

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

FAO No.374/2019 & CM. APPL. No.41221/2019

Reserved on: 13.01.2023
Pronounced on: 20.04.2023

IN THE MATTER OF:

THE ORIENTAL INSURANCE CO LTD Appellant
Through: Mr.Nar Singh and Mr.S.P. Jain,
Advocates

versus

SIMARJEET KAUR & ORS. Respondents
Through: Mr.R.K. Nain and Mr.Chandan Prajapati,
Advocates.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J.

1. The appellant has preferred the present appeal under Section 30 of the Employees' Compensation Act, 1923 assailing order dated 17.07.2019 passed by learned Commissioner, Employees' Compensation in Case No.CEC/SD/I/95/2017/17145, whereby the claim petition filed by respondent Nos.1 and 2 (LRs of deceased/original claimant-*Sh.Manjeet Singh*) was allowed and the appellant directed to deposit compensation amount of Rs.6,84,864/- along with interest @ 12% p.a. w.e.f. 15.09.2016 till realization.
2. The primary contention raised on behalf of the appellant was that the claimant(s) not only failed to prove existence of employee-employer

relationship between the deceased and respondent No.3/employer, but also failed to connect the medical treatment undertaken by the deceased to the injury allegedly suffered on 16.08.2016. It was submitted that neither any DD Entry/FIR, nor any Driving License or fitness certificate of the vehicle in question was placed on record before the learned Commissioner. It was also submitted that while the injury was claimed to have been suffered by the deceased on 16.08.2016, the medical documents of *Shanti Kumud Hospital, Adarsh Nagar, Delhi* are dated 04.09.2016.

3. Learned counsel appearing for respondent Nos.1 and 2 defended the impugned order and submitted that the claim petition was filed for injury compensation however, later, the original claimant (deceased) expired. Explaining the purported delay in the deceased seeking treatment, it was submitted that though initially the injury suffered appeared to be minor, complications arose forcing him to seek medical treatment from *Shanti Kumud Hospital, Adarsh Nagar, Delhi*.

4. In the present appeal, respondent No.3 refused service of summons.

5. It is noted that in the claim petition, deceased/*Sh.Manjeet Singh* was stated to be employed with respondent No.3 as a driver on vehicle bearing *No.PB-09S-3797*. The vehicle was owned by respondent No.3 and was insured with the appellant vide policy No.233106/31/2017/1609 which was valid from 01.08.2016 to 31.07.2017. On 16.08.2016, the vehicle was on its business trip from *Kalindi Kunj, Delhi* to *Kala Amb, Himachal Pradesh*. When the deceased was helping the cleaner posted on the said vehicle in covering the loaded goods by putting tarpaulin, an iron nail penetrated through his shoe resulting in injury of his right foot. First-aid was provided by the cleaner, whereafter considering the urgency of the work, the deceased and him proceeded towards their destination. After some days, on noticing swelling in his right foot, the deceased

visited a doctor and, on the doctor's advice, he got admitted in *Shanti Kumud Hospital, Adarsh Nagar, Delhi* where he remained admitted for a period of four days. It was claimed that the treatment continued even after being discharged. Eventually, right leg of the deceased became dysfunctional, making him unable to do work as a driver.

7. Respondent No.3 had appeared and filed her written statement before the learned Commissioner. She admitted the employer-employee relationship between herself and the deceased, and stated that on 16.08.2016, deceased/*Sh.Manjeet Singh* had suffered injury while being employed as a driver on her vehicle. She also stated that the vehicle was duly insured with the appellant and even additional premium was paid. On the aspect of salary of the deceased, it was stated that he was paid minimum rate of wages as admissible under law. Considering the evidence on record, while the appellant was directed to deposit compensation alongwith interest, respondent No.3 was directed to pay penalty amount.

8. The appellant's contention that admission by respondent No.3 is to be eschewed as no documentary proof of the employer-employee relationship was placed on the record, merits outright rejection as in the present case besides respondent No.3 admitting the employer-employee relationship between herself and deceased, the cleaner of the vehicle-*Sh.Shingara Singh* was also examined. He deposed that the deceased, whom he used to call *Ustad Ji*, was employed as a driver with respondent No.3/employer. He further stated that while being employed on the said vehicle, the deceased had suffered injury in his presence. There is no reason for this Court to doubt this admission especially when nothing to the contrary is placed on record by the appellant. In view of the categorical stand taken by respondent No.3/employer and testimony of *Sh.Shingara Singh*, the employer-employee relationship stands established.

