



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

% **Judgment reserved on : 06 November 2023**
Judgment pronounced on : 28 November 2023¹

+ **FAO 478/2019 & CM APPL. 51788/2019, CM APPL. 51789/2019**

ORIENTAL INSURANCE CO LTD Appellant
Through: **Mr. Pradeep Gaur with Ms. Sweta Sinha, Advs.**
Versus

HARI PRASAD KAMKAR & ORS. Respondents
Through: **Mr. A. K. Mishra and Mr. M. K. Rathee, Advs. for R-1 to R-3.**

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. This judgment shall decide the present appeal filed by the appellant/Insurance Company under Section 30 of the Employee's Compensation Act, 1923² assailing the impugned order dated 31.07.2019 passed by Employee's Compensation Commissioner³ in case No. CEC/WD/D146/16 titled as 'Hari Prasad Kamkar & Ors. v. Deepak Brara & Ors.', whereby the claim for compensation filed by the claimants/respondent Nos. 1 to 3 for death of one Dhan Bihari was allowed.

¹ Written submissions filed on 20.11.2023

² EC Act

³ Commissioner



FACTUAL BACKGROUND:

2. Briefly stating, the victim/deceased Dhan Bihari was son of respondent No.1 and brother of respondent Nos. 2 and 3. It was the case of the claimants that the deceased was employed as a cleaner with respondent No.2 (respondent No.4 in the present appeal)⁴, who was the owner of truck bearing No. HR55J-0747, who left from Calcutta for Delhi on a commercial trip; and that in the intervening night of 13th and 14th September 2016 the truck reached Thandi Poyau Chowki under jurisdiction of P.S. Kotwali Kehat, Distt. Bulandshar, Uttar Pradesh, where all of sudden a Nilgai came in front of the moving truck and in order to save it, the truck driver lost balance and control as a result of which the truck turned upside down and the deceased received multiple grievous injuries all over his body. He was rushed to Civil Hospital Bulandshar and later referred to Lok Nayak Hospital, Delhi, where he eventually succumbed to his injuries on 21.09.2016.

3. The claimants submitted that the deceased died during the course of his employment with the registered owner, and therefore, they sought compensation under the EC Act. The appellant, being the insurer of the truck and the registered owner, disputed the assertion of the claimants that the deceased was working as a cleaner and died during the course of his employment.

4. The Commissioner framed the following issues for consideration:



- “(i) Whether the deceased employee Sh. Dhan Bihari was the employee of the Respondent no.1?
- (ii) Whether deceased Sh. Dhan Bihari suffered death or and in the course of employment with respondent no.1?
- (iii) Whether the claimant is entitled to compensation for the death of deceased and the amount thereof?
- (iv) Whether respondent no.2 is liable to indemnify respondent no.1 policy issues to respondent no.1?
- (v) Whether respondent no.2 is entitled to right of respondent no.2 recovery against respondent no.1 for violation of policy terms?
- (vi) Any other relief to whether claimant is entitled?”

5. During the course of inquiry claimant Mr. Hari Prasad Kamkar, (the respondent No.1 herein) was examined. He filed his detailed affidavit in evidence (Ex.PW-1/10) and substantiated the assertions made in the claim petition on oath. He was duly cross-examined by the learned counsel for the Insurance Company as well as the registered owner.

6. On the other hand, respondent No.1 examined Mr. Bhola Singh, the driver of the vehicle, who rather corroborated the version of the claimants that the deceased was employed as a cleaner and he was with him at the time of the accident. He produced his Driving License, copy of which is Ex.RW-1/D placed on the record and he was duly cross-examined by the learned counsel for the petitioner. On behalf of respondent No.2, Mr. Abhishek Tripathi, Assistant Manager filed his detailed affidavit Ex.R1W1/A, thereby denying the relationship of ‘employer and employee’ and he was duly cross-examined by the learned counsel for the petitioner.

