

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

+ **FAO 185/2019**

Reserved on : 12.01.2023

Date of Decision : 23.01.2023

IN THE MATTER OF:

M/S NEELKANTH TRAVELS Appellant

Through: Ms. Sonal Chauhan and
Mr. Ashish Chauhan, Advocates

versus

MOHAN LAL & ANR. Respondents

Through: Mr. Kanwar Pal Singh, Advocate
for respondent No. 1.
Mr. Rajeev M. Roy and Mr. P.
Srinivasan, Advocates for
respondent No.2

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J.

1. Feeling aggrieved by the order dated 30.11.2018 passed by the learned Commissioner, Employees' Compensation (District North-East) in CEC-I/NE/36/2017/3338-3340, the appellant/respondent No. 1 has filed the present appeal under Section 30 of the Employees' Compensation Act, 1923 (hereinafter, referred to as the '*EC Act*'). Vide the impugned order, the appellant was directed to deposit the amount of compensation of Rs.2,09,869/- alongwith interest @ 12 % from the date

of the accident and Rs.1,04,935/- i.e., penalty @ 50% of compensation amount within one month.

2. The appellant contended that the liability to pay compensation ought to have been of the respondent No. 2 as the vehicle in question was duly insured. *Per Contra*, respondent No. 2 contested the submission by contending that as the vehicle from which the respondent No. 1 fell was not in 'use', the answering respondent is not liable to pay the compensation.

3. Brief facts, in nutshell, are that a claim application under Section 10 of the EC Act came to be filed by respondent No. 1 (claimant before the Tribunal), wherein it was stated that he was working as a driver with the appellant for about four years and drawing salary @ Rs.15,000/- per month. He was required to drive the cash van bearing No. DL-1L-R-2651 in which an ATM of *State Bank of India* was installed. On 04.03.2016 at about 09:00 am, he had parked the cash van at *CRPF Camp, Okhla, New Delhi* on a roadside so that general public could avail the facility of cash withdrawal from the ATM installed inside the van. It was claimed that as part of his duty, he was required to clean the van on daily basis and on the said date when he climbed on the van to clean the windshield, he lost his balance and fell. He sustained multiple injuries including fracture of right femur bone & right hip bone and was removed to *Safdarjung Hospital, New Delhi* where he was operated upon. It was claimed that on account of the said injuries, he became permanently disabled and could not perform his natural work.

The employer i.e., the present appellant appeared in the proceedings and admitted 'employee-employer' relationship as well as

the fact that respondent No. 1/claimant was employed by it as a driver on the cash van. The appellant contended that compensation amount, if any, is to be paid by respondent No. 2 as the vehicle was duly insured at the relevant time. During the course of submissions, learned counsel for the appellant has referred to the insurance policy wherein premium is charged for 'legal liability to paid driver/or conductor and/or cleaner'.

On the other hand, respondent No. 2 denied the averments made in the claim application. It was contended that 'employee-employer' relationship has not been proved between the parties and that no document has come on record proving that the vehicle met with an accident on 04.03.2016.

4. The parties led their evidence. In support of the claim application, respondent No. 1/claimant placed on record a copy of the police complaint, RC of the vehicle, driving license, national permit of vehicle, medical treatment bill(s), insurance policy and authorization certificate, fitness certificate of the vehicle as well as other relevant documents including Aadhar card, salary certificate, discharge summary etc.

5. In view of the contentions raised by respective parties, the only issue which needs to be decided by this Court is whether the insurance claim can be denied by the respondent No. 2/insurance company by contending that the vehicle was not in 'use' at the time of the incident.

6. The expression 'arising out of the use of a motor vehicle' came up for consideration before the Supreme Court in Shivaji Dayanu Patil and Another v. Vatschala Uttam More (Smt) reported as (1991) 3 SCC 530 wherein it was observed that the word 'use' has to be construed in a

wider sense to include the period when the vehicle is not moving and is stationary. Relevant excerpt from the said decision reads as under:

“26. These decisions indicate that the word “use”, in the context of motor vehicles, has been construed in a wider sense to include the period when the vehicle is not moving and is stationary, being either parked on the road and when it is not in a position to move due to some breakdown or mechanical defect. Relying on the abovementioned decisions, the appellate bench of the High Court has held that the expression “use of a motor vehicle” in Section 92-A covers accidents which occur both when the vehicle is in motion and when it is stationary. With reference to the facts of the present case the learned Judges have observed that the tanker in question while proceeding along National Highway 4 (i.e. while in use) after colliding with a motor lorry was lying on the side and that it cannot be claimed that after the collision the use of the tanker had ceased only because it was disabled. We are in agreement with the said approach of the High Court. In our opinion, the word “use” has a wider connotation to cover the period when the vehicle is not moving and is stationary and the use of a vehicle does not cease on account of the vehicle having been rendered immobile on account of a breakdown or mechanical defect or accident. In the circumstances, it cannot be said that the petrol tanker was not in the use at the time when it was lying on its side after the collision with the truck.”

7. In the present case, as claimed by the respondent No. 1 and also admitted by the appellant, the vehicle in question was a cash van. It is safe to observe that to enable the general public to use the facility of withdrawal of cash from the ATM installed in the cash van, it has to be kept stationary and parked at a certain place. The respondent No. 1 had stated that it was his duty to clean the vehicle and while doing so, he suffered injuries.

8. In National Insurance Company Ltd., Bhandara v. Budha S/o Watujichoudhari and Others reported as **2019 SCC OnLine Bom 307**, it was opined that even though tractor-trolley was stationary it continued to be in use while sand was being filled in the trolley and the collapse of the bank of the stream.

9. In view of the aforesaid dicta as well as foregoing discussion, this Court is of the opinion that liability to pay the compensation amount alongwith interest @ 12% from the date of the incident is of respondent No. 2/Reliance General Insurance Co. Ltd. Pertinently, it is apparent from the impugned order that the learned Commissioner had issued Show Cause Notice to the appellant as to why penalty not exceeding 50% of the compensation amount be not imposed upon it under Section 4-A(3)(b) of the Act in default of payment of compensation due under the Act within one month from the date it fell due. The appellant failed to file Reply to the said Show Cause Notice. So far as additional amount of compensation by way of penalty imposed under Section 4-A(3)(b) of the Act is concerned, it would be the liability of the employer i.e., the appellant alone [Refer: Ved Prakash Garg v. Premi Devi and Others reported as **(1997) 8 SCC 1**].

10. Resultantly, the appeal is partly allowed and respondent No. 2/Reliance General Insurance Co. Ltd. is directed to pay the compensation amount of Rs.2,09,869/- alongwith interest @ 12% from the date of the incident till realization to respondent No. 1/claimant within a period of two weeks from today. Insofar as penalty @ 50% of the compensation amount i.e., Rs.1,04,935/- is concerned, the impugned

order is upheld and it is directed that the Registry shall release the same to respondent No. 1 within one week from today.

11. The appeal stands disposed of in above terms. Pending application, if any, is disposed of as having become infructuous.

(MANOJ KUMAR OHRI)
JUDGE

JANUARY 23, 2023

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