9. Insofar as the appellant's contention that no DD Entry or FIR was placed on record in support of the claim, suffice it to note that the deceased had suffered injury not in any accident with another vehicle, but rather, while putting tarpaulin on the loaded goods. Reference may profitably be made to the decision rendered by a Co-ordinate Bench of this Court in Shriram General Insurance Co. Ltd. v. Babu and Anr. reported as **2014 SCC OnLine Del 2542** where it was opined that insistence on placing on record of DD Entry and Police MLC Report is misplaced when there is neither a medico-legal case nor police enquiry is required.

10. Coming to the appellant's next contention relating to the delay in medical treatment, it is noteworthy that the deceased expired during pendency of proceedings before learned Commissioner. Accordingly, his wife *Smt.Simarjeet Kaur* filed her evidence by way of an affidavit enclosing therein a copy of his Disability Certificate, medical treatment documents, etc. It was stated that initially the injury was considered minor, however, later, when swelling appeared on right foot of the deceased, he sought medical advice and was eventually admitted in the hospital.

11. A perusal of the records would show that during the proceedings, opinion of Medical Board of *Babu Jagjivan Ram Memorial Hospital, Jahangirpuri, Delhi* was sought, which assessed the disability of deceased as 67% permanent. Even otherwise, medical documents of *Shanti Kumud Hospital, Adarsh Nagar, Delhi* would show that the deceased was treated for *edema* in the right foot.

Although the appellant examined its panel doctor one *Dr.Arun Aggarwal*, in support of its case, the opinion of the Medical Board establishes that there is causal connection of the injury and the treatment undertaken by the deceased.

12. Thus, in the present case, injury suffered by the deceased was on account of penetration of iron nail when he was putting tarpaulin on the loaded goods.

There is a causal connection between the accident and the work done in the course of employment. The incident in the opinion of this Court has arisen out of and in the course of employment.

13. At this stage, it is deemed expedient to refer to the decision of the Supreme Court in Param Pal Singh Through Father v. National Insurance Company and Another reported as (2013) 3 SCC 409 where it reiterated the principles laid down earlier in Mackinnon Mackenzie and Co. (p) Ltd. v Ibrahim Mahammed Issak reported as (1969) 2 SCC 607. Relevant extract of the decision reads as under:

“28. Again in yet another celebrated decision of this Court in Ibrahim Mahmmud Issak (supra) this Court has set down the principles applied in such cases as under in paragraph 5:

“5. To come within the Act the injury by accident must arise both out of and in the course of employment. The words “in the course of the employment” mean “in the course of the work which the workman is employed to do and which is incidental to it.” The words “arising out of employment” are understood to mean that “during the course of the employment, injury has resulted from some risk incidental to the duties of the service, which, unless engaged in the duty owing to the master, it is reasonable to believe, the workman would not otherwise have suffered.” In other words there must be a casual relationship between the accident and the employment. The expression “arising out of employment” is again not confined to the mere nature of the employment. The expression applies to employment as such- to its nature, its conditions, its obligations and its incidents. If by reason of any of those factors the workman is brought within the zone of special danger the injury would be one which arises ‘out of employment’. To put it differently if the accident had occurred on account of a risk which is an incident of the employment, the claim for compensation must succeed, unless of course the workman has exposed himself to an added peril by his own imprudent act. In Lancashire and Yorkshire Railway Co. v. Highley, Lord

summer laid down the following test for determining whether an accident “arose out of the employment.” (Emphasis added)”

14. Insofar as appellant’s contention that the vehicle permit was not produced, suffice it to note that the submission though taken in the appeal is not supported by appellant’s own witness in the proceedings before the Commissioner wherein it was stated that the same was based on assumption without any verification. Keeping in view the foregoing discussion as well as in light of the decisions cited hereinabove, this Court finds no ground to interfere with the impugned order. Consequently, the appeal is dismissed. The order dated 10.10.2019 passed by the predecessor Bench stands vacated. The compensation amount lying deposited with the learned Commissioner, Employees’ Compensation be released to respondent Nos.1 and 2/the claimant forthwith, alongwith the interest accrued thereon. The appellant shall also deposit interest as awarded vide the impugned order within two weeks from today, which shall also be released to the claimant. Pending application stands disposed of.

(MANOJ KUMAR OHRI)
JUDGE

APRIL 20, 2023/v