⁴ Registered owner of the truck



7. To summarise, the Commissioner rendered the findings that in view of testimony of Bhola Singh, it was proven on record that deceased was working as a cleaner on the Truck, and therefore, he was an 'employee' within the meaning of the EC Act. It was further held that it was admitted fact that the truck in question was duly insured with the respondent No.2/Insurance Company i.e., the appellant; and it was held that the deceased died due to injuries sustained by him in the accident. Resultantly, the aforesaid issues were decided in favour of the claimants and against the respondents (i.e., the appellant and respondent No.4 registered owner of the truck herein)

8. Deciding on the issue of relief, finding that the deceased was 42 years of age as per the *post mortem* report and assuming that he was drawing wages of Rs. 8,000/- per month and would be spending about 50% of his earning on his family obviously for being a bachelor, reckoning the relevant factor @178.49, the compensation was assessed to be $178.49 \times 4000 = \text{Rs. } 7,13,960/-$. Accordingly, the claimants were made entitled to receive compensation of Rs. 7,13,960/- along with interest @ 12 % from the date of accident till its realization. Additionally, Rs. 5,000/- were granted as funeral charges.

GROUND FOR APPEAL:

9. The impugned order has been assailed *inter alia* on the grounds that the Commissioner committed grave error in holding that there existed relationship of 'employer and employee' between the parties since no appointment letter, no salary slip or bank account statement of the deceased was put on the record in order to establish that the deceased was employed with the registered owner; and that the



Commissioner failed to appreciate that initially the claim was made that the deceased was employed as a driver and later on only by way of amendment, it was pleaded that he was actually employed as a cleaner; and that in passing the impugned order the Commissioner overlooked the police report as well as investigation carried out in the matter, and therefore, it is prayed that impugned order granting compensation to the claimants/ respondent Nos. 1 to 3 was liable to be set aside.

10. During the course of arguments, learned counsel for the appellant strenuously urged that no evidence was brought on the record that deceased was employed as a cleaner of the truck and heavily relied on decisions in **New India Assurance Co. Ltd. v. Babbu Miyan & Anr.**⁵; **Mohd. Zulfikar Ali v. Commissioner under the Employees Compensation Act & Ors.**⁶; and **Rashida Haroon Kupurade v. DIV. Manager, Oriental Ins. Co. Ltd. & Ors.**⁷

11. *Per contra*, learned counsel for the respondent Nos. 1 to 3 referred to Section 2(dd) read with sub-clause (e) of the EC Act and it was vehemently urged that in view of testimony of driver Bhola Singh, it was proven on record that there existed relationship of ‘employer and employee’ as between the deceased and the registered owner. Reliance has been placed on decisions in **Fazlu Rahman**

⁵ 2014 SCC OnLine Del 3114

⁶ 2014 SCC OnLine Del 2976

⁷ (2010) 3 SCC 271



Ansari v. National Insurance Company Limited⁸ and Mohammed Anis Mohd. Elyea Khan v. Litiza & Co. & Anr.⁹

12. It is pertinent to mention here that the present appeal was filed on 02.12.2019 and since then notice of the appeal has not been served upon the registered owner despite several opportunities. Hence, this Court found that no useful purpose would be served in prolonging the disposal when the whereabouts of the registered owner have not been located despite sufficient opportunities. Thus, this Court proceeds to dispose of the matter after hearing arguments advanced by the learned counsels for the parties appearing in the matter.

13. Needless to state that the material placed on record has been perused. At the outset, this Court finds that the present appeal is bereft of any merits. **First things first**, there is no denial to the fact that deceased sustained injuries in a motor vehicle accident involving truck belonging to the registered owner in the intervening night of 13th & 14th September 2016. The accident was reported vide DD No. 42/16 marked PW-1/A on 15.09.2016 at PS Kotwali Kehat, District Bulandshar, Uttar Pradesh. It is also an admitted fact that the deceased had suffered multiple grievous injuries all over his body, rushed to Civil Hospital, Bulandshar, Uttar Pradesh, and thereafter he was referred to Lok Nayak Hospital, Delhi, where he was admitted on 15.09.2016 and eventually succumbed to his injuries on 21.09.2016. The *post mortem* report bearing No. 971/2016 on 21.09.2016

⁸ (2019) 13 SCC 806

⁹ 1999 SCC OnLine Bom 569



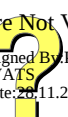
categorically opines that the deceased died due to multiple injuries sustained in a motor vehicle accident.

14. In the face of such facts established on the record, although the registered owner of the truck denied that he had ever employed the deceased, there is unrebutted and uncontroverted testimony of the truck driver Mr. Bhola Singh that the vehicle was loaded with iron metal and they met with an accident in the area of Bulandshar, Uttar Pradesh while driving from Durgapur, West Bengal to Delhi. He testified without any challenge that the deceased was a cleaner accompanying him at the time of accident. In his cross-examination he also deposed that deceased was getting wages of Rs. 6,000/- per month.

