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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO 545/2016 & CM APPL. 20251/2024**
FUTURE GENERALI INDIA INSURANCE
CO LTDAppellant

Through: Mr. Rajeev M. Roy and Mr. P.
Srinivasan, Advs.

versus

RAMESHWAR CHOUDHARY & ORS.Respondents
Through: Mr. R.K. Nain, Adv. for R-1 &
R-2.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER
% **22.01.2025**

REVIEW PET. 125/2024 in FAO-545/2016 (Disposed off case)

1. The applicant/appellant is seeking review of the impugned judgment dated 13.02.2024, passed by this Court under Order XLVII, read with Sections 114 and 151 of the CPC¹, whereby this Court dismissed the appeal and upheld the order in original passed by the Commissioner, Employee's Compensation, thereby awarding a sum of ₹8,69,574/- to the respondent Nos.1 and 2, the parents of the deceased boy, namely Ganga Ram Choudhary, aged about 19 years. The learned counsel for the non-applicants/respondent Nos.1 and 2 are present on advance notice.

2. Having heard the learned counsel for the parties and on perusal of the record, this Court has no hesitation in holding that the present application is bereft of any merit.

¹ Code of Civil Procedure, 1908



3. Shorn of unnecessary details, the case of the non-applicants/claimants, i.e., the parents, was that their son was employed with respondent No.3, M/s Jauhar Logistics Pvt. Ltd., as a loader on vehicle/truck bearing No. HR-55J-9615, which was insured with the applicant/appellant at the relevant time. The victim sustained grievous injuries on the fateful night of 23/24.07.2013 and eventually succumbed to his injuries on 27.07.2023.

4. A claim petition was preferred by the non-applicants/claimants seeking compensation under the Employees Compensation Act, 1923², which came to be allowed *vide* judgments dated 29.07.2016/02.08.2016 by the Commissioner, Employee's Compensation, Delhi in Case No. CWC/CD/14/14/1431.

5. The learned counsel for the applicant/appellant contends that the Court's finding that the victim was employed with respondent No.3 suffers from "an error apparent on the face of the record", since it was established during the proceedings before the Commissioner, Employee's Compensation, as well as during the course of hearing of the present appeal that the victim had no employer-employee relationship with respondent No.3 and rather he was under the employment of M/s Fidelity Manpower Services Pvt. Ltd.

6. The learned counsel for the petitioner has referred to the order dated 14.02.2017 passed by this Court during the course of hearing of the appeal, whereby the ESI Corporation was impleaded as a respondent No. 4. It is pointed out that following this, a compliance affidavit was filed by Sh. Paramjit Singh Bains, posted as SSO (Legal) in ESIC, New Delhi, stating that the deceased Sh. Ganga Ram, son of Sh. Rameshwar (Respondent No.1), was covered under the ESI Act



with Insurance Code No. 6922770527. The details of which were forwarded to the concerned Branch Office, Rajiv Chowk, Gurgaon *vide* letter dated 12.03.2014, and the said information was also sent to the father of the deceased *vide* letter dated 21.07.2016.

7. I am afraid that the said evidence cannot be considered as it would amount to filling up the lacuna in the case of the applicant/appellant. It is pertinent to mention that the Commissioner, Employee's Compensation, in its order dated 29.07.2016/02.08.2016, made the following observations with regard to the issue of employer-employee relationship between the victim and the respondent No.3, which reads as under:-

