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

% **Date of Decision: 18th June, 2021**

\+ FAO 193/2019 & CM APPLs.17224/2019, 43531/2019, 26992/2020 & 30265/2020

M/S ANSHUL TRADERS ...... Appellant
Through: Mr. Raghu Vasishth, Advocate

versus

THE COMMISSIONER, LABOUR WELFARE CENTRE AND ANR. ..... Respondents
Through: Mr. R.K. Nain, Advocate for respondent No.3

\+ FAO 446/2019 & CM APPLs.49425/2019 & 49426/2019

RAM KISHAN ...... Appellant
Through: Mr. R.K. Nain, Advocate

versus

M/S ANSHUL TRADERS & ORS ..... Respondents
Through: Mr. Raghu Vasishth, Advocate

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

J U D G M E N T

1. Ram Kishan filed an application for compensation before the Commissioner, Employee's Compensation against Anshul Traders claiming compensation on the averments that Ram Kishan was employed as a labourer with Anshul Traders and he was posted on the truck bearing registration No.HR-55-F-6511; he was aged 22

years and was drawing wages of Rs.10,000/- per month including allowances; on the night of 23rd/24th May, 2016, he was on duty on the aforesaid vehicle; when the vehicle reached Capital Market, Shamli Road, Panipat at about 10.00 P.M., the upper portion of the goods loaded on the vehicle came in contact with transmission line of the electricity department due to which he was electrocuted and he suffered injuries on the right leg and his right shoulder; and he was taken to the Government Hospital, Panipat where his right leg was amputated; he was employed on the vehicle and the accident arose out of and during the course of his employment; he suffered 100% disability and claimed compensation for permanent disablement along with interest @12% per annum from the date of accident till realization and penalty to the extent of 50%.

2. Anshul Traders filed the written statement on 15th January, 2018 in which they stated that Anshul Traders offered to bear the expenditure of Ram Kishan's treatment at Muzaffarnagar but Ram Kishan repeatedly denied the same; Ram Kishan voluntarily admitted his responsibility to bear all the repercussions of the injury caused; Ram Kishan accepted Rs 37,000/- from Anshul Traders and signed an undertaking that in future, he would not raise any concern regarding payment of compensation; and the liability to pay the compensation, if any, is of the Insurance Company with which the vehicle was insured.

3. Ram Kishan filed an application dated 29th January, 2018 under Order I Rule 10 read with Order VI Rule 17 of Code of Civil Procedure to implead the registered owner of the vehicle, namely

Gagan and United India Insurance Company Ltd. as respondents No.2 and 3.

4. Vide order dated 08th March, 2018, the application dated 29th January, 2018 of Ram Kishan under Order I Rule 10 read with Order VI Rule 17 of Code of Civil Procedure to implead the registered owner of the vehicle as well as the insurance company as respondents No.2 and 3, was dismissed. The dismissal of the application has been recorded in the impugned award which is reproduced as followed:

> *"6.The claimant filed amended memo of parties along with amended claim and application dated 29.01.2018 under Order 1 Rule 10 read with order VI Rule 17 CPC to implead the registered owner of the vehicle and Insurance Company as respondent no.2 &3 in the array of respondents.*
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> *The claimant has stated in the application that in the original file an application Sh. Anshul M/s. Anshul Traders was impleaded as R-1 and respondent no.1 has filed his W.S. along with insurance policy of the vehicle bearing no. HR-55-F-6511, as per which Sh.Gagan, S/o Sh.Diwan Chand R/o H.No. 1693, Sector-12, HUDA Panipat Haryana was the registered owner/insured of the vehicle on which the injured was employed as a labourer for loading and unloading of the vehicle and thus necessary amendment in the claim has been made and R-2, Sh. Gagan and R-3, Insurance Company be impleaded in the array of respondents.*
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> *7. On 08.03.2018 the application dated 29.01.2018 of claimant to implead registered owner of the vehicle and insurance company as R-2 and R-3 was dismissed since respondent i.e. Sh. Anshul M/s. Anshul Traders had admitted that claimant was not his regular employee but was a daily wage earner and was an employee of a contractor, in the statement recorded on the very first date*

of his appearance and in his written statement. Respondent was covered under the definition of principal employer since Section 12 of E.C. Act imposes the liability of payment of compensation on the principal with right to recover the same from the contractor in respect of work been carried out by the contractor.

