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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO 21/2019**

ATUL KUMAR SHARMAAppellant
Through: **Mr. M.K. Rathee, Adv.**
versus

M/S REEFER EXPRESS & ANRRespondents
Through: **Mr. Kumar Vikram, Adv. for**
R-1.
Mr. Pankaj Seth and Mr. Yuvraj
Sharma, Advs. for R-
2/Insurance Company.
Mr. Manoj Bhandari, Adv. for
R-3.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

% **ORDER**
11.03.2025

1. The claimant/appellant is preferring this appeal under Section 30 of the Employees Compensation Act, assailing the impugned judgment dated 29.08.2018, passed by the learned Commissioner, Employees Compensation (District North), whereby his claim for compensation was dismissed.
2. Having heard the learned counsel for the appellant as well as learned counsel for the respondent No. 1/Employer and the respondent No. 2/Insurance Company, shorn of unnecessary details, the case of the claimant/appellant is that he was employed as a driver by the respondent No. 1, drawing a monthly salary of Rs. 9,500/- along with a food allowance of Rs.150/- per day.
3. At the time of the accident, he was about 35 years of age and was driving the vehicle bearing No. HR-55T-3290, which was loaded with chocolates from Goa to Bhiwandi, Mumbai. The accident



occurred on 15.03.2016, at around 12:30 PM, when the vehicle reached at Sthavanidhi Ghat, District Belagavi, within the jurisdiction of PS Nippani Town, Karnataka. According to the appellant, the road at the accident site was uneven, and causing him to lose control of the vehicle, which resultantly overturned.

4. It is claimed that as a result he has sustained permanent disability in both of legs. After undergoing prolonged treatment, he filed the claim petition, asserting that he had suffered 100% disability and seeking compensation accordingly. Notably, the vehicle was insured with the respondent No. 2 during the period in question.

5. During the course of proceedings before the learned Commissioner, Employees Compensation, respondent No. 1 acknowledged that the appellant/claimant was employed as a driver, but contended that he was earning @ Rs.8,000/- per month and a food allowance of Rs.100/- per day during occupational tours.

6. It is also borne out from the digitized trial Court record that the appellant/claimant was examined as PW-1, while respondent No. 1/Moti Lal Srivastava, who was the employer and the owner of the truck, was examined as RW-1.

7. A bare perusal of the impugned order dated 29.08.2018, passed by the learned Commissioner, Employees Compensation, would show that the claim petition was dismissed, *inter alia*, on the grounds that the appellant/claimant had failed to produce the OPD card, thereby failing to establish that he had sustained injuries and was under medical treatment. Additionally, the documents with regard to the FIR No.046/2016 dated 15.03.2016 registered at PS Nippani Town, were in Kannada and no translated copies were filed.

8. Despite, a clear admission by the respondent No. 1 that the



appellant/claimant was employed as a driver, the said evidence was discarded by giving an opinion that the claim petition was collusive in nature so much so that even the respondent No. 2/Insurance Company was not spared.

9. It would be pertinent to refer to certain observations made by the learned Commissioner in the impugned judgment dated 29.08.2018, which are as follows:

“18. I find that except the oral testimony of the Claimant and Respondent No. 1 there is no evidence as to how the accident took place, who took the injured driver to hospital, who took the vehicle in question back to the owner, who lodged the FIR about the accident, whether or not any damage was caused to the vehicle, whether or not any OD Claim was claimed by the owner from the insurance for the damaged to the vehicle, whether or not the OD claim was paid by the insurance. Further no documentary evidence has been placed on record either by Claimant or by Respondent No. 1 that the injured was a paid driver of Respondent No.1. If the Claimant was at a disadvantage in placing any documentary evidence about his employment, certainly Respondent No, 1 could have easily placed documentary evidence which would have shown the employee-employer relationship between the Claimant and Respondent No. 1.