10. Respondent No.1 stated that the deceased was not their employee but he was employee of M/s Fidelity Man Power Services Pvt. Ltd. They had given some work to the outsourcing agency i.e. M/s Fidelity Man Power Services Pvt. Ltd. The said respondent has gone to the extent of disclosing that the deceased had completed his duty at or after midnight and he started for his room/residence and while proceeding towards his room on his way there were two bulls and they started fighting and one of them left the fight and came towards deceased and gave a hard blow in the abdomen of the deceased and the deceased sustained injury in his stomach. The accident form no. 16 was submitted by M/s Fidelity Man Power Services Pvt. Ltd. and in the form submitted by the said concern employer have made over-writing at many places at form no.16 in order to adjust the name of employer, time of accident and date of the receipt of the form by the Branch Manager, ESIC, Gurgaon. Initially, the accident was shown at 00.15 hours on 23.07.2013 which has been subsequently change to 01.15 hours and shift was shown from 16.30 to 01.00 hours. After, examination of from it appears that time, date & place of accident has been altered as per convenience of the respondents in order to escape the liability of compensation. In the accident book of the respondent, the notice of accident has been shown at 01.15 hours on 23.07.2013 and there is no mentioned as how the person who has recorded in accident book came to know about the accident at 01.15 AM and who was the eye witness who informed that the deceased Ganga Ram has been hit by one of the two bulls who were fighting in the way of the deceased. What was the distance of

² EC Act



the accident site and who informed the respondent no.2 about the accident caused to the deceased due to Bull fighting.

11. As per evidence of the petitioner the deceased Ganga Ram met with an accident with vehicle no. HR-553-9615 at village Begumpur Khatola, in which he sustained injury in his stomach while the respondent no. 1 have also claimed the damages of the vehicle for the said accident but they have shown the accident in the accident book and Form no.16 that in was caused by hitting of one out of two bulls to the deceased. It is difficult to believe the version of the respondent in which there is no eye witness of the Bull fighting and hitting of Ganga Ram by one Bull and incident is recorded immediately in the accident register at 01.15 hours. The respondent no. 1 has failed to produce any evidence from their side as how, when & by whom the respondent no.1 was informed about the accident caused to the workman due to Bull attack and they have recorded the entry in the accident book in Form-15 which shows that at 01.15 hours on 23.07.2013 Ganga Ram, the workman was hit by a Bull attack at Begumpur Khatola. The entry has been made by Balwan Singh who is not an eye witness but he has been shown as the person giving notice of accident and he himself is recording the entry in the accident book and also putting his signature in Column of person who makes the entry at 01.15 AM. The Column of name, address & occupation of 2 witnesses has been left blank. None of the above witnesses were produced by the respondents. Further, the respondent no.1 did not produce any documents to show that the deceased was actually employed with respondent no.2 for shift duty on 23.07.2013 from 16.30 hours to 01.00 hours along with other workers or alone and there was any written agreement between them. In view of above, the evidence adduced by petitioner is more reliable and based on the facts and circumstances of the claim which relates to accident of vehicle no.HR 55J-9615 at village Begumpur Khatola in which the workman sustained injury and subsequently he died in the hospital. The respondent no.1 has also claimed and the damages of the vehicle from the insurance company.

12. Further, the Dr. Vishnu Gupta who appeared from Park Hospital and produced the records and he has admitted that initially the hospital record Ex.PW2/I-I shows that patient was having injury by ball which has been changed to the word Bull by hand by himself. In his cross he has admitted that he don't know about the occurrence of the accident as how did it happen and he has admitted that he has changed the record at his own from ball to bull without any consultation/advise of superior doctor. All these factors create doubt in the pleadings of the respondent no.1 & 2 which appears to have been created to escape the liability of the compensation.



