

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

FAO 205/2020 and CM APPL. 28790-28792/2020

Date of decision: 08.12.2022

IN THE MATTER OF:

THE NATIONAL INSURANCE CO. LTD. Appellant

Through: Mr. S.P. Jain, Advocate

VERSUS

RENU & ORS.

..... Respondents

Through: Appearance not given

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J.(ORAL)

CM APPL. 28793/2020

1. By way of the present application filed under Section 5 of the Limitation Act, the appellant/respondent No. 2 seek condonation of delay of 65 days in filing the present appeal.
2. Learned counsel for the appellant submits that the impugned order was passed on 08.06.2020 and the appeal could not be filed timely on account of COVID-19 pandemic.
3. This Court takes note of the fact that, vide order dated 23.09.2021 passed in **Suo Motu Writ Petition (Civil) No. 3 of 2020** titled as In Re: Cognizance for Extension of Limitation, the Supreme Court has directed that for computing the period of limitation in suit, appeal, application or

proceedings, the period from 15.03.2020 till 02.10.2021 shall stand excluded. The impugned order was passed on 08.06.2020 and the instant appeal was filed on 05.10.2020. Considering the facts and circumstances of the case, the application is allowed and the delay of 65 days in filing the accompanying appeal is condoned.

4. In view of the abovementioned submissions and circumstances, the application is disposed of.

FAO 205/2020

1. By way of the present appeal filed under Section 30 of the Employees' Compensation Act, 1923 (hereinafter, referred to as the 'Act'), the appellant has challenged the order dated 08.06.2020 passed by the learned Commissioner, Employees' Compensation, Karampura, New Delhi-110015 in Case No.WCD/32/WD/17/1880 *titled as* Renu & Ors. v. D.J. Logistics & Anr. whereby the claim petition filed by respondents No. 1 to 3 was allowed.

2. While admitting that at the time of incident, a valid insurance policy was issued in favour of respondent No. 4, the liability for the incident is denied by contending that it cannot be said to have occurred during the course of employment. It was further contended that in the present case, the body of deceased was found abandoned in the fields and the truck which he was driving was not found involved in any accident.

3. I have heard learned counsels for the parties and have also gone through the material placed on record.

4. Before proceeding further, this Court deems it expedient to outline the scope of appeal filed under Section 30 of the EC Act as delineated in North East Karnataka Road Transport Corporation v. Sujatha reported as **(2019) 11**

SCC 514. In the captioned case, the Supreme Court has reiterated that the scope of interference in an appeal filed under Section 30 of the Act is limited to substantial questions of law and findings of facts proved either way, are not to be likely interfered with. Relevant excerpt from the decision is reproduced hereunder:-

“9. At the outset, we may take note of the fact, being a settled principle, that the question as to whether the employee met with an accident, whether the accident occurred during the course of employment, whether it arose out of an employment, how and in what manner the accident occurred, who was negligent in causing the accident, whether there existed any relationship of employee and employer, what was the age and monthly salary of the employee, how many are the dependents of the deceased employee, the extent of disability caused to the employee due to injuries suffered in an accident, whether there was any insurance coverage obtained by the employer to cover the incident etc. are some of the material issues which arise for the just decision of the Commissioner in a claim petition when an employee suffers any bodily injury or dies during the course of his employment and he/his LRs sue(s) his employer to claim compensation under the Act.

10. The aforementioned questions are essentially the questions of fact and therefore, they are required to be proved with the aid of evidence. Once they are proved either way, the findings recorded thereon are regarded as the findings of fact.

11. The appeal provided under Section 30 of the Act to the High Court against the order of the Commissioner lies only against the specific orders set out in clauses (a) to (e) of Section 30 of the Act with a further rider contained in the first proviso to the section that the appeal must involve substantial questions of law.

12. In other words, the appeal provided under Section 30 of the Act to the High Court against the order of the

Commissioner is not like a regular first appeal akin to Section 96 of the Code of Civil Procedure, 1908 which can be heard both on facts and law. The appellate jurisdiction of the High Court to decide the appeal is confined only to examine the substantial questions of law arising in the case.”

5. Keeping in view the above dicta of the Supreme Court, it is opined that this Court, in exercise of jurisdiction under Section 30 of the EC Act, should not interfere with an award passed by Commissioner, Employees' Compensation, except when there is a substantial question of law involved. The same view has recently been voiced by the Supreme Court in Shahajahan and another v. Shriram General Ins. Co. Ltd. and another reported as **2022 ACJ 203**.

