

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

FAO 220/2018 and CM APPL. 19565/2018

Date of Decision: 18.11.2022

IN THE MATTER OF:

UNITED INDIA INSURANCE CO. LTD. Appellant
Through: Mr. Pradeep Gaur, Advocate

versus

SMT. SHEELO DEVI & ANR. Respondents
Through: Mr. Shrey Chathly, Advocate for
respondent No.1

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

MANOJ KUMAR OHRI, J. (ORAL)

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/respondent No.2 has assailed the order dated 26.12.2017 passed by the learned Commissioner, Employees' Compensation (District-West), Vishwakarma Nagar, Jhilmil Colony, Delhi in Case No. CEC/WD/D/36/16/103 whereby it was directed to pay compensation to respondent No.1/claimant.

2. Learned counsel for the appellant has contended that the learned Commissioner while passing the impugned order failed to appreciate that as the claimant failed to establish any employer employee relationship

with respondent No.2/respondent No.1, the question of accident having taken place during the course of employment, does not arise.

3. *Per Contra*, learned counsel for respondent No.1 has supported the impugned order. He has referred to the evidence of CW-3 (*Sh. Krishan Singh*) and decision of this Court in Reliance General Insurance Co. Ltd. v. Ashok Kumar and Another reported as **2018 ACJ 2484** wherein it was observed that it would not be practical to expect written contracts of employment as between the individual employers of private vehicles and the employees of such vehicles who work as drivers or cleaners or co-drivers.

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

5. There is no gainsaying that labour statutes such as the EC Act constitute '*beneficial legislation*' for the welfare of workmen and should be liberally construed in their favour. In this regard, the Supreme Court in Jaya Biswal and Others v. Branch Manager, IFFCO Tokio General Insurance Company Limited and Another reported as **(2016) 11 SCC 201** has opined thus:-

"20. The EC Act is a welfare legislation enacted to secure compensation to the poor workmen who suffer from injuries at their place of work. This becomes clear from a perusal of the preamble of the Act which reads as under:

"An Act to provide for the payment by certain classes of employers to their workmen of compensation for injury by accident."

This further becomes clear from a perusal of the Statement of Objects and Reasons, which reads as under:

" ... The growing complexity of industry in this country, with the increasing use of machinery and consequent danger to workmen, along with the comparative poverty of the workmen themselves,

renders it advisable that they should be protected, as far as possible, from hardship arising from accidents.

An additional advantage of legislation of this type is that, by increasing the importance for the employer of adequate safety devices, it reduces the number of accidents to workmen in a manner that cannot be achieved by official inspection. Further, the encouragement given to employers to provide adequate medical treatment for their workmen should mitigate the effects to such accidents as do occur. The benefits so conferred on the workman added to the increased sense of security which he will enjoy, should render industrial life more attractive and thus increase the available supply of labour. At the same time, a corresponding increase in the efficiency of the average workman may be expected."

(emphasis supplied)

21. Thus, the EC Act is a social welfare legislation meant to benefit the workers and their dependents in case of death of workman due to accident caused during and in the course of employment should be construed as such."

6. Before advertng to the facts of the present case, it is deemed expedient to outline the scope of an appeal filed under Section 30 of the EC Act. This Court in Marlo or Fab Gold v. Arvind reported as **2022 SCC OnLine Del 3299** took note of the decision of the Supreme Court in North East Karnataka Road Transport Corporation v. Sujatha reported as **(2019) 11 SCC 514**, wherein it was 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 interfered with. Relevant excerpt from Sujatha (Supra) reads 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 LR(s) 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. 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 Ors. v. Shri Ram Gen. Insurance Co. Ltd. and Ors. reported as **2022 ACJ 203**.

8. In the claim petition, it was claimed that *Sh. Jagdev* (the deceased) was employed with respondent No.2 as a 'driver' on vehicle/canter No. HR-74-4860 and was drawing salary of Rs.10,000/- per month plus Rs. 150/- per day towards food and other allowance. On the intervening night of 26/27.07.2016, while *Sh. Jagdev* was driving the aforesaid vehicle, he met with an accident caused from another truck bearing No. HR-58B-7962. When *Jagdev* was assessing the damage caused to the truck on account of the accident, another vehicle passing through, hit him resulting in fatal injuries. An FIR No. 262/2016 was registered under Sections 279/304A IPC. Admittedly, the vehicle driven by the deceased was insured on the date of the accident with the appellant.

9. A perusal of the record would show that in the proceedings before the Commissioner, one *Ram Avtar*, who reportedly was employed with respondent No.2 as an Office Executive, appeared, and stated that the deceased was employed with respondent No. 2 as a permanent driver. In cross-examination, he clarified that no appointment letter was issued but in the intervening night of 26/27.07.2016, the deceased was driving the truck bearing No. HR-74-4860.

10. In support of the claim, another witness namely, *SI Krishan Singh*, Investigating Officer of FIR No. 262/2016, was examined as CW-3. He stated that in the intervening night of 26/27.07.2016, he noticed truck bearing No. HR-74-4860 and another canter bearing No. HR-58B-7962 at the spot in an accidental condition. The body of deceased was also found nearby.

During examination, the claimant also exhibited a signed personal particular form of the deceased. The appellant had not disputed the same.

11. In the opinion of this Court, in view of the aforesaid material placed in the proceedings, the Commissioner rightly concluded that the employer employee relationship was duly established between the deceased and respondent No.2, and that the accident had occurred during the course of employment.

12. I find no ground to interfere with the aforesaid decision. Consequently, the impugned order is upheld and the appeal is dismissed along with the pending application. Let the compensation amount be released forthwith to respondent No.1/claimant alongwith interest accrued thereupon, if any.

13. A copy of this judgment be communicated to the concerned Commissioner for information.

(MANOJ KUMAR OHRI)
JUDGE

NOVEMBER 18, 2022

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