

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

+ **FAO 74/2023**

Date of Decision: 24.03.2023

IN THE MATTER OF:

RELIANCE GENERAL INSURANCE CO LTD Appellant
Through: Mr. A.K. Soni, Advocate

Versus

SMT VEENA YADAV & ORS. Respondents
Through: Mr. Shrey Chathly, Advocate for
respondents No.1 to 4

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J. (ORAL)

CM APPL. 14733/2023 (exemption)

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

CM APPL. 14735/2023 (delay)

1. The present application has been filed under Section 151 CPC on behalf of the appellant seeking condonation of delay of 18 days in filing the appeal.
2. For the reasons stated in the application, the same is allowed and the delay of 18 days in filing the present appeal is condoned.
3. The application is disposed of.

FAO 74/2023 and CM APPL. 14734/2023 (stay)

1. By way of the present appeal filed under Section 30 of the Employees' Compensation Act (hereinafter, the 'EC Act'), the appellant seeks setting aside of order dated 12.12.2022 passed by the learned Commissioner, Employees' Compensation in Case No.ECD/107/ND/2022(New)/5077 whereby the claim petition filed on behalf of claimants/respondent Nos.1 to 4 was allowed.

2. Learned counsel for the appellant submits that the claimants have failed to establish the employer-employee relationship between respondent No.5/employer and the deceased (husband of respondent No.1), and as such, the learned Commissioner erred in passing the impugned order.

3. Briefly stated, in the claim petition, it was averred that the deceased/*Yogendra Singh* aged about 24 years was employed as a driver with respondent No.5 on his vehicle bearing *No. NL-01AE-1391*. On 14.08.2020, when the deceased was driving the said vehicle on duty, at about 03:30 A.M., an unknown truck came from the wrong side and hit the vehicle being driven by the deceased. As a result, the deceased was crushed inside the cabin. An FIR No.371/2020 was registered under Sections 279/338A IPC at Police Station Bilaspur, Gurugram, Haryana.

It was claimed that on account of the accident, the deceased received multiple serious injuries all over his body. He was rushed to *Samvit Hospital, Gurugram* where he remained admitted from 14.08.2020 to 25.08.2020. Thereafter, he was referred to *Safdarjung Hospital, Delhi* where during the course of treatment, he succumbed to his injuries on 28.08.2020.

It was further claimed that the vehicle being driven by the deceased was insured with the appellant vide Insurance Policy No. 13132192334000116 that was valid from 02.12.2019 to 01.12.2020. It was also claimed that at the time of the accident, the deceased was drawing wages @ Rs.16,000/- p.m. alongwith Rs.250/- per day as food allowance.

4. Although respondent No.5 was initially represented, it subsequently failed to appear and was proceeded *ex-parte*. The present appellant denied the averments made in the claim petition but admitted that the vehicle was duly insured with it, and at the time of accident, the insurance policy was valid and subsisting.

5. The only contention raised on behalf of the appellant is that the employer-employee relationship was not proved.

6. From the records, it is borne out that copies of the RC as well as the Insurance Policy were placed on record by the claimants. Admittedly, the truck driven by the deceased was owned by respondent No.5 and the same was duly insured with the present appellant. Pertinently, neither respondent No.5 denied the employer-employee relationship nor the appellant denied the insurance policy. The appellant did not deny the occurrence of accident either. In fact, the occurrence of the accident has been stated in the FIR.

7. Having heard learned counsels for the parties and after going through the material placed on record, I find no merit in the appellant's contention regarding the employer-employee relationship. In this regard, I take note of the decision rendered in North East Karnataka Road Transport Corporation v. Sujatha reported as (2019) 11 SCC 514 where the Supreme Court has outlined that the scope of interference in an

appeal filed under Section 30 of EC Act is limited to substantial questions of law and findings of facts proved either way, are not to be likely interfered with. Relevant excerpt from the decision is reproduced hereunder:-

“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.”

8. In view of the categorical admission of the employer-employee relationship by the employer, no ground is made out to entertain the present appeal. The impugned order is upheld and the appeal is dismissed. Let the compensation amount alongwith interest be released in favour of respondent Nos.1 to 4/claimants, if not already done.

(MANOJ KUMAR OHRI)
JUDGE

MARCH 24, 2023

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