

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

+ **FAO 46/2017**

Reserved on: 16.03.2023

Pronounced on: 11.05.2023

IN THE MATTER OF:

SAROJ AND ORS.

.... Appellants

Through: Mr.Anshuman Bal, Advocate

versus

JAMUN RAI AND ANR.

.... Respondents

Through: Mr.Rajan Mishra, Advocate

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J.

CM APPL. 3198/2017 (Delay)

1. The present application has been filed under Section 5 of the Limitation Act on behalf of the appellant seeking condonation of delay of 210 days in filing the appeal.
2. Learned counsel for the respondent fairly does not oppose the present application.
3. In view of the above, the application is allowed and the delay of 210 days in filing the appeal is condoned.
4. The application is disposed of.

FAO 46/2017

1. By way of present appeal filed under Section 30 of the Employee's Compensation Act, 1923, the appellants who were claimants before the Trial Court have preferred the present appeal seeking to modify the impugned award dated 25.04.2016 passed by learned Labour Commissioner, New Delhi whereby instead of directing the respondent No.2/Insurance Company, the respondent No.1/the employer has been directed to pay the compensation.
2. The only contention raised by the appellants relate to liability of the respondent No.2 to pay the compensation. It was submitted that since the vehicle was insured with respondent No.2, it should have been held liable to pay the compensation amount.
3. Learned counsel for respondent No.2/Insurance Company, on the other hand, had contested the appeal. It was submitted that in the present case, the deceased did not have the requisite driving license to drive the tractor attached with the trolley and thus, the liability to pay compensation amount remained of respondent No.1 only.
4. Despite being served, respondent No.1 has preferred not to contest the appeal.
5. I have heard learned counsels for the parties and have also gone through the entire material placed on record.
6. The facts, in nutshell, are that appellant No.1 had preferred the claim application wherein it was claimed that her husband *Sh.Bashisht* was employed with respondent No.1 as a driver. On 24.11.2009 at about 11.45 a.m. while the deceased was driving the tractor bearing No.HR-13D-0530 owned by respondent No.1, he met with an accident in the jurisdiction of Police Station Mangolpuri, Delhi. The deceased was 28

years of age at the time of the accident and drawing a salary of Rs.6,000/- per month. The injuries were fatal and in this regard an FIR bearing No.399/2009 was registered under Sections 279/304-A IPC at Police Station Mangolpuri, Delhi on 24.11.2009 itself.

7. Respondent No.1 contested the claim application by stating that the deceased had consumed alcohol and suffered incident on account of his own negligence. The claim was also resisted by respondent No.1 who though admitted that the said tractor was insured with respondent No.2 vide Policy No. OG-10-1110-1811-00000176 valid from 12.06.2009 to 11.06.2010 however, the deceased was not carrying a valid driving license. In his evidence, respondent No.1 admitted that the deceased was working on daily/casual basis and further admitted that on the date of accident he was not present in Delhi but was in Bihar. He also admitted that he was not sure that the deceased was under the influence of alcohol. He also admitted that the deceased was paid wages.

8. Learned Commissioner, after going through the post-mortem report arrived at a conclusion that respondent No.1's allegation that the deceased was consuming alcohol was not substantiated by any legal documents. The deceased was holding a valid driving license i.e., Light Motor Vehicle Non-Transport {in short 'LMV(NT)'}. In these circumstances, the Commissioner found fault with respondent No.1 for not checking the driving license of the deceased before allowing him to drive the subject tractor.

9. A perusal of the Trial Court Record would reveal that the claimants have placed on record a response received under RTI Act from the office of Regional Transport Officer, Kashmir, wherein in response to a question as to whether if a trolley is attached to a tractor what kind

of driving license would be required, it was replied that the transport license would be required.

10. This Court also takes note of the decision of the Supreme Court in Sant Lal v. Rajesh & Ors. reported as **(2017) 8 SCC 590** wherein the issue involved was whether the tractor attached to a trolley carrying goods would require LMV License and there is no need to obtain a separate endorsement. Relevant extracts of the same read as follows:

“The appeals have been preferred by the owner, aggrieved by the award passed by the Motor Accident Claims Tribunal, Bhiwani (for short, “the MACT”). The driver was driving a tractor which was attached to the trolley carrying goods. The MACT held that the same becomes transport vehicle though the driver was having licence to drive motor cycle, scooter, car, jeep and light motor vehicle. There was no endorsement to drive a transport vehicle. Thus, there was violation of the conditions of the policy. Driver was not having a valid licence to drive transport vehicle. Thus, after making payments to the claimant, right of recovery have been given to the insurer from owner. Signature Not Verified Digitally signed by BALA PARVATHI Date: 2017.11.27 16:49:02 IST Reason: The award has been affirmed by the High Court. Hence present appeals.

This Court has considered the question whether the holder of licence for light motor vehicle can drive tractor attached to the trolley carrying goods and also whether separate endorsement is required authorizing him to drive such a transport vehicle?

We have answered the question that driver having licence to drive light motor vehicle can drive such a transport vehicle of LMV class and there is no necessity to obtain separate endorsement, since tractor attached with the trolley was transport vehicle of the category of light motor vehicle. Hence, there was no breach of the conditions of the policy.

Accordingly, in view of the answer given to reference by the three Judge Bench of this Court in Mukund Dewangan vs. Oriental Insurance Co. Ltd. etc. (Civil Appeal No.5826 of 2011), these appeals have to be allowed and are hereby allowed. The right given to the insurer to recover amount from owner is hereby set aside. The liability is held to be joint and several of owner, driver and insurer. No costs.”

11 In view of the authoritative pronouncement, this Court is of the view that the factum of deceased holding a valid LMV (NT) and the vehicle being insured being not in dispute, respondent No.2 is liable to pay the compensation.

12. Accordingly, the appeal is allowed and respondent No.2 is directed to pay the entire compensation amount of Rs.4,10,200/- alongwith interest as directed in the impugned order within two weeks from today.

(MANOJ KUMAR OHRI)
JUDGE

MAY 11, 2023/v