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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Judgment reserved on : 12th December, 2023**
Judgment pronounced on : 30th January, 2024
+ **FAO 599/2016 & CM APPL. 47257/2016 & CM APPL. 47258/2016**

UNITED INDIA INSURANCE CO LTD Appellant

Through: **Mr. Pankaj Gupta & Ms. Suman Bagga, Advocates**

versus

VEERBAL & ANR Respondents

Through: **None.**

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. This present appeal is preferred by the Appellant/Insurance Company in terms of Section 30 of the Employee's Compensation Act, 1923¹ assailing the impugned order dated 06.05.2016 passed by the learned Employee's Compensation Commissioner², in case No. CWC/CD/32/14³ titled as '**Sh. Veerbal vs. Sh. Ravi Katiyal & Anr.**', whereby the claim for compensation filed by the claimant/respondent No.1 was allowed and the liability to pay the compensation has been fastened on the appellant/Insurance Company with liberty to initiate

¹ EC Act

² Commissioner

³ Claim Application



appropriate proceedings to recover the amount of compensation paid to the employer i.e., respondent No. 2 in the instant appeal.

FACTUAL BACKGROUND:

2. Briefly stating, it was the case of the claimants that Sh.Veerbal/claimant was employed with Respondent No.1/Sh. Ravi Katyal as a driver on the vehicle bearing No.MH-12-CH-2855 (Tata LP 1510 Bus) owned by respondent No.1. That on 10.01.2014, the claimant was on his regular duty for respondent No.1 in Prime Industries located in Sidcul, Haridwar, Uttarakhand. He was to pick up the labourers for night-shift duty in the factory. At about 6:30 P.M., when the driver was boarding the bus, the loose handle of the driver's side door of the bus suddenly broke and he fell down from the bus with his hip hitting the ground, as a consequence of which he sustained grievous injuries to his hip bone. He was rushed to Cosmos hospital in Premnagar, Moradabad, UP, where he was admitted and undertook treatment. He finally got discharged from the hospital on 19.01.2014.

3. Respondent No.1/employer⁴ in his written statements stated that the claimant/driver was employed with him on his vehicle and he met with an accident while being posted as a driver on the said vehicle. The Insurance Company/respondent No.2 on the other hand, disputed the assertions of the claimants in their written statements stating that

⁴ Section 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.



no cause of action took place and no injury was caused to the driver as there was no employer–employee⁵ relationship. But the insurance company admitted to the fact that the vehicle was insured with them vide policy No. 250786/31/13/02/00000143 for the period from 27.07.2013 to 26.07.2014.

4. Based on the pleadings, the learned commissioner framed the following issues for consideration :

- i. Whether accident was caused to the applicant out of and during the course of employment ?
- ii. If so, what amount of injury compensation the applicant is entitled to ?
- iii. Relief, if any ?

PROCEEDINGS BEFORE THE COMMISSIONER AND IMPUGNED ORDER:

5. During the course of proceedings before the commissioner, it was admitted by respondent No.1/owner that the claimant/driver was employed with him and he met with an accident while he was on duty. The commissioner held that there was an employer-employee relationship. The germane observations regarding Issue No. 1 have been reproduced as under :

“8. The response of employer was that the injury to the applicant was caused out of and during the course of employment. In the written statement filed by respondent No. 1 admitted the factum of employment and accident and injury was caused while the applicant was on duty. He came and appeared in the court. He gave statement and in his testimony before the court he categorically admitted that the injury to the applicant was caused when he was on duty. In the given situation the counsel for

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



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applicant relied on the judgment of the Hon'ble Supreme Court in the case titled as T. S. Shylaja vs. Oriental Insurance Co. - cited 2014 AG 480. Given the above, I am in agreement that the injury to the applicant was caused out of and during the course of employment. The said issue is decided in favour of the applicant and against the respondent/s.”

6. The wage of the driver was taken at Rs. 8000/- as notified by the Ministry of Labour, Government of India with effect from 31.05.2010 by the commissioner. Further, after taking into consideration the claim application along with the documents of the Medical Disablement Board and Election Identity Card, the age of the driver was taken to be 56 years. The certificate issued by the Medical Board, Aruna Asaf Ali hospital, New Delhi, assessed 26% physical disability. The commissioner relying on **Pratap Narain Singh Deo vs. Srinivas Sabata and Another**⁶ and **S. Suresh vs. Oriental Insurance Co. Ltd.**⁷, held that there is a “loss of earning capacity in total”. Observations of the impugned order regarding Issue Nos. 2 & 3 are as under:

