

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

+ **FAO 34/2023 and CM APPLS. 6748-49/2023**

Date of Decision: 13.02.2023

IN THE MATTER OF:

THE NEW INDIA ASSURANCE COMPANY LTD..... Appellant

Through: Mr. Gaurav Nair and Mr. Rahul
Saxena, Advocates.

versus

SMT KAMLA DEVI & ORS

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J. (ORAL)

1. By way of present appeal filed under Section 30 of the Employees' Compensation Act, 1923, the appellant has assailed order dated 06.12.2022 passed by the learned Commissioner, Employees' Compensation, Delhi in Case No. ECD/74/NW/2017/5127-29, whereby the claim petition filed by respondent Nos.1-2/claimants seeking death compensation was allowed.

2. As per the claim petition, *Sh. Narender* (deceased) was employed with respondent No.3 as a driver on truck bearing registration No.HR-63B-1107. On 11.05.2016, the deceased was directed to drive the aforesaid vehicle from *Narwana* to Delhi. On 12.05.2016, as per

FAO 34/2023

Page 1 of 5

instructions, the deceased unloaded the goods at *Narela* and thereafter loaded plastic raisin/material from *Noharbadra Transport, Bawana* which was to be delivered at *Narwana Village, Dhrodhi*. However, en route on 14.05.2016 the deceased was found murdered. An FIR bearing No. 232/2016 was registered on 14.05.2016 at *Bawana*.

3. In view of the above facts, respondents No. 1 & 2 filed a claim petition before the learned Commissioner which was allowed. The learned Commissioner directed the appellant to deposit the compensation amount of Rs. 8,31,920/- alongwith simple interest @12% p.a. w.e.f. 14.05.2016 till the date of payment along with funeral expenses of Rs.5,000/-. Aggrieved by the impugned judgment/order, the appellant has filed the present appeal.

4. In the present appeal, the appellant has based its arguments on the following two grounds:

- a) That the death of the deceased was caused by murder and not by accident occurred in course of employment while driving the insured vehicle, and
- b) That the Driving License produced by respondent Nos.1 and 2 is fake and the same is against the policy conditions. Therefore, the insurer/appellant cannot be held liable to indemnify respondent No.3/employer. In this regard, reference was made to an RTI Reply, wherein the District Transport Authority stated that the details of Driving License No. 78679/TV/Z/2010 were not found in their records.

5. With regard to the question of liability of insurance company in case of murder, 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.”

xxx

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.”

6. To a similar extent is the decision of 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.

7. In the present case, respondent No.3 admitted to having employed the deceased. He also supported the fact that the deceased was coming back taking the goods from Delhi to Narwana under his instructions when the incident occurred. Accordingly, the first ground raised is rejected as being devoid of merit.

8. Coming to the second issue raised by the appellant, that the driving license produced by respondent Nos.1 and 2 is fake and therefore the appellant is not liable to pay compensation, the issue stands settled, as also noted in Dushad Earth Mover v. National Insurance Company Ltd.

& Ors. reported as **2013 SCC OnLine Del 2921**, where the Court held thus:

“15. Upon hearing the learned counsel for the parties and keeping in mind the settled law that the owner of the vehicle has to take all due care at the time of appointing the driver; firstly, he has to see the driving licence and secondly, to test the skill of the driver. If both tests are qualified then it cannot be said that there was any intentional or willful violation of the terms and conditions of the Insurance policy. Hence, it is obvious that if the owner of the offending vehicle has taken all due care while appointing the driver, then the recovery rights should not be given against the owner of the vehicle.”

9. It is borne out from the written statement filed by respondent No.3 before the learned Commissioner that when deceased/Narender approached him for a job, he had checked his Driving License and taken a driving test. Further, a copy of the Driving License was also placed on the record. In view of the same, this Court is of the opinion that respondent No. 3 had taken all precautionary measures on his part. Hence, the second ground raised by the appellant cannot be used to hold it not liable to pay compensation.

10. Finding no ground to interfere with the impugned order, the same is upheld and the appeal is dismissed. Pending applications stand disposed of.

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

(MANOJ KUMAR OHRI)
JUDGE

FEBRUARY 13, 2023

ga

FAO 34/2023

Page 5 of 5