

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

FAO 52/2016

Date of Decision: 14.03.2023

IN THE MATTER OF:

UNITED INDIA INSURANCE CO LTD Appellant
Through: Mr. Pankaj Seth, Advocate

Versus

BABITA & ORS. Respondents
Through:

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J. (ORAL)

1. By way of the present appeal filed under Section 30 of the Employees' Compensation Act, 1923, the appellant has assailed the order dated 10.11.2015 passed by the learned Commissioner, Employees Compensation, Jhilmil Colony, Delhi in Case No.CWC-D/NE/12/2009/3378 whereby the appellant was held liable to pay the compensation.

2. Learned counsel for the appellant submits that the incident in the present case occurred when the vehicle claimed to be driven by the deceased met with an accident. He contends that the deceased did not have a valid licence and as per the inquiry, the same was found to be fake. He thus submits that the impugned order needs to be set aside.

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3. Before dealing with the contention, the relevant facts to appreciate the contention are that in the claim application, it was averred that *Veerpal Singh* (since deceased) aged about 37 years was working as a driver with respondent No.1 on vehicle No. DL-1LF-5379 and was drawing salary @ Rs.6,000/- per month. It was claimed that in the course of employment while driving the aforesaid vehicle on 15.06.2009, he met with an accident at FudiLal Chowk, Jag Pravesh Chand Hospital, Delhi resulting in fatal injuries. An FIR No.184/2009 under Sections 279/304A IPC was registered at P.S. Usman Pur, Delhi.

4. In the proceedings before the learned Commissioner, employer/respondent No.1 appeared and admitted to the employer-employee relationship between himself and the deceased. He further admitted that the deceased had a valid driving licence. And that on the day of accident, the vehicle was duly insured for carrying goods as private carrier having a valid and subsisting insurance policy No. 221503/31/08/02/00005496. Respondent No.1 also stated that the deceased was drawing a salary of Rs.4,000/- per month.

Though initially the appellant was proceeded ex-parte, later, it was allowed to file the written statement wherein the only contention raised was with respect to the genuineness of the driving licence. The factum of vehicle being insured having a subsisting insurance policy which was valid from 30.12.2008 to 29.12.2009 was admitted.

5. A perusal of the records would show that respondent No.1 through one Neeraj Kumar filed evidence and reiterated the stand taken in the written statement. It was specifically deposed that the deceased was having a valid driving licence. On the other hand, the appellant

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maintained that the driving licence (DL No. 5700/E/93) of deceased was fake. In support of its stand, the appellant examined its Administrative Officer i.e., *Sh. Raju Meena*, who deposed that only an oral verification was done through their Investigator. On being cross-examined, he admitted that no report to the aforesaid extent was received from the office of RTO, Etah. It is noteworthy that alongwith the claim application, a copy of the driving licence of deceased was also placed on record. Respondent No.1 in his evidence stated that the deceased was holder of a valid driving licence. Per Contra, the appellant only made a bald assertion without placing any documentary evidence from the concerned transport authority on the record to substantiate its allegation.

6. At this stage, I may profitably make reference to the decision 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."

7. Accordingly, this Court finds no ground to interfere with the impugned order. Consequently, the appeal fails and the impugned order is upheld. The amount of compensation, if not already released, be released to the claimants forthwith.

8. A copy of this judgment be communicated to the concerned Court to ensure compliance.

(MANOJ KUMAR OHRI)
JUDGE

MARCH 14, 2023

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