

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

+ **FAO 465/2017**

Date of Decision: 25.01.2023

IN THE MATTER OF:

SONU KUMAR

..... Appellant

Through: Mr. R.K. Nain and Mr. Chandan
Prajapati, Advocates.

versus

RUDAL PANDIT & ANR

..... Respondents

Through: Mr. Gaurav Singh, Advocate for
respondent No.1.
Mr. A.K. Soni, Advocate for
respondent No.2.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J. (ORAL)

1. The present appeal has been preferred by the appellant/claimant under Section 30 of the Employees' Compensation Act, 1923 (*hereinafter*, the '*EC Act*') assailing order dated 29.05.2017 passed by the learned Commissioner, Employees' Compensation in Case No. CWC-I/ED/22/2016/373, whereby his claim petition seeking injury compensation was dismissed.

2. Facts in nutshell are that the appellant claims himself to have been employed with one *MKS Electricals & Interiors Private Limited* (*hereinafter*, '*MKS Electricals*') as a driver on vehicle bearing No. *DL-7CM-*

0379 at a salary of Rs.11,000/- per month. On 05.05.2014, while driving the said vehicle from Agra to Delhi, he met with an accident resulting in grievous injuries to him as well as other passengers accompanying him in the vehicle. The appellant and the passengers were admitted in *Yatharth Wellness Hospital, Greater Noida*, where the former remained admitted from 05.05.2014 to 19.05.2014.

Initially, the claim petition was filed impleading *MKS Electricals* as respondent No.1 and the Insurance Company as respondent No.2. Subsequently, in view of a stand taken by *MKS Electricals* that the vehicle in question was owned by its proprietor/director-Mr.*Rudal Pandit* in his personal capacity, the latter was impleaded as respondent No.1. The claim petition came to be dismissed vide the impugned order, ostensibly on the ground that the appellant had failed to prove employee-employer relationship between himself and respondent No.1.

3. Mr. R.K. Nain, learned counsel for the appellant, has submitted that besides the appellant's claim in the claim petition, respondent No.1 had also admitted the appellant's employment as a driver with him in the 'Own Damages Claim' (hereafter 'ODC') filed with the Insurance Company. In support of the submission that appellant was employed with respondent No.1, learned counsel has drawn attention of this Court to the written statement filed on behalf of respondent No.1 and the ID card placed on record by the appellant, identifying him as an employee of *MKS Electricals*. On the strength of the aforesaid, it has been contended that the learned Commissioner failed to appreciate the facts of the case and erred in concluding that the employee-employer relationship between the appellant and respondent No. 1 was not established.

4. Mr. Gaurav Singh, learned counsel for respondent No.1, has submitted that the learned Commissioner did not have jurisdiction to entertain the claim petition, as both the appellant and respondent No.1 are residents of U.P. and the accident also took place in U.P.

5. Mr. A.K. Soni, learned counsel for respondent No.2, has supported the impugned order and submitted that passing of the ODC does not establish employee-employer relationship between the appellant and respondent No.1. He has further submitted that though the appellant filed an amended memo of parties when he found out that the vehicle in question was not owned by *MKS Electricals* but by *Mr. Rudal Pandit*, the requisite amendments in the claim petition were not made.

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

7. A perusal of the claim petition would show that the appellant had specifically averred himself to be an employee of *MKS Electricals*. On issuance of notice, a written statement came to be filed by *MKS Electricals* (through its proprietor-*Mr. Rudal Pandit*) thereby bringing on record the fact that the vehicle in question was under the ownership of *Mr. Rudal Pandit* in his personal capacity. Primarily on the ground that the appellant had claimed himself to be a driver employed with *MKS Electricals* while the vehicle was owned by *Mr. Rudal Pandit*, the claim petition was rejected.

8. On a reading of the impugned order, it is apparent that during the proceedings before the learned Commissioner, *MKS Electricals* claimed *Mr. Rudal Pandit* to be a director thereof, instead of proprietor.

It is also worthwhile to note that the appellant had placed on record a surveyor report, wherein his driving licence was found to be genuine.

9. In the opinion of this Court, the learned Commissioner failed to appreciate that the appellant was a driver at *MKS Electricals* and impleading of the company instead of *Mr.Rudal Pandit* ought not have been the basis for rejection of the claim petition, as *Mr.Rudal Pandit* was the proprietor/director thereof.

10. So far as the contention with respect to territorial jurisdiction of the learned Commissioner in the present case is concerned, reference may profitably be made to the decision in New India Assurance Co. Ltd. v. Shyam Sunder and Others reported as **2022 SCC OnLine Del 3020**, where it has been held that if the insurance company has a regional office in Delhi, it is a good enough reason to entertain the claim petition in Delhi. Accordingly, the contention is found to be meritless and is rejected.

11. The accident not being in dispute and keeping in view the aforesaid discussion, the present appeal is allowed and the impugned order is set aside. Let the matter be listed before the learned Commissioner, Employees' Compensation on 03.02.2023 at the first instance to award compensation in terms of the EC Act. The same be done within four weeks of the date stipulated above.

12. Appeal is disposed of in the above terms.

13. A copy of the judgment be communicated to the Commissioner, Employees' Compensation for information.

(MANOJ KUMAR OHRI)
JUDGE

JANUARY 25, 2023/ga