“10. The Workman was a driver by profession and it has been claimed that he has become totally disabled. A certificate to that effect has been issued by the Medical Board, ArunaAsaf All Govt. Hospital, New Delhi whereby he has been assessed 26% physically disabled. In the medical disability certificate injury has been shown in his lower right limb and the condition of the petitioner is not going to improve in future. Though, his physical disablement has been assessed partial, but as the applicant was driver by profession and as per law laid down by the Hon'ble Supreme Court in the case titled as -PratapNarain Singh Dev vs. SrinivasSabata -1976 ACJ 141, with the said injury applicant cannot drive a vehicle even otherwise as has been stated in the case titled as - S. Suresh v. Oriental Insurance Co. Ltd. (Supreme Court of India) 487 (ACJ 2010) he cannot be permitted to drive a vehicle.”

⁶ (1976) 1 SCC 289

⁷ (2010) 13 SCC 777



7. Based on the aforementioned observations, the commissioner granted a compensation of Rs.6,33,360/- (Six Lakhs Thirty Three Thousand Three Hundred Sixty Only) to the claimant along with simple interest @12% per annum. Further, during the course of proceedings, it was admitted by respondent No.1 and respondent No.2 that the vehicle in question was insured by the company and that the insurance company had charged an additional premium under the EC Act, which makes respondent No.2/insurance company liable to indemnify respondent No.1/employer. The relevant observations of the impugned order are reproduced below :

“11. The applicant is also entitled to simple interest @ 12% per annum from 30 days after the accident as per Section 4A till the date of deposit. The applicant is entitled to the injury compensation from respondent No.1. Further, as the Respondent No. 1 has stated that he had taken an insurance coverage and the said fact has been admitted by respondent No. 2 stating that the vehicle was insured with them and they had charged additional premium under the Employees Compensation Act, 1923. In view that respondent No. 2 is liable to indemnify respondent No. 1 and they are liable to pay whatever liability is fastened on respondent No. 1.”

“12. The respondent No. 2 is directed to deposit the above amount of injury compensation alongwith interest with this court within 30 days from the date of this order. However, respondent No. 2 is given liberty to initiate proceeding to recover the said amount from respondent No. 1. In case respondent No. 2 fails to deposit the injury compensation within 30 days the same shall be recovered as arrears of land revenue.”

8. Accordingly, holding Issues Nos. 2 & 3 against the respondents/ insurance company and in favour of the claimants, the claim application was disposed of. The impugned order is assailed by the appellant/United India Insurance primarily on the ground that there was a breach of policy terms and conditions on the part of the



registered owner/insured and the Learned Commissioner ought to have granted an opportunity to the insurance company to lead evidence on this issue; and that the learned Commissioner failed to appreciate that the copies of the relevant documents in the nature of permit, fitness certificate & RC were not provided despite service of notice under Order XII Rule 8 C.P.C. Further, the appellant contends that the interest of 12% p.a. granted by the commissioner is wrong in law. Based on the aforementioned grounds, the appellant has preferred this appeal before this court.

ANALYSIS AND DECISION:

9. I have given my thoughtful consideration to the submissions advanced by learned counsels for the rival parties at the Bar. I have gone through the relevant records of this case as also the case-laws cited at the Bar.

10. First things first, the appellant/Insurance Company is not assailing the quantum of compensation awarded by the learned Commissioner, Employees' Compensation. There is no challenge and, very rightly so, to the disposition that since respondent No.1/workman was employed as a driver, the physical disability suffered by him is such that he has been rendered out of the reckoning or unable to get employment as a driver, and therefore, the loss of earning capacity has been rightly adjudicated @ 100% by the commissioner.

11. The main grievance espoused by learned counsel appearing for the appellant/Insurance Company was with regard to the non-submission of the copies of the relevant documents viz., permit and fitness certificate of the offending vehicle by respondent



No.2/registered owner/insured. It is pertinent to mention here that the written statement was filed on behalf of **respondent No.2/Insurance Company** in April, 2015, and evidently, a preliminary objection was taken *vide* paragraph (9) that the aforesaid documents viz. copies of the permit, RC and fitness certificate have not been supplied by respondent No.1/registered owner till that date.

12. It is also significant to note that RW-1/Ravi Katyal, the registered owner of the offending vehicle, was examined in the Court on 21.02.2016 on which date, he produced the permit as well as the fitness certificate of the offending/insured vehicle which are marked as Ex.R-1/1 and Ex.R-1/2 without any objection. There was no prodding in the cross-examination of RW-1/Ravi Katyal that the said permit and/or the fitness certificate was forged and fabricated in any manner. There was no suggestion to witness that he was served with any notice under Order XII Rule 8 CPC for production of such relevant documents either.

