

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

**FAO 248/2022 & CM.APPL No. 42123/2022 (Stay)**

Reserved on : 23.09.2022

Date of decision : 09.11.2022

**IN THE MATTER OF :**

THE NATIONAL INSURANCE CO. LTD. .... Appellant  
Through: Mr.Sunder Parkash Jain, Advocate  
(Through V.C.)

**VERSUS**

SMT. SANJAIDA & ORS. .... Respondents  
Through:

**CORAM:**  
**HON'BLE MR. JUSTICE MANOJ KUMAR OHRI**

**JUDGMENT**

**MANOJ KUMAR OHRI, J.**

1. By way of the present appeal filed under Section 30 of the Employees' Compensation Act (hereinafter, referred to as the '*EC Act*'), the appellant (respondent No.2 before learned Commissioner) has challenged order dated 14.07.2022 passed by the learned Commissioner, Employees' Compensation, Nimri Colony, Delhi-110052 in Case No. ECD/105/NW/2019/1849-51 *titled as* Smt. Sanjaida & Ors. v. M/s V.R.C. Logistic Pvt. Ltd. & Anr.

2. Mr. Sunder Parkash Jain, learned counsel for the appellant, has assailed the impugned order by contending that respondent Nos.1-5/claimants failed to establish employer-employee relationship and that *Sh.*

*Kamil* had died during the course of employment, inasmuch as no connection was proved between the death and truck in question bearing No. HR-38T-1586. While denying the appellant's liability, it was contended that it was the personal fault of respondent No.6/employer and thus, no penalty could be fastened upon the appellant.

3. At the outset, 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 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.”*

4. 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**.

5. A perusal of records of the present case would show that respondent Nos.1-5 had filed the claim petition under provisions of EC Act. It was stated that the deceased was employed as a driver with respondent No.6 at a salary of Rs.15,000/- per month and was 30 years of age at the time of accident. On 05.01.2018, after loading the truck bearing registration No. HR-38T-1586 owned by respondent No.6 with rice, the deceased proceeded from *Delhi* to *Mundra Port, Gujarat*, however did not reach the destination.

On 09.01.2018, respondent No.6 and the owner of rice searched the location of the truck on GPS and discovered that the same was lying at *Vijay Ghat, Delhi*. On visit to *Vijay Ghat, Delhi*, it was found that the deceased-*Kamil* and rice loaded in the truck were missing. Respondent No.6 thereafter lodged an FIR bearing No. 09/18 at P.S. Alipur, Delhi.

During investigation, it came on record that some persons had looted the truck loaded with rice and murdered *Sh. Kamil*. Subsequent thereto, accused persons were arrested and a charge-sheet came to be filed under Sections 302/365/396/120B/412/34 IPC and Sections 25/27 of the Arms Act. The body of the deceased was recovered from the jungle of *Alipur*. The post-mortem of the body was conducted in *Maulana Azad Medical College, LNJP Hospital, Delhi*.

6. In the proceedings before the learned Commissioner, respondent No.1/*Smt. Sanjaida* (wife of the deceased) examined herself and placed on record documents including copies of the charge-sheet, the post-mortem Report and the FSL Report.

7. Respondent No.6/employer appeared through one *Sh. Kulinder Bahl* and admitted having employed the deceased as a driver on the truck in question as well as the employer-employee relationship. It was stated that the truck in question was validly insured with the appellant and additional premium was paid for the driver and conductor of the vehicle. Respondent No.6 also filed a copy of the insurance policy/cover bearing No. 350300311710005718, which was valid for the period from 03.01.2018 to 02.01.2019, and application dated 15.11.2016 for the appointment of driver. It was further admitted that the deceased was being paid wages @ Rs.6,500/- per month plus daily food allowance of Rs.250/-.

In cross-examination, *Sh. Kulinder Bahl* stated that the deceased-*Sh.Kamil* was employed after seeing his original driving license and examining his driving skill, at a salary of Rs.6,500/- per month plus Rs.250/- allowance per day i.e., Rs.14,000/- (in total). It was further stated that an amount of Rs.30,000/- was paid to respondent No.1 at the time of cremation and Rs.5,000/- per month till the time of starting of lockdown.

8. Merely because the deceased was found murdered, the contention that the appellant had no liability to pay, is specious and merits rejections. In terms of aforementioned evidence, there is no doubt that the employer-employee relationship between the deceased and respondent No.6 stood established. It was further conclusively established before the learned Commissioner that the deceased met his fate while driving the truck in question under the employment of respondent No.6. This Court concurs with the opinion given by the learned Commissioner that the deceased met with the accident during the course of his employment.

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** where, Hon'ble Justice Deepak Gupta (as his Lordship then was), speaking for 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.6 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 truck. 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. Although in the proceedings before the learned Commissioner, it was sought to be urged by the appellant that the driving license held by the deceased was fake, no evidence to that effect came on record. The appellant's application to summon a witness in support of the contention was rather disallowed on the ground that the deceased had not caused any accident while driving the vehicle and was in fact murdered.

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 application is disposed of as infructuous. Let the compensation amount stated to be deposited by the appellant with the learned Commissioner be released forthwith to respondent Nos.1-5/claimants alongwith 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

NOVEMBER 09, 2022/v