6. A perusal of records of the present case would show that respondents No. 1 to 3/claimants had filed the claim petition under the provisions of the Act. It was claimed that the deceased was employed with respondent No. 4 as a driver. On 08.05.2016, on the direction of respondent No.4, after loading the vehicle bearing No. DL-IGC-5847 owned by respondent No. 4 with cargo for delivery, the deceased proceeded to Karnal. While performing duty, the incident in question occurred and the dead body of the deceased was found by the police at Village Manglora, Meerut Road, District Karnal.

7. A written statement came to be filed on behalf of respondent No. 4 wherein it was stated that when the deceased had approached the answering respondent for the job of driver, the answering respondent had seen and examined the driving licence and had also satisfied himself with the driving skills of the deceased. It was admitted that the said incident occurred during the course of employment. During the proceedings before the Commissioner, copy of the FIR, driving licence, RC, permit of vehicle No.

DL-IGC-5847, voucher of salary and expenses by respondent No. 4 to the deceased were also exhibited.

8. Respondent No. 4 along with his evidence had also placed on record track report, unloading the goods & receiving documents, and a copy of transaction history to corroborate the evidence that the vehicle in question was coming from Bihar Sharif to Karnal and was driven by the deceased. Needless to state that for the claim to succeed there has to be a causal connection between the incident and the employment. Admittedly, the deceased was employed with respondent No. 4 who had sent him to Karnal and the said incident occurred on the way. In like facts and circumstances in National Insurance Co. Ltd. v. Sanjida and Others reported as **2022 SCC OnLine Del 3709**, where employer-employee relationship stood established, this Court opined that merely because the deceased had passed away on account of the murder and not on account of accident involving the vehicle, the appellant therein (Insurance Company) cannot escape its liability to pay compensation.

9. In this regard, it is deemed expedient to advert to the decision in Shrimati Bhagubai v. The General Manager, Central Railway reported as **1954 SCC OnLine Bom 10**, where a Division Bench of the Bombay High Court analysed circumstances under which a causal connection between employment of the deceased and his accident is established. It was observed as follows:-

“...Now, it is clear that there must be a causal connection between the accident and the employment in order that the Court can say that the accident arose out of the employment of the deceased. It is equally clear that the cause contemplated is the proximate cause and not any remote cause. The authorities

have clearly laid down that if the employee in the course of his employment has to be in a particular place and by reason of his being in that particular place he has to face a peril and the accident is caused by reason of that peril which he has to face, then a causal connection is established between the accident and the employment. It is now well settled that the fact that the employee shares that peril with other members of the public is an irrelevant consideration. It is true that the peril which he faces must not be something personal to him; the peril must be incidental to his employment. It is also clear that he must not by his own act add to the peril or extend the peril. But if the peril which he faces has nothing to do with his own action or his own conduct, but it is a peril which would have been faced by any other employee or any other member of the public, then if the accident arises out of such peril, a causal connection is established between the employment and the accident. In this particular case what is established is that the employee while in the course of his employment found himself in a spot where he was assaulted and stabbed to death. He was in the place where he was murdered by reason of his employment. He would have been safely in his bed but for the fact that he had to join duty, and he had to pass this spot in order to join his duty. Therefore the connection between the employment and the accident is established. There is no evidence in this case that the employee in any way added to the peril. There is no evidence that he was stabbed because the assailant wanted to stab him and not anybody else.”

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Once the peril is established it is for the employer then to establish either that the peril was brought about by the employee himself, or that the peril was not a general peril but a peril personal to the employee. It is because of this that the authorities have made it clear that the causal connection between the accident and the employment which the applicant has to establish is not a remote or ultimate connection but a connection which is only proximate. Once that proximate connection is established the applicant has discharged the burden, and in this case the proximate connection between the

employment and the injury is the fact that the deceased was at a particular spot in the course of his employment and it was at that spot that he was assaulted and done to death.”

10. Reference may further be profitably made to United India Insurance Co. Ltd. v. Kanshi Ram reported as **2004 SCC OnLine Del 109**, where a factual matrix akin to the present case was involved. Briefly stated, the deceased in the captioned case was claimed to have been employed as a driver. While he was taking a truck carrying goods to Hyderabad as part of his duties, he was murdered by the second driver in the truck. The truck went missing for a few days and after investigation, the goods were found to have been stolen. The concerned Commissioner had awarded death compensation to the claimants, but the appellant/Insurance Company filed an appeal.

