



2023-DHC-8622



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

% **Judgment reserved on : 07 November 2023**
Judgment pronounced on : 05 December 2023¹

+ **FAO 265/2021**

KANTA

..... Appellant

Through: **Mr. Vipin Kumar Mishra, Mr.
Lalit Kumar Gupta and Mr.
Manoj Kumar Yadav, Advs.**

versus

GURVINDER KAPOOR & ANR. Respondents

Through: **Mr. Rakesh, Adv. for R-1.**

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/claimant under Section 30 of the Employee's Compensation Act, 1923² directed against order dated 07.10.2021 passed by Commissioner³, Employee's Compensation in case No. ECD/121/NW/18/1188 whereby her application for compensation was dismissed.

FACTUAL BACKGROUND:

2. Briefly stating, the appellant/claimant is the wife of late Shri Balwan Singh⁴, who was admittedly employed as driver with respondent No.1/registered owner⁵ for about more than 10 years and

¹ Written submissions filed on behalf of the appellants 20.11.2023

² EC Act

³ Commissioner

⁴ deceased

⁵ registered owner



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stated to be receiving salary of Rs. 15,000/- per month plus Rs.200/- per day towards meals⁶. On the fateful day i.e. 25.06.2018, deceased was driving vehicle No. HR55-N-8384, admittedly insured with respondent No.2/Insurance Company loaded with some material and heading for B-91, Mansa Ram Park, Uttam Nagar, Delhi. It was clearly brought out in the proceedings before the Commissioner that accident had occurred involving some other vehicle near PW Rest House, Gharonda, District Karnal and deceased stopped his truck on the opposite side and went across the road to help the victim and while returning back to his vehicle, some unknown vehicle coming at a very high speed driven in a rash and negligent manner struck him resulting in grievous injuries to the deceased and one driver on some other vehicle, namely Raj Kumar removed the deceased to Aparna Hospital, Karnal in a three wheeler where the Doctor declared him brought dead and consequent to it First Information Report [“FIR”] No. 411/2018 under Section 279/304 of the Indian Penal Code, 1860 [“IPC”] was registered at PS Gharnoda, District Karnal.

3. The appellant/claimant in the application seeking compensation under Section 22 of the EC Act on the death of deceased pleaded that only Rs. 30,000/- had been paid to her by registered owner through cheque drawn on HDFC Bank Limited and despite serving of legal notice dated 27.11.2018 no compensation has been paid and rather the registered owner took evasive pleas, denying the compensation on the ground that deceased was not a regular employee but a casual one.

⁶ As deposed by RW-1/respondent No.1



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PROCEEDINGS BEFORE THE COMMISSIONER:

4. The claim application was contested by both the registered owner as well respondent no. 2 Insurance Company. The learned Commissioner framed the following issues for consideration:-

- “1. Whether employer - employee relationship existed between the respondent and the deceased Sh. Balwan Singh ?
2. And if so whether accident resulting into death occurred in the course out of employment with respondent no.1?
3. And if so to what amount of compensation the claimant is entitled, any other relief?
4. Whether respondents liable for penalty under section 4A and to what extent and amount?”

5. During the course of proceedings before the learned Commissioner, the appellant/claimant filed her affidavit Ex.CW-1/A in evidence and she was cross-examined by the learned counsel for the respondent No.1. On the other hand, respondent no. 1/registered owner chose to come in the witness box and filed his detailed affidavit in evidence Ex.RW-1/1. Thereafter, he was subjected to cross-examination by the learned counsel for the appellant/claimant.

IMPUGNED JUDGMENT:

6. Suffice to state that the learned Commissioner decided issue No.1 in favour of the appellant/claimant holding that deceased was an employee of registered owner in terms of Section 2 (dd) of the EC Act and the deceased met with an accident in the course of employment, for which appellant/claimant had been paid Rs. 30,000/- by the registered owner without prejudice. It was further held that in any case the insurance company was duty bound to indemnify the registered owner since the truck in question was duly insured. However, here lies the stark blemish on part of the learned



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Commissioner in holding issue No.2 against the appellant/claimant interpreting Section 3 of the EC Act to mean that employer is liable for compensation only if personal injury is caused to an employee by accident 'arising out of and in the course of employment'. It was held that since the deceased added peril only when he met with an accident at own will, no liability could be fastened on the registered owner as also resultantly on respondent No.2 and the claim petition was dismissed.

