



\$~6

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ FAO 607/2016, CM APPL. 47962/2016 & CM APPL. 47964/2016

MAGMA HDI GENERAL INSURANCE
CO LTD

.....Appellant

Through: Mr. Navneet Kumar and Mr.
Harsh Sharan, Advs.

versus

BALKAR SINGH & ANR

.....Respondents

Through: Mr. R.K. Nain, Adv.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

09.05.2025

%

1. The appellant/Insurance Company has preferred this appeal under Section 30 of the Employee's Compensation Act, 1923 [hereinafter referred as "EC Act"], thereby assailing the impugned judgment-cum-award dated 05.05.2016, whereby the learned Commissioner, Employee's Compensation has been pleased to allow the claim application of the claimant/respondent No.1/Balkar Singh and thereby awarding him compensation for suffering disability purportedly in an accident that occurred on 07.10.2013 when the injured was travelling in the insured truck bearing HR-55-N-3152 (Eicher 12 Tyre), probably as a cleaner cum second driver from Azadpur Mandi, Delhi to Bangladesh (Goja Danga Border).

2. Alluding to the written-statement that was filed by the appellant/Insurance Company before the learned Commissioner, it is submitted that the impugned order is erroneous inasmuch as it has not considered the defences which were raised by the appellant.

This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.

The Order is downloaded from the DHC Server on 14/05/2025 at 11:37:37



3. It is pointed out that the vehicle was admittedly insured in the name of Mr. Pankaj Chhabra, who was not even impleaded in the original claim petition and instead Bombay Kandla Transport Corporation was impleaded. It is also urged that the deceased was travelling as a gratuitous passenger besides denying the existence of relationship of employer and employee between the injured/claimant/respondent No. 1 and the respondent No. 2/Bombay Kandla Transport Corporation.

4. *Per contra*, Mr. Nain, learned counsel for the legal heirs of the deceased claimant/workman/respondent No. 1 has urged that during the course of inquiry, Mr. Pankaj Chhabra was also impleaded being the partner of M/s Bombay Kandla Transport Corporation. It is also urged that though the injured/claimant was not examined during the course of inquiry, before the learned Commissioner, the same was not even required in view of Section 25 of the EC Act read with Clause (13) of the Insurance Regulatory and Development Authority of India.

5. The sum and substance of the submissions which has been advanced by learned counsel for the appellant/Insurance Company, is that even filing of the claim petition by the injured was not mandatory in view of Section 10 of the EC Act, and a *suo moto* inquiry should have been initiated by the Commissioner on an intimation by the employer that an accident has occurred and that the workman has suffered injury arising out of or in the course of his employment.

6. The said plea cannot be sustained in law. It was incumbent upon the claimant to discharge the initial burden of proving that he was employed as a driver with respondent/employer. He did not come in the witness box and on the other hand the respondent employer too

failed to appear to lead any evidence. Although the proceedings were

This is a digitally signed order.

The authenticity of the order can be verified from Delhi High Court Order Portal by scanning the QR code shown above.

The Order is downloaded from the DHC Server on 14/05/2025 at 11:37:37



summary in nature, the claim petition just could not have been decided on mere pleadings of the parties.

7. Having regard to the totality of the facts and circumstances inasmuch as the deceased/claimant was not examined, though there was an admission on the part of respondent No.1 that the deceased/claimant was their driver, the deceased should have entered the witness box and the nature and extent of injury suffered should have proven in accordance with law.

8. Anyhow since the deceased/claimant expired after the passing of the impugned award on 22.09.2016, it is but necessary that the employer be examined and the relevant details be elicited by way of evidence to determine whether or not the deceased was working as a driver or whether he was a 'gratuitous' passenger.

9. Accordingly, the present appeal is allowed and the matter is remanded back to the learned Commissioner, Employee's Compensation with the direction that a fresh determination be made with regard to the claim of the deceased now survived through his legal heirs in the light of the objections that have been raised in the present appeal, in accordance with law.

10. The appeal is disposed of accordingly. Pending applications also stand disposed of.

11. The parties shall appear before the learned Commissioner, Employee's Compensation concerned on 02.06.2025 for further proceedings and the matter be decided within a period of six months.

DHARMESH SHARMA, J

This is a digitally signed order.
MAY 09, 2025/gunn/sa

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.

The Order is downloaded from the DHC Server on 14/05/2025 at 11:37:37