15. At this juncture, it becomes imperative to refer to relevant provisions in the EC Act. Section 2 (1) (dd) defines the word ‘employee’ to mean *a person who is recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle*. Further, Section 2 (1) (e) of the Act defines the term ‘employer’ as under:-

“ ‘employer’ includes any body of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer, and, *when the services of an employee are temporarily lent or let on hire to another person by the person with whom the employee has entered into a contract of service or apprenticeship*, means such other person while the employee is working for him” **{italics emphasized}**

16. A careful perusal of Section 2(e) of the EC Act would show that it is an inclusive definition and whether a person is temporarily hired by another person, who is an employee or has entered into contract of





service with the employer, the person so hired also becomes an employee of the principal employer. In this regard, reference can be made to a decision cited by the learned counsel for the respondent in the case of ***Fazlu Rahman Ansari (supra)*** wherein the Supreme Court categorically held that “Section 2(1) (e) of the Act would cover the kind of employment by virtue of which the workman was rendering services and even services through sub-contractors are covered in the definition”.

17. Incidentally, in another decision by Bombay High Court in case titled ***Mohammed Anis Mohd. Eleya Khan (supra)*** cited by the learned counsel for the respondent, it was held that “ a cleaner, who is engaged or employed by a driver during the course of a trip, also is deemed to be an employee of the owner of the vehicle”. It was a case where driver was paid some amount in lump sum and out of the same, driver was allowed to engage somebody to work as a cleaner with him on the truck.

18. Evidently, in the instant case the registered owner had not appointed any cleaner directly as such but at the same time cognizance of the fact can be taken that it is a normal practice in the transport business where the driver is paid lump sum amount and he engages somebody to work as a cleaner with him on the truck. This is a practical commercial practice prevalent in transport business. Be that as it may, there is no denying the fact that even at the time of examination of the driver of the ill fated truck, no request was made by on behalf of the appellant/ Insurance Company seeking permission to cross-examine the driver.



19. Therefore, a contest thrown by the appellant/Insurance Company in the instant appeal that there was no ‘employer-employee’ relationship, is not *worth its salt* since the appellant despite having vast resources at its disposal failed to conduct any field survey so as to produce any evidence that the deceased was not working as a cleaner on the ill-fated truck at the time of accident or that the version of the driver was false. There is no gainsaying that a bald denial on the part of the registered owner on the said aspect is hardly of any legal consequence so as to support the appellant.

20. Before parting with the instant appeal, suffice to state that the decision in the case of ***New India Assurance Co. Ltd. (supra)*** cited by the learned counsel for the appellant is clearly distinguishable since it was a case where claimants had miserably failed to prove that their deceased son was employed as cleaner with the registered owner. The decision in the case of ***Mohd. Zulfikar Ali (supra)*** cited by the learned counsel for the appellant is also distinguishable as it was a case under the Workmen Compensation Act, 1923, wherein the definition of ‘workman’ provided in Section 2(n) of the said Act was entirely different, to mean “*any person other than a person whose employment is of a casual nature and who is employed otherwise than the purposes of the employer’s trade or business*”.

21. Lastly, the decision in the case of ***Rashida Haroon Kupurade (supra)*** again emanates from the Workmen Compensation Act, 1923 wherein apart from the fact that the definition of the ‘workman’ was entirely different, Section 3(1) of the Workmen Compensation Act,





1923 as it stood prior to its amendment¹⁰, was *restricted to an employer's liability for compensation to a workman in case of injury in the course of his employment*. However, as discussed hereinabove the definition of 'employee' provided by Section 2(1) (dd) of the EC Act is much wider.

22. In view of the foregoing discussion, I find that the present appeal is devoid of any merits. The impugned order passed by the Commissioner does not suffer from any illegality, perversity or incorrect approach in law. Hence, the present appeal is dismissed. The amount of compensation deposited with the Commissioner Employee's Compensation be released forthwith to the claimants with accrued interest.

23. The pending applications also stand disposed of.

DHARMESH SHARMA, J.

NOVEMBER 28, 2023

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¹⁰ By Act 45 of 2009 Section 5 w.e.f. 18.01.2010