ANALYSIS AND DECISION:

7. Having heard the half baked submissions addressed by the learned counsel for the parties and on perusal of the record, this Court has no hesitation in holding that the impugned order dated 07.10.2021 is not only unconscionable and patently erroneous in law and facts but also against the whole purpose and object of the EC Act.

8. In order to understand the basic fallacy in decision making process of the learned Commissioner in arriving at impugned order dated 07.10.2021, it would be expedient to reproduce the narrative and the reasons given by the Commissioner while answering decisive issue No.2, which reads as under:-

"Issue No.2

As per statement of claimant on the day of accident i.e. 25/06/2018 deceased was his duty as a driver on vehicle bearing No HR-55N-8384. On 25/06/2018 on way of his journey an accident had occurred near PW Rest house, Gharonda of known person, deceased Balwan Singh stopped his vehicle on the road and had gone to other side of the road to help the victim and on returning to his vehicle unknown vehicle coming in very high speed in rash and negligent manner had hit him and he got grievous and fatal injuries and on reaching hospital doctor declare brought dead. The respondent has also taken same stand in his reply. As per section 3 of the EC Act, 1923 employer's "*liability for compensation comes*



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only if personal injury is caused to an employee by accident arising out of and in the course of his employment. Only then his employer is liable to pay compensation in accordance with the provision of the Act". In this case deceased has left his vehicle for moving other side of the road to help victims of unknown person who met as accident was not in the part of duty of the deceased Balwan Singh. He added peril only then he met an accident at own will, as such accident of deceased Balwan Singh cannot be terms as accident caused arising out of and in the course his employment as such employer u/s 3 of the Act is not liable to pay compensation to the claimant being the widow of the deceased Balwan Singh, though the vehicle in question was insured with respondent no 2. In these circumstances the respondents cannot be fastened with any liability for payment of compensation to claimant. As such issue no 2 is decided against the claimant."

9. First things first, there can be no quarrel with the proposition of law that deceased was employed as a driver and was an employee within the meaning of Section 2 (dd) of the EC Act⁷. It was also brought on the record that during the proceedings the deceased was having a driving license which was proved on the record and there was no substance in the case of the registered owner that deceased was not a regular but a casual employee. The facts have clearly been delineated in the inquiry before the learned Commissioner that the FIR No. 411/2018 with PS Gharonda, District Karnal had been recorded at the instance of the registered owner, wherein he made a statement stated that as per his information, driver Balwan Singh was driving truck No. HR55-N-8384 and was heading towards Uttam Nagar when he stopped his vehicle near PW Rest House, Gharonda and went to look after a victim of a motor vehicle accident on the other side of the

⁷ Section 2(dd) - "employee" means a person, who is:-

(ii) (c) a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle



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road/highway, and while returning back to his parked truck, some untraced motor vehicle driven at fast speed, negligently and carelessly struck the deceased and afterwards driver of another vehicle, namely Raj Kumar removed the injured to Aparna Hospital, Madhuban, District Karnal, where Doctor declared the victim as brought dead.

10. At the cost of repetition, what was clearly brought to the fore before the learned Commissioner was that deceased after stopping his truck, got down and went over the other side of the road and probably attended upon somebody who had been injured in a motor vehicle accident. Unfortunate as it may look, it is while he was returning back to his vehicle, which by all probabilities was properly parked on the side way, that he got struck by another unknown speeding vehicle and sustained injuries. Although, there is no evidence as to what sort of help or assistance was rendered by the deceased, we have to assume that being a 'Good Samaritan' he stopped his truck and responded to somebody in distress. All the more for the reason that as per the Commissioner, the victim added peril to oneself as he voluntarily elected to help someone in distress, and thus, he concluded that what he did was not encompassed in the performance of his duties as a driver.

