



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO 252/2022**

Date of Decision: 27.09.2022

IN THE MATTER OF:

AVEENA MILK PRODUCTS PVT LTD Appellant
Through: Mr.Arun Birbal and Mr.Sanjay Singh, Advocates.
versus

NIYAZ MOHAMMAD ALIAS Respondents
MOHD. NIYAZ AND ANR
Through: Mr.R.K.Nain, Advocate for respondent No.1.
Mr.Pankaj Gupta, Advocate for Ms.Suman Bagga, Advocate for respondent No.2.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J. (ORAL)

CM. APPL. No. 42715/2022 (Exemption)

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

FAO 252/2022 & CM. APPL. Nos.42714, 42716 & 42717/2022

1. By way of the present appeal filed under Section 30 of the Employees' Compensation Act, 1923 (hereinafter, referred to as the 'EC Act'), the appellant has sought setting aside of the order/Award dated 26.04.2021 passed by the learned Commissioner, Employees' Compensation in Case No.CEC/SD/D/69/2017/493, whereby the claim petition filed by the claimant/respondent No.1 was allowed and the



appellant directed to deposit Rs.10,62,576/- alongwith interest @ 12% per annum w.e.f. 21.11.2015 till realization towards compensation, Rs.2,80,901/- towards medical expenses and Rs.5,31,288/- towards penalty.

2. Brief facts, as summarised in the impugned order, are as follows:-

“2. The claimant in his claim application has stated that he was employed as a driver on vehicle bearing No. UK-17CA-0134 owned by Respondent No. 1. On 22.10.2015, he met with an accident and he received grievous injuries on his right leg and stomach. On 22.10.2015, the vehicle was on its business trip from Bhagwanpur for supply of Milk when the vehicle was near Mohand on Saharanpur/Dehradun highway and he was driving the said vehicle another vehicle came from the opposite direction in rash and negligent manner and collided with this vehicle. The cabin of the vehicle was totally damaged and the claimant sustained grievous injuries. The helper who was present in the vehicle called for the ambulance and an ambulance came and he was taken to hospital -Shri Guru Ram Rai Institute of Medical & Health Sciences Shri Mahant Indresh Hospital, Patel Nagar, Dehradun. He remained admitted there and surgeries /operations were conducted. He has incurred an amount of more than Rs. 7 Lac. Many more operations are to be conducted. After this accident, the claimant says, he is not in a position to do any work and he has been rendered 100% disabled for the purpose of his employment as driver. His earning capacity has been totally reduced. The vehicle bearing No. UK-17CA-0134 was owned by the Respondent No. 1 at the time of the accident and it was insured with the Respondent no. 2 vide policy no 3006/000184/04/253005/1 and an additional premium was charged under E.C. Act by the respondent no. 2 from respondent no. 1. It was further submitted that he was getting wages Rs.9,000/- per month plus Rs. 200/- per day as food allowances and he was aged 22 years at the time of accident. The respondent no. 1 is having the knowledge of accident since the day of its occurrence. The applicant contends that he was driver by



profession and he has been rendered totally disabled and not able to take up physical work and as per law settled by the Hon'ble Supreme Court of India in the case titled as Pratap Narain Singh vs. Srinivasa Sabata, 1976 ACJ 141 it is a case of total disablement. He was an Employee and the accident was caused out of and during the course of employment, hence he is entitled to compensation to the extent of 100% disability and as per section 4(1) (c) & 4(1) (d) of the Employee's Compensation Act, 1923, he is entitled for permanent disablement and medical expenses along with interest @ 12% p.a. from the date of accident till realization and penalty to the extent of 50% of the principal amount.”

3. Mr. Arun Birbal, learned counsel appearing for the appellant, has fairly not opposed the amount of compensation awarded to respondent No.1/claimant. He, however, submits that at the time of accident, the vehicle driven by the claimant was insured with respondent No.2/Insurance Company under a valid and subsisting insurance policy and as such, respondent No.2 is liable to pay compensation. He seeks liberty to initiate/pursue appropriate proceedings in this regard.

4. Mr. R.K. Nain, learned counsel appearing for the claimant/respondent No.1, on the other hand, has submitted that respondent No.1 was employed as a driver on vehicle bearing No. UK-17CA-0134, which was owned by the appellant. He has also submitted that the claimant, after having met with the accident, was taken to *Shri Guru Ram Rai Institute of Medical & Health Sciences* where he remained admitted and underwent surgeries/operations.

Learned counsel has further submitted that the claimant had preferred a writ petition bearing W.P.(C) No.12989/2021 seeking implementation of the impugned Award, wherein the present appellant was also impleaded. Statedly, the said writ petition was allowed.



5. I have heard learned counsels for the parties and have also gone through the entire records of the learned Commissioner, Employees' Compensation.

6. Before proceeding further, this Court deems it expedient to refer to the decision in North East Karnataka Road Transport Corporation v. Sujatha reported as (2019) 11 SCC 514, where the Supreme Court has reiterated that the scope of interference in an appeal filed under Section 30 of the EC Act is limited to substantial questions of law and findings of facts proved either way, are not to be likely interfered with. In the said case, it has been opined as under :-

“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.”

7. Coming back to the present case, it is noted that the claimant has premised his claim on the ground that he was employed with the appellant herein as a driver on its vehicle bearing No. UK-17CA-0134. It is averred that the accident had arisen out of and during the course of employment when the claimant had gone to supply milk on said vehicle.

8. While refuting the employer-employee relationship, the appellant has taken a stand to the effect that the aforesaid vehicle was not owned by it. However, it is observed that during the proceedings before the learned Commissioner, the Registration Certificate (RC) of the vehicle driven by the claimant was placed on record, and it showed that the vehicle was registered in the name of *M/s Aveena Milk Products*.

9. A perusal of the record further reveals that *Mr. Akshay Mittal*, the director of the appellant, had examined himself. He admitted that the appellant was involved in the production of milk and its project was situated at *Latifpur, Tehsil Bhagwanpur*. The witness was confronted with the Registration Certificate of the vehicle bearing No. UK-17CA-



0134, carrying the same address as that of the appellant's-firm. However, he denied appellant's ownership of the same.

10. The only contention raised on behalf of the appellant in the present proceedings is that the owner of the vehicle driven by the claimant and the appellant are not one and the same entity.

11. On a specific query by the Court in this regard, learned counsel for the appellant, on instructions, has submitted that *M/s Aveena Milk Products* and the appellant are related entities. It is thus seen that the appellant has attempted to shirk its responsibility by not admitting this fact before the learned Commissioner.

12. It is reiterated that the RC of the vehicle placed on record discloses that the said vehicle was owned by *M/s Aveena Milk Products* and the address mentioned therein is the same as that of the appellant-firm.

13. In this view of the matter, the present appeal is dismissed with liberty to the appellant to seek appropriate remedy against respondent No.2/Insurance Company in accordance with law. Pending applications are disposed of as infructuous.

(MANOJ KUMAR OHRI)
JUDGE

SEPTEMBER 27, 2022/v