

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

FAO 472/2017 and CM APPL. 44000/2017 (stay)

Date of Decision: 22.03.2023

IN THE MATTER OF:

RELIANCE GENERAL INSURANCE COMPANY LTD Appellant
Through: None

Versus

DEV GOPAL MISHRA @DEV KUMAR MISHRA @ GOVIND
& ANR Respondents

Through: Mr. Daksh Nain, Advocate for
respondent No.1

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J. (ORAL)

1. Present none for the appellant and respondent No.2.
2. It is noted that the appellant remained unrepresented even on the last two dates of hearing.
3. Be that as it may, I have heard learned counsel for respondent No.1/claimant and gone through the impugned order/Award dated 01.09.2017 as well as the Commissioner's Records.
4. A reading of the paper book would show that respondent No.1 had approached the learned Commissioner, Employees' Compensation by filing an application under Section 22 of the Employees' Compensation Act, 1923 (hereinafter, the '*EC Act*'). It was claimed that he was employed as a driver on vehicle bearing No.HR-61-6683 owned by

respondent No.2 and drawing wages @ Rs.8000/- per month plus Rs.200/- per day as food allowance. In the course of employment, he met with an accident on 21.10.2014 when he was driving the vehicle and his hand was crushed under its tyres. Respondent No.1 was first admitted in *Hindu Rao Hospital* for treatment whereafter, he was shifted to *Regency Hospital, Kanpur* where his hand was operated upon three times and resulted in amputation of three fingers and thumb. It was claimed that being a driver, he had suffered 100% disablement on account of amputation. It was further claimed that the vehicle was registered with the appellant and an additional premium was paid by respondent No.2. An FIR No.720/2014 was also registered at P.S Timarpur, District North, Delhi.

5. In the proceedings before the learned Commissioner, respondent No.1 produced the DL, RC, Permit, Fitness Certificate and Insurance Policy of the vehicle. Respondent No.2/employer appeared and admitted to the employer-employee relationship between himself and respondent No.1. He further admitted to the factum of accident taking place and the vehicle being insured with the appellant vide policy No.131574233400045 having validity from 25.04.2014 to 24.04.2015.

6. Considering that the employer-employee relationship was admitted by respondent No.2 and the vehicle was duly insured at the time of the accident, the learned Commissioner held the present appellant liable to deposit the compensation alongwith interest. In the present appeal filed under Section 30 of the EC Act, the appellant has contended that the employer-employee relationship between the respondents was not established during the proceedings before the learned Commissioner.

7. At this stage, I may profitably make reference to the decision in North East Karnataka Road Transport Corporation v. Sujatha reported as **(2019) 11 SCC 514** where the Supreme Court has outlined 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.”

8. Accordingly, and especially in view of the stand of respondent No.2 admitting that respondent No. 1 was in his employ, and the further fact that no material contrary to claim has been placed on record by respondent No.2, I find no merit in the contention raised by the appellant. The appeal is dismissed alongwith the pending application.

9. The order dated 04.12.2017 stands vacated. The compensation amount, alongwith interest, deposited before the learned Commissioner be released to respondent No.1 forthwith.

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

(MANOJ KUMAR OHRI)
JUDGE

MARCH 22, 2023

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