11. The aforesaid narrative brings us to Section 3 of the EC Act, which provides as under:-

“3. Employer’s liability for compensation.—(1) If personal injury is caused to a [employee] by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter: Provided that the employer shall not be so liable—



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- (a) in respect of any injury which does not result in the total or partial disablement of the [employee] for a period exceeding [three] days;
- (b) in respect of any [injury, not resulting in death [or permanent total disablement], caused by an accident which is directly attributable to—
 - (i) the [employee] having been at the time thereof under the influence of drink or drugs, or
 - (ii) the wilful disobedience of the [employee] to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of employee's, or
 - (iii) the wilful removal or disregard by the [employee] of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of [employees]"

12. First things first, there was no evidence before the learned Commissioner that in order to exclude the liability of the employer for payment of compensation in terms of sub-section (1) to (3) of the EC Act, there was any blemish on the part of the driver in terms of clause (b) in the sense that there was no evidence that he was under the influence of any alcohol or drug, or that he wilfully disobeyed any direction of the employer, or for that matter disregarded any safety measure provided to him by the employer with respect to handling the truck entrusted to him and to be driven for the benefit of the business of his employer.

13. It is well ordained in compensatory jurisprudence that there is a doctrine of “notional extension” of the term “*in the course of employment*” whereby any accident resulting from some risk incidental to duties comes under the phrase “*in the course of employment*”. The instant matter is one where this doctrine of notional extension of acts falling in the course of employment can be invoked, which by all means, would be in consonance with the



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underlying public policy of preventing hazards, loss of life and property involving motorists on the public road/highways in the EC Act as also the Motor Vehicles Act, 1988⁸. Incidentally and pertinently, the Supreme Court in the case of *Savelife Foundation and Another v. Union of India and Another*⁹ was concerned with the plight of ‘**Good Samaritans**’, who voluntarily come forward to help any victim of road accident and their main concern was about harassment faced by bystanders or Good Samaritans getting involved in the rigmarole of ensuing criminal prosecution of the offenders. In short, on pathbreaking directions of the Supreme Court and resultant deliberations by a Parliamentary Committee, the legislature by way of an amendment, introduced section 134 (A) to the MV Act, which reads as under :-

“134A. Protection of Good Samaritans.—(1) A Good Samaritan shall not be liable for any civil or criminal action for any injury to or death of the victim of an accident involving a motor vehicle, where such injury or death resulted from the Good Samaritan's negligence in acting or failing to act while rendering emergency medical or non-medical care or assistance.

(2) The Central Government may by rules provide for the procedure for questioning or examination of the Good Samaritan, disclosure of personal information of the Good Samaritan and such other related matters.

*Explanation.—*For the purposes of this section, “Good Samaritan” means a person, who in good faith, voluntarily and without expectation of any reward or compensation renders emergency medical or non-medical care or assistance at the scene of an accident to the victim or transports such victim to the hospital.”

⁸ M.V. Act

⁹ (2016) 7 SCC 194.



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14. It would be expedient to refer to some of the observations of the Supreme Court in the case of *Savelife Foundation v. Union of India* (*supra*) which read as under: -

“57. Accident cases require fastest care and rescue which could be provided by those closest to the scene of the accident. Bystanders' clear support is essential to enhance the chances of survival of victim in the “Golden Hour” i.e. the first hour of the injury. As per the WHO India Recommendations, 50% of the victims die in the first 15 minutes due to serious cardiovascular or nervous system injuries and the rest can be saved through by providing basic life support during the “Golden Hour”. Right to life is enshrined under Article 21 which includes right to safety of persons while travelling on the road and the immediate medical assistance as a necessary corollary is required to be provided and also adequate legal protection and prevention from harassment to good Samaritans.

16. However, there is one significant aspect in the recommendations of the present Committee which needs immediate attention. The said recommendations have been paraphrased in the Report under the Head “Recommended Directions in Relation to Protection of Good Samaritans”. The learned counsel for the petitioners has contended that the said recommendations of the Ad hoc Committee headed by the Additional Secretary can reasonably form the basis of an exercise under Article 32 of the Constitution of India to issue directions until framing of appropriate laws by the legislature. The learned counsel has also pointed out that the Committee was headed by a high official of the Government of India and that the Union of India was adequately represented in the said Committee.

56.1. In England and Wales, Parliament has enacted the Social Action, Responsibility and Heroism Act, 2015 which provides for certain factors to be considered by the court while hearing an action for negligence or breach of duty. Section 2 of the Act provides that the court must consider whether the respondent was acting for the benefit of society or any of its members. Section 4 of the Act further provides that the court must consider whether the respondent was acting heroically by intervening in an emergency to assist an individual in danger.