8. The respondent Sh. Anshul, Proprietor of M/s. Anshul Traders filed a copy of insurance policy of the vehicle with his reply but on perusal it was seen that Sh.Gagan, S/o Sh.Diwan Chand was the insured and not Sh. Anshul i.e. Proprietor of M/s. Anshul Traders. It was very much clear that when the claimant came to know that Sh.Gagan was the policyholder of the vehicle and not his employer Sh. Anshul, Proprietor of M/s. Anshul Traders he immediately put in an application for amending the claim application accordingly, in which he stated that the claimant was employed as labourer with respondent no.1 and posted on vehicle owned by respondent no.2 which is clearly an afterthought. The claim has been tried to be amended in a way so that the compensation liability entirely shifts to insurance company. Respondent Sh. Anshul had no documentary evidence to who the role of Sh. Gagan, insured owner of the vehicle in M/s. Anshul Traders which is a Proprietorship firm. In absence of any employment documents/documentary evidence proving Sh. Gagan to be the employer and admittance of employment by respondent Sh. Anshul, Proprietor of M/s. Anshul Traders in his W.S. as well as by claimant in his claim, the application of claimant to amend the claim was dismissed and the matter was fixed for filing of the rejoinder. "

5. The Commissioner, Employee's Compensation held that there was an employer – employee relationship between Ram Kishan and Anshul Traders at the time of accident and Ram Kishan was entitled to the compensation. The Commissioner, Employee's Compensation computed the compensation of Rs.7,11,614/- on the basis of the age

of Ram Kishan i.e. 22 years; the relevant applicable factor of 221.37; wages of Rs. 8,000/- per month; and disability was taken as 70% according to the disability certificate issued by the Disability Board, Aruna Asaf Ali Hospital, Delhi. The Commissioner awarded simple interest @ 12% p.a. from 23rd June, 2016 till the date of deposit of the amount.

6. The Commissioner, Employee's Compensation further awarded penalty on Anshul Traders to pay an amount equal to 10% of the principal amount of compensation, i.e. Rs.71,161/- under Section 4A(3) Employee's Compensation Act.

7. Anshul Traders filed a writ petition, W.P.(C) 3754/2019 which was subsequently converted into an appeal under Section 30 of the Employee's Compensation Act, and re-numbered as FAO 193/2019. Vide order dated 11th April, 2019, Ram Kishan was impleaded as respondent no.3. Vide order dated 09th August, 2019, this Court impleaded the registered owner, Gagan as appellant No.2 and United India Insurance Company Ltd. as respondent No.4 in FAO 193/2019.

8. Anshul Traders has challenged the order of the Commissioner, Employee's Compensation on various grounds *inter-alia* that the order dated 12th October, 2018 passed by the Commissioner, Employee's Compensation was not received by him; that Respondent No. 3 has not placed any evidence on record pertaining to his employment with the appellant; that the date of payment of compensation should have been 12th October, 2018 and not 23rd June, 2016; Respondent No. 3 had placed two different Voter ID

cards on record; that the vehicle was in the name of Gagan and was insured; and the registered owner and the insurance company were necessary and proper parties before Commissioner, Employee's Compensation.

9. Learned counsel for Anshul Traders urged at the time of the hearing that the offending vehicle bearing No. HR-55-F-6511 was validly insured with United India Insurance Company Ltd. and therefore, the liability to pay the compensation is of United India Insurance Company Ltd. under the policy.

10. Ram Kishan has also challenged the order dated 12th October, 2018 on various grounds *inter-alia* that the Commissioner, Employee's Compensation took the permanent disability as 70% whereas it should have been taken as 100% and the penalty of 10% be enhanced to 50%.

11. Vide order dated 11th April, 2019, the proprietor of the petitioner undertook to deposit Rs 2,00,000 with the Registrar General of this Court within three weeks and the balance award amount within three months.

