



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Judgment reserved on : 11 December 2023**
Judgment pronounced on : 25 January 2024

+ **FAO 233/2016 and CM APPL. 1316/2019**
USHA DEVI & ORS Appellants
Through: Mr. Anshuman Bal, Adv.

versus
PRADEEP KUMAR & ORS (FUTURE GENERALI INDIA
INS CO LTD) Respondent
Through: Mr. Vipin Jai and Mr. Ujjwal
Goel, Advs. for R-1
Mr. Rajeev Roy, Adv. for R-2

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA
J U D G M E N T

1. The present appeal is filed by the appellants/claimants in terms of Section 30 of the Employees Compensation Act, 1923¹ assailing the Impugned order dated 15.01.2016 passed by the learned Labour Commissioner, Vishwakarma Nagar, New Delhi², whereby the claim application bearing No. CEC-D/ED/25/09/49³, filed under Section 22 of the EC Act was dismissed.

FACTUAL BACKGROUND:

2. Briefly stated, it was the case of the appellants/claimants that on 02.07.2009 at about 6.00AM, the deceased Sh. Surender Kumar who was working as a driver with Respondent no. 1 on monthly wages of Rs. 6000/-, met with an accident while driving a TSR (Three-wheeled scooter rickshaw) bearing no. DL-1RL-6471 at Madanpur Khadar near

¹EC Act

² Commissioner

³ Claim Application



Badarpur, Delhi, resulting in his death. Subsequently, Post mortem was conducted at Jai Prakash Narayan Hospital, Delhi and FIR No. 187/2009 was registered by the police.

3. During the proceedings before the learned Commissioner, the Respondent no.1/Pradeep Kumar/Employer denied the **Employer**⁴ – **Employee**⁵ relationship in his written statements and also the fact that the deceased was drawing wages of Rs. 6000/- per month. Further Respondent No.2/M/s Future Generali Insurance Co. Ltd. and Respondent No.3/Mukesh Kumar Bhaskar in their respective written statements contested the claim and pointed out that the deceased had no valid permit to drive a TSR and this was in violation of the Motor Vehicles Act, 1988⁶, and thus, they are not liable for any compensation.

4. The learned commissioner framed the following issues :

- i. Whether there exists a relationship of employee and employer between the claimant and R1/R3 ?
- ii. Whether the accident resulting into death of deceased workman occurred out of and during the course of his employment with the Respondent ?
- iii. If so to what amount of compensation, the defendants of the deceased workman are entitled to and who is liable to pay the compensation ?
- iv. Relief if any ?

⁴Section 2(1)(e)EC Act, “employer” includes anybody of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer, and, when the services of a2[employee] are temporarily lent or let on hire to another person by the person with whom the 2[employee] has entered into a contract of service or apprenticeship, means-such other person while the 2[employee] is working for him.

⁵Section 2(dd)(c) EC Act a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle.

⁶MV Act



5. Learned commissioner on appreciating the evidence on record observed that the claimants have not produced any employment details of the deceased except oral statements. Further, it was held that the deceased was not having a valid permit/license to drive a TSR vehicle; and thus, the deceased did not fall under the definition of an “employee” and the respondent was also outside the ambit of the definition of an employer as per the EC Act. It would be pertinent to mention the observations of the court, which are reproduced as under :

“9. In view of the fact and circumstances discussed above, I find it difficult to believe plying the TSR on the basis of salary by the deceased. The Claimants have not stated any details of his employment except oral statement or receipt of salary from the R-1. Plying TSR on a basis of contractual basis i.e. on the basis of per day rent, may be explainable, though it would also be illegal. A void and illegal contract cannot be enforced by the courts. In such a situation deceased like the case in present would not fall under the definition of the employee under the Section 2(1)(dd) and the respondent is also not covered under the definition of employee given in Section 2(1)(e) of the Employee’s Compensation Act, 1923”.

6. In the concluding observations, the claimants relied on two judgments **P.P. Mohammad v. K. Rajappan**⁷ and **National Insurance Company Ltd., v. Hanumantharayappa and Ors.**⁸, which the court held were not relevant to the present facts and circumstances of the case. The Commissioner was also in agreement with Respondent no.3 with respect to the fact that claim of the claimant was on the basis of an accident by a TSR covered under the MV Act, which was beyond the jurisdiction of the court. Accordingly,

⁷(2008) 17 SCC 624

⁸2014 SCC OnLine Kar 13482



the Commissioner dismissed the claim petition based on abovenoted observations.