56.2. In Ireland, Section 51-D of the Civil Law (Miscellaneous Provisions) Act, 2011 provides that a good Samaritan will not be liable in negligence for any act done in emergency to help person in serious and imminent danger. In Australia, protection to good Samaritan is provided in several States. In New South Wales and Victoria, for instance, a good Samaritan is protected from personal



civil liability with respect to anything done in state of emergency or accident by virtue of the Civil Liability Act, 2002 and the Wrongs Act, 1958, respectively.

56.3. In Canada, various States like Ontario, Alberta and British Columbia offer protection to good Samaritans. In Ontario, the Good Samaritan Act, 2001, by Section 2(1), provides that except for gross negligence, a person is not liable for damages resulting from his acts during aid in emergency. Similar protection is provided in States of Alberta, British Columbia and Nova Scotia by Emergency Medical Aid Act, Good Samaritan Act and Volunteer Services Act, respectively. Similar protection to good Samaritans is to be found in different States' laws in the USA. States of Alabama, Alaska, Arizona, Arkansas, California and New York, to name a few, provide that if a person lends emergency assistance or service to another person in good faith, he is not liable in civil damages with respect to his act or omission.

63. The scope of reference of the Committee, inter alia, included the following aspects with which we are concerned in the instant matter:

“(ix) Identify the root causes for fear of harassment and legal hassles in general public regarding helping injured victims.

(x) Deliberate and develop a set of guidelines for protecting good Samaritans from police harassment and legal hassles. The guidelines will aim to address the root causes for fear of harassment and legal hassles in general public regarding helping injured victims. These guidelines will also serve as a foundation for further legislative work in the area of protecting good Samaritans.”

The Committee was required to submit report to this Court within three months.

66. The Ministry of Road Transport and Highways has issued a Notification containing guidelines on 12-5-2015 published in the Gazette of India Para 1 of Section 1 of the Notification dated 12-5-2015 for protection of good Samaritans and a further Notification has been issued on 21-1-2016 in accordance with Paras 1(7) and 1(8) of the Guidelines dated 12-5-2015 which required Standard Operating Procedures to be framed and issued for examination of good Samaritans by the police or during trial. It has been mentioned in the affidavit filed by the Ministry of Road Transport and Highways, Government of India that in the absence of any statutory backing, it is felt that it will be difficult to enforce these Guidelines issued on 12-5-2015 and standard operating procedures as notified on 21-1-2016. It has also been mentioned that the notified Guidelines in relation to protection of a bystander or a good Samaritan are without prejudice to the liability of the driver of a motor vehicle involved in the road accident, as specified under



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Section 134 of the Motor Vehicles Act, 1988.

67. The Notification dated 12-5-2015 issued by the Ministry of Road Transport and Highways containing Guidelines for protection of good Samaritans to be in force till appropriate legislation is framed by the Union Legislature, is extracted hereunder:

“No. 25035/101/2014-RS.—Whereas the Hon'ble Supreme Court in Savelife Foundation v. Union of India[Set out in paras 30 to 32, above.] vide its order dated 29-10-2014, inter alia, directed the Central Government to issue necessary directions with regard to the protection of good Samaritans until appropriate legislation is made by the Union Legislature;

And whereas, the Central Government considers it necessary to protect the good Samaritans from harassment on the actions being taken by them to save the life of the road accident victims and, therefore, the Central Government hereby issues the following Guidelines to be followed by hospitals, police and all other authorities for the protection of good Samaritans, namely—

1. (1) A bystander or good Samaritan including an eyewitness of a road accident may take an injured person to the nearest hospital, and the bystander or good Samaritan should be allowed to leave immediately except after furnishing address by the eyewitness only and no question shall be asked to such bystander or good Samaritan.

(2) The bystander or good Samaritan shall be suitably rewarded or compensated to encourage other citizens to come forward to help the road accident victims by the authorities in the manner as may be specified by the State Governments.

(3) The bystander or good Samaritan shall not be liable for any civil and criminal liability.

(4) A bystander or good Samaritan, who makes a phone call to inform the police or emergency services for the person lying injured on the road, shall not be compelled to reveal his name and personal details on the phone or in person.

(5) The disclosure of personal information, such as name and contact details of the good Samaritan shall be made voluntary and optional including in the Medico-Legal Case (MLC) Form provided by hospitals.