A co-ordinate Bench of this Court, after analysing the legal position on the issue as set out in a catena of decisions, decided the issue in favour of the claimants and dismissed the appeal of the Insurance Company.

11. To a similar extent is the decision of another co-ordinate Bench of this Court in United India Insurance Co. Ltd. v. Ashwani Kumar & Ors. reported as **2014 SCC OnLine Del 281** where it was opined that if a driver is murdered when he is driving a truck during the course of his employment, then there exists the necessary connection of the death arising out of and in the course of employment.

12. The aforementioned view also finds resonance in the decision of this Court in ICICI Lombard General Insurance Co. Ltd. v. Smt. Sonia & Ors. reported as **2014 SCC OnLine Del 707**. In the captioned case, the deceased had gone

to supply milk in an area where he was attacked and grievously injured. When taken to the hospital, he was declared *brought dead*.

Finding no merit in the argument advanced by the appellant that the death had occurred on account of a murder under Section 302 IPC and therefore, the incident could not be '*an accident arising out of and in the course of employment*', the learned Judge held that the expression 'arising out of and in the course of employment' is wide enough to take into its fold death of an employee attacked while performing duties of a driver. It was further observed that the said expression did not apply only to cases where death occurred while driving a vehicle. While dismissing the appeal of the Insurance Company, the learned Judge categorically held the murder of the deceased to have been '*an accident arising out of and in the course of employment*'.

13. Before parting with the issue, this Court may also make reference to United India Insurance Co. Ltd. v. Seema Devi and Others reported as **2005 SCC OnLine HP 37** the Court distinguished the scope of liability in cases of death versus those of injury and opined as follows:

“25. Taking a cue from section 3 quoted supra it is my considered view that when an employee dies or suffers permanent total disablement in an accident arising out of and in the course of his employment, then the fact that such employee had obtained employment on the basis of false qualification would not be a defence open to the employer and consequently the insurance company. However, in case the employee only suffers injury which does not disable him permanently, then the employer can take up a defence that the employee has obtained employment on the basis of false qualifications and, therefore, wilfully disregarded the law and in such an eventuality the employer and the insurance company may not be liable. This is in consonance with the

intention of the legislature that when a person dies or suffers permanent disablement then it is not only he who suffers, but his dependants suffer with him. In the case of other injuries the employee alone suffers and, therefore, he has not been given the benefit. The intention appears to be that the dependants of the employee should not be denied compensation.

26. In the present case, there is nothing to show that the employer knew that the licence in question was fake. Ostensibly on the face of it, the driving licence appears to be valid. When the owner of a vehicle employs a driver he is only expected to see the driving licence. He is not expected to go to the registration and licensing authority to verify the genuineness of the licence. In the present case also, there is no breach on the part of the owner. No doubt, it is true that in the present case the deceased himself endangered his safety and life by inviting unnecessary calamity by engaging in driving of vehicles when he knew that he did not have a valid driving licence. In view of the provisions of proviso (b) to section 3(1) of the Act, when a workman dies or is permanently disabled then even if it is proved that he acted recklessly or endangered his life by illegal means would, in my humble opinion, not be a defence open to the employer and consequently the insurance company. In case the employee only receives injuries, this would be a valid defence."

14. Coming back to the facts of the present case, it is pertinent to note that in pursuance of the Show Cause Notice issued qua penalty amount, respondent No. 4 reiterated that the deceased was holding a valid driving license at the time of accident and was engaged after satisfying as to his driving skill & watching him drive the vehicle. It was further stated that the appellant was informed well in time about the incident, but it failed to deposit the compensation within the statutory period.

15. In view of the statement of respondent No. 4, the employer-employee

relationship between the deceased and respondent No. 4 stood established. It was further conclusively established before the learned Commissioner that the deceased met his fate while driving the vehicle in question under the employment of respondent No. 4. This Court concurs with the opinion given by the learned Commissioner that the deceased had met with the said incident during the course of his employment.

16. In view of the above, this Court is of the opinion that the appellant has failed to produce any evidence contrary to the records of the case and no ground is made out to interfere with the finding recorded in the impugned order. Consequently, the same is upheld and the appeal is dismissed. Pending applications are disposed of as infructuous. Let the compensation amount stated to be deposited by the appellant with the learned Commissioner be released forthwith to respondents No. 1 to 3/claimants along with interest accrued thereupon, if any, if not already done.

17. A copy of this judgment be forwarded to the concerned Commissioner for information.



(MANOJ KUMAR OHRI)
JUDGE

DECEMBER 08, 2022

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