13. On a perusal of the cross-examination conducted by the then learned counsel for the respondent No.2/Insurance Company, rather a case was sought to be made out that no accident had occurred and the claimant/driver was not even on duty on the date of incident. It goes without saying that no documents were placed on record so as to show that any notice under Order XII Rule 8 CPC was served upon respondent No.1/registered owner. Be that as it may, serving of such notice in summary proceedings is inconsequential since it is evident from the record that the information about the incident was given to the appellant/Insurance Company soon after the incident. The claim in



this case was filed on 21.11.2014 and as pointed out above, the written statement was filed by the appellant/Insurance Company in April, 2015 and lastly, the present appeal was filed on 24.11.2016.

14. In view of the said history of long litigation, the plea taken by learned counsel for the appellant/Insurance Company that non-supply of such documents has irreparably prejudiced their case is not fathomable. It goes without saying that the appellant/Insurance Company was well-aware about the registration number, chassis and the engine number of the offending vehicle and exercising due diligence, they could have easily ascertained whether or not any permit and fitness certificate were existing. Be that as it may, even after the cross-examination of RW-1 in the court on 21.02.2016, they had sufficient time to verify the above said documents. A new plea has been taken in the appeal that such documents were false and fabricated without any further detail, which can't be accepted.

15. In view of the above discussion, the learned Commissioner, Employees' Compensation, adopted the right course in giving an option to the appellant/Insurance Company to seek recovery of amount of compensation paid with interest, by filing independent proceedings rather than giving the Insurance Company the recovery rights in the same proceedings. I don't see how the decision in **National Insurance Co. Ltd. v. Swaran Singh & Ors.**⁸, helps the case of the appellant/Insurance Company. It was a case where the Supreme Court was considering the issues concerning the want of a driving license or having the driving license available for plying a



different kind of vehicle other than the one which was involved in the accident and in such circumstances, the issues were answered as follows:

“Summary of findings

110. The summary of our findings to the various issues as raised in these petitions is as follows:

(i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third-party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.

(ii) An insurer is entitled to raise a defence in a claim petition filed under Section 163-A or Section 166 of the Motor Vehicles Act, 1988, inter alia, in terms of Section 149(2)(a)(ii) of the said Act.

(iii) The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) Insurance companies, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish “breach” on the part of the owner of the vehicle; the burden of proof wherefor would be on them.

(v) The court cannot lay down any criteria as to how the said burden would be discharged, inasmuch as the same would depend upon the facts and circumstances of each case.

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its

⁸ (2004) 3 SCC 297



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liability towards the insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply “the rule of main purpose” and the concept of “fundamental breach” to allow defences available to the insurer under Section 149(2) of the Act.

(vii) The question, as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver (a fake one or otherwise), does not fulfil the requirements of law or not will have to be determined in each case.

(viii) If a vehicle at the time of accident was driven by a person having a learner's licence, the insurance companies would be liable to satisfy the decree.

(ix) The Claims Tribunal constituted under Section 165 read with Section 168 is empowered to adjudicate all claims in respect of the accidents involving death or of bodily injury or damage to property of third party arising in use of motor vehicle. The said power of the Tribunal is not restricted to decide the claims inter se between claimant or claimants on one side and insured, insurer and driver on the other. In the course of adjudicating the claim for compensation and to decide the availability of defence or defences to the insurer, the Tribunal has necessarily the power and jurisdiction to decide disputes inter se between the insurer and the insured. The decision rendered on the claims and disputes inter se between the insurer and insured in the course of adjudication of claim for compensation by the claimants and the award made thereon is enforceable and executable in the same manner as provided in Section 174 of the Act for enforcement and execution of the award in favour of the claimants.”

16. The long and short of the aforesaid discussions is that the appellant/Insurance Company has failed to show that there was a fundamental breach of the terms of insurance policy on the part of respondent No.1/registered owner/insured so as to warrant giving them independent recovery rights. At the cost of repetition, there is shown no fundamental breach of terms and conditions of the insurance policy. As far as the interest is concerned, there is no hard and fast rule that the interest should be allowed @ 9% and not @ 12%, and in the instant matter, the Commissioner, Employees' Compensation,



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rather granted a reasonable interest rate on the amount of compensation payable after 30 days of the accident keeping in mind the nature of injuries, agony and pain suffered by the claimant.

17. In view of the foregoing discussions, this Court finds no merit in the present appeal. The impugned order passed by learned Commissioner, Employees' Compensation, does not suffer from any illegality, perversity or incorrect approach in law. The appeal is accordingly dismissed.

18. The pending applications also stands disposed of.

DHARMESH SHARMA, J.

JANUARY 30, 2024

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