(6) The disciplinary or departmental action shall be initiated by the Government concerned against public officials who coerce or intimidate a bystander or good Samaritan for revealing his name or personal details.

(7) In case a bystander or good Samaritan, who has voluntarily stated that he is also an eyewitness to the accident and is required to be examined for the purposes of investigation by the police or during the trial, such bystander or good Samaritan shall be



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examined on a single occasion and the State Government shall develop Standard Operating Procedures to ensure that bystander or good Samaritan is not harassed or intimidated.

(8) The methods of examination may either be by way of a commission under Section 284 of the Code of Criminal Procedure, 1973 or formally on affidavit as per Section 296 of the said Code and Standard Operating Procedures shall be developed within a period of thirty days from the date when this Notification is issued.

(9) Video conferencing may be used extensively during examination of bystander or good Samaritan including the persons referred to in Guideline (1) above, who are eyewitnesses in order to prevent harassment and inconvenience to good Samaritans.

(10) The Ministry of Health and Family Welfare shall issue Guidelines stating that all registered public and private hospitals are not to detain bystander or good Samaritan or demand payment for registration and admission costs, unless the good Samaritan is a family member or relative of the injured and the injured is to be treated immediately in pursuance of the order of the Hon'ble Supreme Court in *Parmanand Katara v. Union of India* [Parmanand Katara v. Union of India, (1989) 4 SCC 286 : 1989 SCC (Cri) 721].

(11) Lack of response by a doctor in an emergency situation pertaining to road accidents, where he is expected to provide care, shall constitute "Professional Misconduct", under Chapter 7 of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 and disciplinary action shall be taken against such doctor under Chapter 8 of the said Regulations.

(12) All hospitals shall publish a charter in Hindi, English and the vernacular language of the State or Union Territory at their entrance to the effect that they shall not detain bystander or good Samaritan or ask depositing money from them for the treatment of a victim.

(13) In case a bystander or good Samaritan so desires, the hospital shall provide an acknowledgment to such good Samaritan, confirming that an injured person was brought to the hospital and the time and place of such occurrence and the acknowledgment may be prepared in a standard format by the State Government and disseminated to all hospitals in the State for incentivising the bystander or good Samaritan as deemed fit by the State Government.

(14) All public and private hospitals shall implement these Guidelines immediately and in case of non-compliance or violation of these Guidelines appropriate action shall be taken by the authorities concerned.

(15) A letter containing these Guidelines shall be issued by the Central Government and the State Government to all hospitals and



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institutes under their respective jurisdiction, enclosing a Gazette copy of this Notification and ensure compliance and the Ministry of Health and Family Welfare and Ministry of Road Transport and Highways shall publish advertisements in all national and one regional newspaper including electronic media informing the general public of these Guidelines.

2. The above Guidelines in relation to protection of bystander or good Samaritan are without prejudice to the liability of the driver of a motor vehicle in the road accident, as specified under Section 134 of the Motor Vehicles Act, 1988 (59 of 1988).

sd/-

Joint Secretary.”

68. Paras 1(7) and 1(8) of the Guidelines dated 12-5-2015 required Standard Operating Procedure to be framed for the examination of the good Samaritans. The Central Government, Ministry of Road Transport and Highways has issued Notification on 21-1-2016 which is as under:

“No. RT-25035/101/2014-RS.—Whereas, the Hon'ble Supreme Court in *Savelife Foundation v. Union of India* [Set out in paras 30 to 32, above.] vide its order dated 29-10-2014, inter alia, directed to issue necessary directions with regard to the protection of good Samaritans until appropriate legislation is made by the Union Legislature;

And whereas, the Central Government published the Guidelines in the Gazette of India, Extraordinary, Para 1, Section 1 dated 12-5-2015 for protection of the good Samaritans i.e. a person who is a bystander or a passer-by, who chooses to assist an injured person or a person in distress on the road;

And whereas, as per Paras 1(7) and 1(8) of the said Guidelines dated 12-5-2015, Standard Operating Procedures are to be framed for the examination of good Samaritans by the police or during trial;

And whereas, the Central Government considers it necessary to issue Standard Operating Procedure for the examination of good Samaritans by the police or during trial and hereby issue the following Standard Operating Procedure, namely—

1. (1) The good Samaritan shall be treated respectfully and without any discrimination on the grounds of gender, religion, nationality, caste or any other grounds.

