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

+ **FAO 126/2021**

KIRAN DEVI & ORSAppellant

Through: **Mr. Anshuman, Adv.**

versus

HARINDRA MEHTO & ANRRespondents

Through: **Mr. Virender Prabhakar and
Mr. Pankaj Gupta, Proxy
Counsel for Ms. Suman Bagga,
Adv.**

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

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20.05.2025

1. This hearing is being conducted through hybrid mode.
2. Mr. Pankaj Gupta, learned counsel appearing for the respondent No.2/Insurance Company requests for an accommodation stating that there is a bereavement in the family of the main counsel.
3. However, learned counsel appearing for the appellant points out that a trivial issue of law and facts is involved in the present matter.
4. Having heard the learned counsel for the appellant and on a perusal of the record, this Court finds that the present appeal under Section 30 of the Employee's Compensation Act, 1923 can be conveniently disposed of since it does involve a well settled question of law which is no more *res integra*.
5. A bare perusal of the record would show that the deceased namely Birendra Sahani, was employed as a driver to ply TSR (Auto No. DL IRU 1442), which was owned by the respondent

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Nagar Mandawali Fazalpur, Delhi and the driver sustained severe injuries and ultimately succumbed to the same, which led to the registration of an FIR No. 33/2017 dated 27.01.2017.

6. The TSR was evidently insured for third-party risk *vide* Policy dated 13.06.2016 for one year with the respondent No. 2.

7. It appears that the deceased was having a nap on the passenger seat of the TSR when it met with an accident. Considering the said aspect, learned Commissioner, Employee's Compensation came to the conclusion that since the duty hours were not indicated by the respondent No. 1 and it was not clear whether the deceased was taking a nap during the duty hours or beyond the duty hours, and hence, the liability to pay compensation was fastened upon the respondent No. 1. However, at the same time giving liberty to the respondent No.1/registered owner/insured to file claims towards compensation for the damage to the vehicles as well as compensation given to the deceased/driver.

8. The aforesaid order is absolutely perverse and unconscionable and the same cannot be sustained in law for the simple reason that the accident had occurred at 02:20 AM in the night and since the deceased/driver was evidently sleeping or having a nap in the vehicle, it is evident that he was perhaps totally exhausted due to long duty hours. Moreover, since it is showed that he was entrusted with the care and custody of the vehicle, the logical conclusion is that he died during the course of and arising out of his employment.

9. It goes without saying that merely because the duty hours were not spelled out by the respondent No.1/registered owner/insured, it would not result in any adverse legal consequence upon the claimants

and would not absolve the respondent No. 2 from making payment of

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compensation to the victim.

10. In fact, there is another palpable error in the impugned judgment dated 31.10.2019 passed by the learned Commissioner inasmuch as it is recorded that there was no coverage of insurance for the driver, whereas the copy of the policy placed on the record would clearly demonstrate that apart from the basic premium that was paid towards the third-party liability and additional premium CNG/LPG unit, further additional premium of Rs.50 had been paid for the legal liability for operation/maintenance for one person, which would obviously also include a driver.

11. In the aforesaid view of the matter, the impugned order dated 31.10.2019 is hereby set aside.

12. The liability to pay compensation of a total amount of Rs.11,57,094/- with interest @ 12% per annum from the date of accident till its realization shall be payable by the respondent No.2/Insurance Company within 30 days from today, failing which the appellant/claimant shall be at liberty to seek execution of the judgment passed by this Court.

13. The compensation be apportioned amongst the wife and the six children thereby releasing 75% of the compensation with accrued interest in favour to the claimant/wife/widow *i.e.*, Smt. Kiran Devi and rest of the compensation with accrued interest in equal shares to the children, some of whom have also turned major.

14. The appeal is disposed of accordingly. Pending applications, if any, also stand disposed of.

DHARMESH SHARMA, J.

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