12. On 03rd May, 2019, Anshul Traders deposited Rs.2,00,000/- by demand draft dated 01st May 2019 and Rs.5,11,614/- by demand draft dated 06th July, 2019 with this Court.

13. On careful consideration of the contentions of the parties, this Court is of the view that the Ram Kishan has been rightly compensation as Anshul himself admitted the accident and employment of Ram Kishan, when he appeared in person before Commissioner, Employee's Compensation on 13th November, 2017

and secondly, Anshul admitted having paid Rs.37,000/- to Ram Kishan. So far as the appeal of Ram Kishan is concerned, this Court is of the view that there is no infirmity in assessing the permanent disability of Ram Kishan as 70%.

14. In that view of the matter, this Court upholds the impugned order dated 12th October, 2018 insofar as the Commissioner, Employee's Compensation has awarded the compensation of Rs.7,11,614/- along with simple interest @ 12% per annum from 23rd June, 2016 and penalty of 10%.

15. The issue of valid insurance and claim of penalty of 50% have not been adjudicated by the Commissioner, Employee's Compensation and therefore, the matter is remanded back to the Commissioner, Employee's Compensation to adjudicate only on the following two issues namely:

> *(1) Whether the offending vehicle bearing No. HR-55-F-6511 was validly insured by United India Insurance Company Ltd.? If so, whether United India Insurance Company Ltd. is liable to reimburse the compensation amount, interest and penalty to Ram Kishan? - Onus of proof on Anshul Traders and Gagan.*
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> *(2) Whether Ram Kishan is entitled to penalty of 50% of the compensation amount? – Onus of proof on Ram Kishan.*

16. Gagan and United India Insurance Company Ltd. are impleaded as respondent No.2 and 3 in the proceedings before the Commissioner, Employee's Compensation. The Commissioner, Employee's Compensation shall afford an opportunity to all the

parties to lead evidence with respect to the aforesaid issues.

17. After recording the evidence, the Commissioner, Employee's Compensation shall adjudicate the aforesaid issues. If Issue No.1 is decided in favour of Anshul Traders, the Commissioner, Employee's Compensation shall direct United India Insurance Company Ltd. to reimburse such amount as is determined to be the liability of United India Insurance Company Ltd. With respect to Issue No.2, the Commissioner, Employee's Compensation shall adjudicate whether any enhancement of penalty is warranted and if so, who would be liable to pay the enhanced penalty amount to Ram Kishan.

18. Since the compensation of Rs.7,11,614/- along with simple interest @ 12% p.a. from 23rd June, 2016 till the date of deposit and penalty of 10% is upheld, the Registrar General is directed to release the amount deposited by the Anshul Traders to Ram Kishan by instructing UCO Bank, Delhi High Court Branch as under:-

(i) Rs.6 lakh be kept in 40 FDRs of Rs.15,000/- each in the name of Ram Kishan for the period 1 month to 40 months respectively with cumulative interest.

(ii) The balance amount after keeping Rs.6 lakh in FDR, be released to Ram Kishan by transferring the same to his savings bank account No. 38730613630 with State Bank of India, Rohini Sector 24, Delhi.

(iii) 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 to Ram Kishan.

(iv) The maturity amounts of the aforesaid FDRs be released to Ram Kishan, by transferring the same to his aforesaid savings bank account as mentioned above.

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

(vi) State Bank of India shall permit Ram Kishan to withdraw money from his savings bank accounts by means of a withdrawal form.

19. The Registrar General shall ensure the disbursement within three weeks.

20. Both the appeals are disposed of in the above terms. Pending applications are also disposed of.

21. The record of Commissioner, Employee's Compensation be returned back along with the copy of this judgment.

22. All the parties shall appear before the Commissioner, Employee's Compensation on 15th July, 2021.

23. The Commissioner, Employee's Compensation shall endeavour to decide the issues being remanded back by this Court within a period of four months from the first date of appearance of the parties.

J.R. MIDHA, J.

JUNE 18, 2021
ak/dk