(2) Any person who makes a phone call to the police control room or police station to give information about any accidental injury or death, except an eyewitness may not reveal personal details such as full name, address, phone number, etc.



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(3) Any police official, on arrival at the scene, shall not compel the good Samaritan to disclose his/her name, identity, address and other such details in the record form or log register.

(4) Any police official or any other person shall not force any good Samaritan who helps an injured person to become a witness in the matter. The option of becoming a witness in the matter shall solely rest with the good Samaritan.

(5) The police official(s) concerned shall allow the good Samaritan to leave after having informed the police about an injured person on the road, and no further questions shall be asked if the good Samaritan does not desire to be a witness in the matter.

2. Examination of good Samaritan by the police—

(i) In case a good Samaritan so chooses to be a witness, he shall be examined with utmost care and respect and without any discrimination on the grounds of gender, religion, nationality, caste or any other grounds.

(ii) In case a good Samaritan chooses to be a witness, his examination by the investigating officer shall, as far as possible, be conducted at a time and place of his convenience such as his place of residence or business, and the investigating officer shall be dressed in plain clothes, unless the good Samaritan chooses to visit the police station.

(iii) Where the examination of the good Samaritan is not possible to be conducted at a time and place of his convenience and the good Samaritan is required by the investigating officer to visit the police station, the reasons for the same shall be recorded by such officer in writing.

(iv) In case a good Samaritan so chooses to visit the police station, he shall be examined in a single examination in a reasonable and time-bound manner, without causing any undue delay.

(v) In case the good Samaritan speaks a language other than the language of the investigating officer or the local language of the respective jurisdiction, the investigating officer shall arrange for an interpreter.

(vi) Where a good Samaritan declares himself to be an eyewitness, he shall be allowed to give his evidence on affidavit, in accordance with Section 296 of the Code of Criminal Procedure, 1973 (2 of 1974) which refers to evidence in formal character on affidavit.

(vii) The complete statement or affidavit of such good Samaritan shall be recorded by the police official while conducting the investigation in a single examination.

(viii) In case the attendance of the good Samaritan cannot be procured without delay, expense or inconvenience which, under



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the circumstances of the case, would be unreasonable, or his examination is unable to take place at a time and place of his convenience, the Court of Magistrate may appoint a commission for the examination of the good Samaritan in accordance with Section 284 of the Code of Criminal Procedure, 1973 (2 of 1974) on an application by the concerned.

3. The Superintendent of Police or Deputy Commissioner of Police or any other police official of corresponding seniority heading the police force of a district, as the case may be, shall be responsible to ensure that all the above-mentioned procedures are implemented throughout their respective jurisdictions with immediate effect.”

15. On a meticulous and meaningful perusal of the aforesaid observations, the underlying judicial philosophy is that that a bystander who is a witness to the accident and/or a Good Samaritan, should not be harassed or intimidated in any manner merely because he or she voluntarily comes forward and provides immediate assistance to a victim of motor vehicle accident on public road and highways. Extending the same judicial philosophy to logical ends, this Court finds that the learned Commissioner while passing the impugned judgment clearly overlooked the broader or the larger aspect of the whole scenario that helping an injured on a public road/highway is prime duty of everyone. An individual, who out of sheer generosity helps someone in distress, is a ‘Good Samaritan’ according to the parable in Gospel of Luke in the Holy Bible¹⁰. Thus, Good Samaritan laws shield/protect a rescuer from being sued if the rescue miscarries, except in cases of gross negligence or recklessness.¹¹ The objective is to reduce any hesitation bystanders

¹⁰ Luke 10:30-37.

