

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

+ **FAO 339/2017**

Date of Decision: 09.01.2023

IN THE MATTER OF:

LAXMI DEVI & ORS.

..... Appellants

Through: Mr. Anshuman Bal, Advocate

Versus

RASHID & ANR.

..... Respondents

Through: Ms. Neerja Sachdeva, Advocate for
respondent No.2 (Through V.C.)

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 appellants (claimants therein) have assailed the order dated 08.12.2017 passed by the learned Commissioner, Employees' Compensation (Central District), Delhi in Case No. WCD/14/NW/2013/357 whereby though compensation amount of Rs.8,73,880/- alongwith interest @ 12% p.a. from 22.05.2012 has been awarded, however the same has been directed to be paid by respondent No. 1 (employer) instead of respondent No. 2/United India Insurance Co. Ltd.

2. Learned counsel for the appellants submits that in the claim application filed before the learned Commissioner, it was claimed that appellant's No. 1 husband, namely, *Mukesh Kumar @ Mukesh Pal* (the deceased) was employed with respondent No. 1 as a driver on vehicle bearing No. DL-1RL-1191 (Three-wheeler scooter) and was drawing salary of Rs.10,000/- per month. It was further claimed that while being employed so, *Mukesh Kumar @ Mukesh Pal* met with an accident on 23.04.2012 when he was driving the said vehicle in the jurisdiction of P.S. Dwarka, South District, Delhi. It was also claimed that at the relevant time, the vehicle was insured with respondent No. 2. An FIR No. 75/2012 came to be registered under Sections 279/337 IPC at P.S. Dwarka (South), Delhi. It was claimed that on account of the said accident which occurred during the course of employment, appellant's No. 1 husband expired. The post-mortem of the deceased was conducted at the *DDU Hospital*.

Learned counsel submits that though the learned Commissioner arrived at a conclusion that the vehicle was duly insured with respondent No. 2, however erred in directing respondent No. 1 to pay the compensation amount with liberty to recover the same from respondent No. 2. He has further referred to a response received under the RTI wherein it has been stated that no record of driving license of the deceased was available with the Regional Transport Office, Mainpuri, Uttar Pradesh.

3. Learned counsel for respondent No. 2, on the other hand, has supported the impugned order.

4. I have heard learned counsels for the parties and perused the entire material placed on record.

5. It is noted that though respondent No. 1 was served in the present appeal, he failed to appear and after noting his absence, he was directed to be proceeded *ex-parte* on 08.12.2017.

6. A reading of the impugned order dated 08.02.2017 would show that there is no denial of 'employee-employer' relationship between the parties by respondent No. 1/employer and it was only after considering the case on merits, that the Commissioner, Employees' Compensation directed the aforesaid compensation award alongwith interest to the appellants. But strangely, despite noting that the vehicle in question was insured by respondent No. 2 at the time of the accident as also admitted by respondent No. 2, the compensation amount was directed to be paid by respondent No. 1 with liberty to recover the same from respondent No. 2. The sole reason in holding so is that respondent No. 1 has failed to fulfil the terms of contract.

7. At this juncture, it is deemed expedient to advert to the decision in Ved Prakash Garg v. Premi Devi and Others reported as (1997) 8 SCC 1 wherein the Supreme Court observed as follows:

“19. As a result of the aforesaid discussion it must be held that the question posed for our consideration must be answered partly in the affirmative and partly in the negative. In other words the insurance company will be liable to meet the claim for compensation along with interest as imposed on the insured employer by the Workmen's Commissioner under the Compensation Act on the conjoint operation of Section 3 and Section 4-A sub-section (3)(a) of the Compensation Act. So far as additional amount of compensation by way of penalty imposed on the insured employer by the Workmen's Commissioner under Section 4-A(3)(b) is concerned, however, the insurance

company would not remain liable to reimburse the said claim and it would be the liability of the insured employer alone.”

8. Considering that the vehicle was insured by respondent No. 2 at the relevant time and based on the foregoing discussion as well as in absence of any challenge to the said finding, the impugned order insofar it directs payment of compensation amount by respondent No. 1 is set aside and respondent No. 2 is directed to pay the compensation amount to the appellants/claimants within a period of four weeks from today with right to recover the same from respondent No. 1.
9. The appeal stands disposed of in above terms. Pending application, if any, is disposed of having become infructuous.
10. A copy of this judgment be communicated to the concerned Commissioner for information.

(MANOJ KUMAR OHRI)
JUDGE

JANUARY 09, 2023

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