7. The appellants / claimants in the present appeal allude to the fact that the deceased met with an accident while driving a TSR vehicle and was earning Rs. 6000/- monthly. Further, they canvass the fact that a premium was charged by the insurance company for the liability of the driver. Lastly, the appellants have placed reliance on **National Insurance Company Limited v. Badami Devi & Ors**⁹ passed by this court. Hence, the appellants have filed this present appeal before this court.

ANALYSIS & DECISION:

8. Having heard my thoughtful consideration to the submissions advanced by learned counsels for the parties at the Bar and on perusal of the record including the record of the proceedings before the Commissioner, Employee's Compensation, I am afraid that the present appeal is bereft of any merits.

9. It is pertinent to mention that initially, respondent No.1 was joined, who in his reply contested that there is a relationship of employer and employee between the parties at any point of time in the past. There was no substantive evidence led to show that the deceased was employed under him and drawing a monthly salary of Rs. 6,000/- per month.

10. During the course of proceedings, the appellants/claimants made a significant change and pursuant to the application under Order 1 Rule 10 CPC, they impleaded respondent No.3 and claimed that he



was the owner of the offending TSR vehicle. Even respondent No.3 in his reply, hotly contested that the deceased was employed under him in any manner; and stated that he had neither knowledge of his age nor his employment with anyone including respondent No.1. On the contrary, he claimed that respondent No.1 was the owner of the vehicle till the relevant time.

11. Be that as it may, the appellant/wife when examined as PW-1, failed to produce even the driving licence of the deceased so as to suggest that he was eligible to drive a TSR. Indeed, the offending TSR was ensured for third party risks including covering risks of the driver as per the insurance policy Ex.R2W1/C. However, in the absence of proving any driving licence standing in the name of the deceased, no inference can be drawn that he was employed as a driver of the TSR vehicle.

12. It is pertinent to mention that Section 2(d)(ii)(c) of the Employees Compensation Act, 1923, defines a person recruited *inter alia* as a driver in connection with the motor vehicle. However, the driving licence to ply such a vehicle was of paramount consideration, which has not been proven on the record by the appellants/claimants.

13. Last but not the least, a perusal of the contents of the FIR No. 187/2009 PS: Sarita Vihar, registered under Section 279/304-A of the IPC as well as the MLC bearing No. 17037 vide dated 02.07.2009 would show that the deceased while driving the vehicle had hit a road divider/metro board resulting in injuries, to which he succumbed later on. In the absence of any substantive proof with regard to the

⁹2014 SCC OnLine Del 1268



existence of the relationship of employer and employee between the deceased and respondent No.1 and for that matter of respondent No.3, the matter would definitely fall out of the ambit of Employees Compensation Act, 1923 and would be governed, if it all, under the Motor Vehicles Act, 1988.

14. Learned counsel for the appellants relied on decision in **Seema & Ors. v. HDFC ERGO Gen. Ins. Co. Ltd & Ors.**¹⁰, wherein in somewhat similar facts and circumstances, where the deceased was plying a TSR, it was *inter alia* observed that the written proof of existence of relationship of employer and employee is not warranted in all cases. I am afraid that was a case where respondent No.2/employer had acknowledged that the deceased was an employee under him and the driving licence of the deceased was also proven on the record. Likewise, another decision by this Court in **Suraj Munni & Anr. v. Sachin Bhatia & Anr.**¹¹, there was evidence to the effect that the deceased was employed as a driver to ply a TSR, which was owned by respondent No.1/employer. Merely, because there was no written contract between the parties, it was held that such large commercial agreements are not drafted or executed, and there was no reason to hold that the deceased was not an employee of the respondent/registered owner. At the cost of repetition, in the instant matter, there is no evidence of existence of relationship of employer and employee.

¹⁰ 2023 SCC OnLine Del 8313

¹¹ 2017 SCC OnLine Del 11193



15. In view of the foregoing discussions, this Court finds no merit in the present appeal. Hence, the appeal is dismissed.

16. The pending application also stands disposed of.

DHARMESH SHARMA, J.

JANUARY 25, 2024/sp