¹¹ *Velazquez v. Jiminez*, 798 A.2d 51 (N.J. 2002)



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may have about giving assistance to those who need such assistance.¹² At the cost of repetition, the reluctance to incur legal trouble is one factor that Good Samaritan laws address.¹³ The legislative and judicial axiom should be to protect persons from punishment who out of benevolence provide help to a fellow person in need of aid and to reduce any hesitation bystanders may have about giving assistance to those who need it. In the absence of such legal protection, attributes such as ‘kind-heartedness’, ‘kindness’, ‘empathy’ towards strangers, which makes humans the social animals they are, who rely on each other for survival and emotional well-being, would be stripped of their very humanity rendering these attributes redundant. Thus, in absence of legal protection, it would become impossible for individuals with kind hearts to act out of benevolence, help a person in distress or a victim of motor vehicle accident.¹⁴

16. In contrast, Bad Samaritan laws “oblige persons, on pain of persons in grave peril”¹⁵ i.e., by operation of such laws, statutory duty is imposed on people to take positive steps to rescue a person in ‘grave peril’. Such position of law can at times lead to morally disturbing instances such as the one in Uttarakhand wherein people chose to video graph a victim of motor vehicle fire instead of taking

¹² C5-02-651 *Swenson v. Waseca Mutual Insurance Co.* [2002].

¹³ *Ibid.*

¹⁴ Åsbjørn Melkevik, ‘Against Samaritan Laws: The Good, the Bad, and the Ugly’ Harvard University, Last Accessed on December 4, 2023 (<https://pacscenter.stanford.edu/wp-content/uploads/2018/05/Melkevik-Against-Samaritan-Laws.-The-Good-the-Bad-and-the-Ugly-1.pdf>)

¹⁵ H. Malm, “Liberalism, Bad Samaritan Law, and Legal Paternalism”, *Ethics*, Vol. 106, No. 1, 1995.



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steps to rescue her.¹⁶ The bottom-line is that a person who chooses to take steps to aid a person in distress should not be harassed for showing kindness and if in the process the Good Samaritan suffers some injury or fatal consequence, the law must come to his rescue.

17. The aforesaid view of this Court also derives from the cherished ideals enshrined under Article 51A of the Constitution laying down certain fundamental duties, which is a constant reminder to every citizen of this country that they are required to observe basic norms of good etiquettes, attitudes, and dispositions to promote and further the objectives of establishing a welfare society. Our view on the subject may also draw wisdom from the enactments which are invoked in other countries.

AN INTERNATIONAL PERSPECTIVE:

18. It is pertinent to point out that in **France**, the duty to rescue was introduced in the French criminal law in 1941 and has been provided under Article 223-6¹⁷ of the French Penal Code (FPC), 1994, where any person who wilfully abstains from helping someone will be punished and fined. Under the French Law, any person who wilfully fails to offer assistance to a person who is in danger incurs a criminal liability. In other words, the law casts a duty on a bystander to assist

¹⁶Kalyan Das, 'Woman dies in scooter fire, onlookers film her' Times Of India (Nov 22, 2023) <<https://timesofindia.indiatimes.com/city/dehradun/woman-engulfed-by-scooter-fire-dies/articleshow/105401862.cms>> Accessed 2 December, 2023.

¹⁷ Article 223-6 French Penal Code, 1994: Anyone who, being able to prevent by immediate action a felony or a misdemeanour against the bodily integrity of a person, without risk to himself or to third parties, wilfully abstains from doing so, is punished by five years' imprisonment and a fine



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and failing to do so would make such a person liable to fine and imprisonment. In the **United State of America** several U.S. States like Vermont, Minnesota, and Rhode Island passed laws based on the idea of a Good Samaritan, establishing the duty to rescue others from danger or peril. Vermont State laws under Section 519 (Emergency Medical Care) imposes on all persons a general duty to rescue a person in danger.¹⁸ Similarly, Section 1799.102¹⁹ of the Health and Safety Code of the Californian laws provides for Good Samaritan law and protects the person from civil liability.

19. Likewise in **Germany**, failure to provide first aid to a person in need is punishable under Section 323c of the German Criminal Code.²⁰ People are thus encouraged to help in any way possible, even if the attempt is not successful. Moreover, people providing first aid are covered by the German Statutory Accident Insurance in case they suffer injury, losses, or damages. Infact, **Portugal** was the first nation to include the duty to rescue in its Portuguese Civil Code of 1867

of €75,000.