19. Further I find that the disability certificate has not been exhibited by the Claimant and has not been proved. In this regard Respondent No. 2 has relied upon para No. 9 of the judgment of Apex Court in the case of Rajesh Kumar Vs. Yudhvair Singh and Anr., SLP (C) No. 8050 of 2007. I fully agreed with the Respondent No. 2 that the disability certificate was required to be exhibited for proving the disability of the Claimant.

20. Further the Claimant claims that he has suffered loss of earning capacity to the extent of 100%. However I find that the driving licence of the Claimant was not surrendered to the Motor Licence Authority after the accident and the same has been surrendered only after the directions of my Ld. Predecessor to surrender the driving licence to the Motor Licence Authority and the same has been surrendered on 26.05.2017.

21. Further I find that cross examination of Respondent No. 1 by the Claimant also gives an indication of connivance of the Claimant with Respondent No. 1. I find that the whole case of the Claimant has been admitted by Respondent No. 1 in his written statement and thus when Respondent No. 1 has appeared



in the witness box there was no need for cross examination of Respondent No. 1 by the Claimant. It appears that by reiterating the claim of the Claimant, the Respondent No. 1 further wanted to strengthen the case of the Claimant which to me appears to be a collusive claim.

22. Further I find that the medical bills Ex. PW1/4 (Colly) have not been proved by the Claimant as no doctor or hospital staff has been summoned nor any prescription of the doctor has been shown to the court where under the medicine under reference were purchased by the Claimant.

23. Further I find it surprising that Respondent No. 2 which has disputed the claim of the Claimant in his written statement has suddenly taken a volte-face and has chosen to neither lead any evidence nor has cross examined Respondent No. 1. Stand of Respondent No. 2 in his written statement is also contradictory. On the one hand the Respondent has disputed the employee-employer relationship between the Claimant and Respondent No. 1, on the other hand it is stated that the accident took place due negligence of the driver. I find it shocking the way the parvi officer of the case on behalf of Respondent No. 2 and the counsel of Respondent No. 2 has conducted this case. The defence put up by Respondent No. 2 is perfunctory and timid and to my opinion the insurance company is also in connivance with the Claimant and the Respondent No. 1. If the case of Respondent No 1 is to be believed that intimation was given to Respondent No. 2 about the accident vide Ex. MW1/4, it is surprising to find out as to why the insurance company has not appointment any officer / surveyor for a visit to the spot and conducting inquiries about the accident of the vehicle as well as the driver suffering the injury and if such a inquiry was conducted why the report was not placed before the court in the evidence of Respondent No. 2.

24. Further I find that Respondent No. 1 in his testimony stated that the insurer was intimated about the accident vide Ex. MW1/4. I find that the vehicle is said to be completely damaged and if the insurance company was intimated it has not been made clear why the OD claim was not made for the damage of the vehicle and why the same was not filed on record by Respondent No. 1."

10. *Ex facie*, the aforesaid findings are manifestly perverse, unconscionable and cannot be countenanced in law. The appellant/claimant had placed on record a copy of the FIR, however, it appears that he was unable to place on record the copies of the charge-sheet. Furthermore, the record indicates that no disability certificate



was either placed or proven during the course of inquiry.

11. That having been said, upon the present appeal being preferred, the matter was taken up for hearing on 18.01.2019, and pursuant to the directions of this Court, the appellant/claimant has since filed the complete copies of the charge-sheet alongwith its English translation. A bare perusal thereof reveals that it was the appellant/claimant, who was driving the ill-fated truck at the time of accident and sustained injuries.

12. In view of the foregoing discussion, the present appeal is allowed and the matter is remanded back to the learned Commissioner, Employees Compensation with the direction to allow the appellant/claimant to lead evidence afresh including the copies of the charge-sheet alongwith its English translations as well as lead evidence regarding his medical disability, if any.

13. The learned Commissioner shall decide the matter afresh after hearing the parties in accordance with the law.

14. Nothing contained in this order shall tantamount to an expression of opinion on the merits of the case.

DHARMESH SHARMA, J

MARCH 11, 2025/gunn/ss