13. The respondent have failed to lead any evidence related to any contract between respondent no.1 & 2 and were unable to produce any record which corroborate their version as how the workman was employed by respondent no.2 and by which order his services were placed at the disposal of the respondent no.1 and how many employee were provided by respondent no.2 in different shift to respondent no.1. They have failed to produce the entry pass and exit pass of the deceased employee in the factory of respondent no.1 as claimed by him. What was the extent of coverage of the deceased ? Whether it was blanket coverage even during night for any work whatsoever. In the definition of “employer” the services of employee can be let on hire and lent on hire for small amount of time. Who knows whether he was not on the truck and his services were not being utilized for the usage of the vehicle and he met with an accident meaning thereby he was ousted at that moment from the ambit of insurance coverage. There is clear evidence of the claimant in that respect and he has categorically stated that the deceased was employed on the vehicle. The said Testimony was never impeached. They did not bring evidence that he used to come to attend to his work in his insured capacity and more so he had finished his duty and he was on his way after doing that hence his injury must be treated to have arisen out of and during the course of employment with M/s Fidelity Man Power Services Pvt. Ltd. Nothing is known. That be so the extension of insurance coverage cannot be provided. The employee of the ESIC could not give any reply to any query of the court and he came and evaded all questions by stating that he cannot comment - "Statement of Mr. Vinit Dahiaya, UDC, ESIC, GURGAON - dated 19.01.2016 is on the record as "This paper has cutting at several places for which I cannot offer any comment. He took the stand that his Higher Authority/Branch Manager will be able to comment on it on the basis of main claim file. He further stated that he even cannot comment whether a person was hit by a bull after office hours in odd hours in mid-night is covered under the ESIC, however, my higher authority will able to clarify it. It is not understandable as to why the said person had been sent from ESIC and what sort of assistance he intended to offer in arriving at just finding in this case when he is unable to clarify the admissibility of the deceased under the ESIC Act. The records indicate that prior to his death the deceased workman was not provided any documents which shows that he was in the zone of ESIC coverage and in absence of such documents, section 53 of ESIC Act cannot be invoked in this case. The question of bar does not come in the way. Hence, the objection of the respondents about the ESIC coverage of the deceased workman is only an afterthought to escape liability under Employee's Compensation Act, 1923 as such it is rejected.”



8. A careful perusal of the aforesaid observations raise an inference that although the evidence was within the knowledge and control of the applicant/appellant, it was not properly produced at the first available opportunity. Subsequently, when the said evidence was sought to be produced, the record was found to be fabricated and unreliable. It is in the said context that this Court, while passing the impugned judgment dated 13.02.2024, also observed as under:-

12. In the case of **North East Karnataka Road Transport Corporation vs. Sujatha**³, the Supreme Court had an occasion to consider the entire scope and ambit of Section 30 of the EC Act. In the context of what would constitute a substantial question of law, it was held as under:-

“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 dependants 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.”

13. In view of the aforesaid position of law, without further ado, reverting to the instant appeal, the learned Commissioner has given a categorical finding that the deceased workman suffered fatal injuries during the course of his employment with respondent

³ (2019) 11 SCC 514



No.3 while he was working and travelling in the ill-fated offending vehicle.

14. The plea canvassed during the appeal was that deceased was an employee of M/s. Fidelity Man Power Services Pvt. Ltd. and that he was covered under the ESI Act, is a bald allegation, which was not substantiated during the course of inquiry/trial before the learned Commissioner.

15. It goes without saying that the burden of proving such vital fact was upon the appellant/ Insurance Company and they did not bother to summon any witness from the said company and examine any witness with regard to the alleged employment of the deceased in such company, and therefore, having failed to discharge the burden of proof, the plea does not merit any attention. Therefore, the plea that the claim was barred under Section 53 of the ESI Act does not come into play.

16. To sum up, I find that the learned Commissioner has not committed any illegality, perversity nor he has adopted any incorrect approach in law in passing the impugned judgment dated 29.07.2016/02.08.2016.”

9. In summary, the finding of fact recorded by the Commissioner, Employee’s Compensation as to how and in what manner the accident occurred and whether or not there was relationship of employer-employee between the parties, could not have been the subject matter of the appeal filed by the applicant/appellant for raising no substantial question of law. Evidently, the finding rendered by the Commissioner, Employee’s Compensation was not patently absurd or unconscionable. At the cost of repetition, the evidence which was within the knowledge and control of the applicant/appellant was not produced at the first available opportunity and when produced, the same was found to be not cogent and reliable. It is also worth noting that the Commissioner, Employee’s Compensation also imposed costs of Rs. 50,000/- upon the applicant/appellant for the fact that they had repeatedly failed to produce on the record the OD claim records and



thereby suppressing material facts from this Court. Therefore, neither in equity nor in law the applicant/appellant is entitled to any relief.

10. In view of the foregoing discussion, the present review petition is hereby dismissed. The pending application also stands disposed of.

DHARMESH SHARMA, J.

JANUARY 22, 2025
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