¹⁸ **12 V.S.A. § 519 Emergency medical care:** (a) A person who knows that another is exposed to grave physical harm shall, to the extent that the same can be rendered without danger or peril to himself or herself or without interference with important duties owed to others, give reasonable assistance to the exposed person unless that assistance or care is being provided by others; (b) A person who provides reasonable assistance in compliance with subsection (a) of this section shall not be liable in civil damages unless his or her acts constitute gross negligence or unless he or she will receive or expects to receive remuneration. Nothing contained in this subsection shall alter existing law with respect to tort liability of a practitioner of the healing arts for acts committed in the ordinary course of his or her practice; (c) A person who willfully violates subsection (a) of this section shall be fined not more than \$100.00.

¹⁹ [CA Health & Safety Code § 1799.102 \(2022\)](#)

²⁰ Section 323c Failure to render assistance; obstruction of persons rendering assistance: (1) Whoever does not render assistance in the case of an accident or a common danger or emergency although it is necessary and can reasonably be expected under the circumstances, in particular if it is possible without substantial danger to that person and without breaching other important duties, incurs a penalty of imprisonment for a term not exceeding one year or a fine; (2) Whoever obstructs a person who is rendering or wishes to render assistance to another person in such a situation incurs the same penalty.



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(‘PCC, 1867’) and Article 2368 of the PCC, 1867²¹, extends a duty on the witnesses to a crime to help or assist the victim.

20. To sum up, the reasons assigned by the learned Commissioner that it was in no part of the duty of the deceased to stop his truck and go over to the other side to help someone and by doing so he added peril to his oneself, is not only morally and legally unfathomable but also does not conform with the purpose or the objective of the EC Act as well as the M.V. Act. Incidentally, the Central Motor Vehicles Rules, 1989²², very significantly mandates a comprehensive ‘Training Manual’ for improving the skills of the drivers, that *inter alia* not only mandates the motorist to have the medical tool kit in the motor vehicles while driving on public road/highways but also to make them abreast with life saving techniques to provide medical help in case of motor accidents, not only to oneself but anybody else involved in the motor accident.²³

FINAL ORDER:

21. Therefore, in view of the foregoing discussion, this court has no hesitation in setting aside the impugned order dated 07.10.2021 passed by learned Employee’s Compensation Commissioner. The same is set

²¹ [Portuguese Civil Code, 1867, Article 2368](#) – Duty to assist the victim – It is the duty of those witnessing such aggressive acts to help the victim, without exceeding the limits of fair defence of the latter, and if, despite not running risk, they fail to oppose such act, they shall also incur liability for losses and damages.

²² CMVR

²³ The Central Motor Vehicle Rules, 1989 vide Rule 21 provides for ‘Powers of licensing authority to disqualify’ and enlists certain acts by holder of driver licence which shall be construed nuisance and danger to the public; Rule 31 provides for syllabus for imparting instruction in driving of motor vehicles viz.: - G. Public Relations for Drivers (Some basic aspects about ethical and courteous behaviour with other road users.) & K. FIRST-AID: - Introduction to first aid, outline of first-aid, and also training for treating wounds, dressings, bandages, circulation of blood, respiratory issues etc.



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aside. The matter is remanded back to learned Employee's Compensation Commissioner with directions to assess the quantum of compensation to be payable to the claimants within a period of two months from today, after affording the claimants and the employer besides respondent no. 2/Insurance company to produce relevant material for consideration.

22. However, considering the long intervening time that must have left the claimants virtually on the verge of vagrancy, the claimants shall be paid interim payment of Rs. 5 lakhs with interest 12% p.a. from the date of accident i.e., 25.06.2018, which be released to the claimant wife within a month from today, subject to future adjustment on final determination of quantum of compensation and payment thereof to the claimants. The interim compensation shall be paid by respondent no.2- M/s. Universal Sompo General Insurance Company Ltd. Any delay thereafter in the disbursement of compensation shall invite costs of Rs. 5,000/- per day till payment. The parties are directed to appear before the learned Commissioner, Employee's Compensation Commissioner on 09.12.2023 with relevant documents. There shall be no adjustment towards ex gratia amount of Rs. 30,000/- paid to the claimants by respondent no. 1/registered owner.

23. A copy of this order be sent to learned Commissioner, Employee's Compensation Commissioner for information and necessary compliance. A compliance report be filed on or before 28.02.2024.



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24. The present appeal is disposed of on the aforesaid terms and conditions. The same may be revived by the claimants, if there is no compliance to the directions passed by this Court.

DHARMESH SHARMA, J.

DECEMBER 05, 2023

sm/sp