

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

FAO 206/2016 & CM. APPL. 17188/2016

Date of Decision: 14.03.2023

IN THE MATTER OF:

NATIONAL INSURANCE CO LTD Appellant

Through: Mr.Pankaj Seth, Advocate

versus

RAVINDER KAUR & ORS Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J.(ORAL)

1. By way of present appeal filed under Section 30 of the Employees' Compensation Act, 1923 (hereinafter, referred to as the 'EC Act'), the appellant has assailed the order dated 03.02.2016 passed by learned Commissioner, Employees' Compensation, New Delhi in Case No.WCD/191/NW/03/1084-86 whereby the claim petition filed by respondent Nos.1 to 7/claimants was allowed and the appellant held liable to deposit compensation alongwith interest.

2. The solitary contention raised by learned counsel for the appellant is that in the proceedings before the learned Commissioner, the employer-employee relationship between respondent No.8 and deceased/*Balvinder Singh* was not established as both were neighbours, living in vicinity of each other.

3. A perusal of the claim petition would show that the deceased was claimed to have been employed with respondent No.8 as a second driver on Truck bearing registration No.HR-37-6015 for about six months at a salary of Rs.5,000/- per month. It was further claimed that on 22.07.2003 at about 1:30 p.m., respondent No.8 asked the deceased to remove electrical wire, which was hanging over the said truck. While following direction of respondent No.1 and in the process of removing over hanging wire, the deceased got electrocuted and died. A case bearing FIR No.476/2003 was registered under Section 304A IPC at Police Station Jahangirpuri. Statedly, the truck in question was insured with the appellant and the deceased was 34 years of age at the time of his death.

4. The claimants appeared and filed their evidence by way of affidavit. While the appellant filed a written statement, respondent No.8 was proceeded *ex-parte*. The learned Commissioner, after considering the evidence, arrived at a conclusion that the deceased was employed with respondent No.8 and died as a result of electrocution suffered out of and during the course of employment.

5. At the outset, this Court deems it expedient to outline the scope of appeal filed under Section 30 of the EC Act as delineated in North East Karnataka Road Transport Corporation v. Sujatha reported as (2019) 11 SCC 514. In the captioned case, the Supreme Court has reiterated 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.”*

6. Keeping in view the above dicta of the Supreme Court, it is opined that this Court, in exercise of jurisdiction under Section 30 of the EC Act, should not interfere with an award passed by Commissioner, Employees' Compensation, except when there is a substantial question of law involved. The same view has also recently been voiced by the Supreme Court in Shahajahan and another v. Shriram General Ins. Co. Ltd. and another reported as **2022 ACJ 203**.

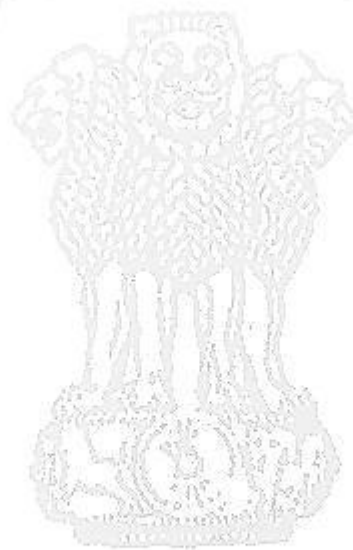
7. Insofar as the finding of the learned Commissioner that the deceased was employed with respondent No.8, this Court is of the opinion that the appellant has failed to produce any evidence contrary to the finding and no ground is made out to interfere with the impugned order. Consequently, the same is upheld and

the appeal is dismissed. Pending application is disposed of. Let the remaining amount of compensation lying deposited with learned Commissioner, Employees' Compensation be released to the claimants forthwith, alongwith interest accrued thereupon, if any, if not already done.

8. A copy of this judgment be communicated to the concerned Commissioner for information.

(MANOJ KUMAR OHRI)
JUDGE

MARCH 14, 2023/v



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