposit, shall be released forthwith to the appellant (claimant). In the event of failure, or default on the part of insurance company to abide by the directions, the appellant will be at liberty to execute the order as per law.

10. The appeal is disposed of in above terms.

R.K.GAUBA, J.

SEPTEMBER 13, 2019

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