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

\+ FAO 110/2025 and CM APPL. 24493/2025

BAJAJ ALLIANZ GEN. INS. CO. LTD. .....Appellant

Through: Ms. Suman Bagga and Ms. Mouli Sharma, Advocates

versus

SMT. LACHHMI (SINCE DECEASED) THROUGH LRS & ANR. .....Respondents

Through: Mr. R.K. Nain, Mr. Daksh Nain, Mr.Chandan Prajapati and Ms. Arti Sharma, Advocates for respondent No.1

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

O R D E R

% **04.02.2026**

1. The present appeal has been preferred under Section 30 of the Employee’s Compensation Act, 1923 by the appellant assailing the award dated 16.12.2024 passed by the Commissioner, Employee’s Compensation, South-East District in Case No. CEC/SED/D/138/2022/6920.

2. This Court on 06.05.2025, passed a detailed order and the same is extracted as under:

> *“6. The present appeal has been preferred by the appellant/Insurance Company under Section 30 of the Employee’s Compensation Act, 1923 [‘E.C. Act’], thereby assailing the impugned judgment-cum-award dated 16.12.2024 passed by the learned Commissioner, Employee’s Compensation, South-East District, whereby compensation has been awarded to the legal heirs of the deceased/Jasbir, aged about 43 years, to the tune of Rs.*

7,02,160/-, with an interest @ 12% p.a., besides the funeral expenses of Rs. 5,000/-, penalty & costs aggregating to the amount of Rs. 12,00,268/-.

7. Upon perusal of the impugned judgment it is brought out that the learned Commissioner has imposed personal penalty under Section 4A(3)(b) of the E.G. Act to the extent of Rs. 1,05,324/- each on the respondent No.l, and the respondent No.2/employer, and the rest of the amount of compensation including the half of the penalty has been fastened upon the appellant/Insurance Company.

8. Learned counsel for respondent/legal heirs of deceased mother of the deceased/Jasbir, is present on advance notice.

9. No one is present for the respondent No.2/employer, despite sending advance notice.

10. Having heard the learned counsels for the parties present and on perusal of the record, the grievance espoused by the learned counsel for the appellant/Insurance Company is that the impugned award is erroneous inasmuch as the deceased died a natural death on suffering a brain stroke and he was not deputed or working or driving with the insured truck in question at the time of his death.

11. I am afraid the said plea is not sustainable in law.

12. It is proven on the record that the deceased/Jasbir was employed as a driver and he was entrusted with the custody of the insured truck bearing No. HR-55R-7648 belonging to the respondent No.2/employer. It is also proven that on the day of incident, he was transporting the vehicle with goods from Gurgaon to Gujarat and when he reached near Kishangarh, he looked over-stressed and seeing his critical condition, the Dhaba owner called his employer and the deceased was asked to take rest; and some some representative of respondent No.2/employer later reached Kishangarh and shifted the deceased to his godown, where he took some rest, but thereafter, he was shifted to a hospital, but he was brought dead.

13. The aforesaid chain of events leave no scope for doubt that the deceased died during the course of and arising out of his employment. The issue raised in the present matter is squarely covered by the decision of the Supreme Court in the case Param Pal Singh v. National Insurance Company and Ors, wherein in a similar situation, it was observed as under:-

> *19. On merits to retrace the facts, the deceased Jeet Singh alias Ajit Singh was employed as truck driver by the second respondent. His services were utilised for driving the truck belonging to the second respondent bearing No. DL IG 8255. The deceased was driving the said truck in connection with the commercial transport operation of the second respondent from Delhi to Nimiaghat on 17-7-2002. According to the claimant*

when the truck reached nearabout Nimiaghat, District Giridih, the deceased felt giddy and, therefore,

parked the vehicle on the roadside near a hotel and soon thereafter he is stated to have fainted. The deceased was removed to a nearby hospital where the doctors declared him brought dead. An FIR was lodged with Police Station, Nimiaghat in FIR No. 7/2002 dated 18- 7-2002. The post-mortem was stated to have been conducted on 19-7-2002 and thereafter the dead body was taken to his native place for performing last rites. The claimant in his application before the Commissioner submitted that the death of the deceased was due to the strain and stress of continuous driving in the course

of his employment with the second respondent, that the vehicle which he was driving bearing No. DL IG 8255 was insured with the first respondent vide Covering Note No. 0968499 for the period from 14-2-2002 to 13-2-2003 and that an additional premium was also paid for coverage of compensation payable under the Workmen's Compensation Act. The claimant, as an adopted son of the deceased, claimed compensation as his dependant.

24.However, there are decisions of the English Court as early as of the year 1903 onwards stating that an unlooked for mishap or an untoward event which is not expected or designed should be construed as falling within the definition of an "accident" and in the event of such "untoward" "unexpected" event resulting in a personal injury caused to the workman in the course of his employment in connection with the trade and business of his employer, the same would be governed by the provisions of Section 3 of the Workmen's Compensation Act. Such a legal principle evolved from time immemorial got the seal of approval of this Court and for this purpose we can refer to the celebrated decision in Ritta Farnandes. After referring to the decision of the House of Lords in Clover, Clayton & Co. Ltd. v. Hughest this Court in Ritta Farnandes referred to the relevant passage in the decision of the House of Lords in para 4, which reads as under:

"4. Even if a workman dies from a pre-existing disease, if the disease is aggravated or accelerated under the circumstances which can be said to be accidental, his death results from injury by accident. This was clearly laid down by the House of Lords in Clover, Clayton & Co. Ltd. v. Hughes where the deceased, whilst tightening a nut with a spanner, fell back on his hand and

died. A post-mortem examination showed that there was a large aneurism of the aorta, and that death was caused by a rupture of the aorta. The aneurism was in such an advanced condition that it might have burst while the man was asleep, and very slight exertion or strain would have been sufficient to bring about a rupture. The County Court Judge found that the death was caused by a strain arising out of the ordinary work of the deceased operating upon a condition of body which was such as to render the strain fatal, and held upon the authorities that this was an accident within the meaning of the Act. His decision was upheld both by the Court of Appeal and the House of Lords: (AC p. 246)

'...No doubt the ordinary accident, ["said Lord Lorebum, L.C."] is associated with something external; the bursting of a boiler, or an explosion in a mine, for example. But it may be merely from the man's own miscalculation, such as tripping and falling. Or it may be due both to internal and external conditions, as if a seaman were to faint in the rigging and tumble into the sea. I think it may also be something going wrong within the human frame itself, such as the straining of a muscle or the breaking of a blood vessel. If that occurred when he was lifting a weight it would properly be described as an accident. So, I think, rupturing an aneurism when tightening a nut with a spanner may be regarded as an accident.'

With regard to Lord MacNaughten's definition of an accident being 'unlocked for mishap or untoward event which is not expected or designated' it was said that an event was unexpected if it was not expected by the man

who suffered it, even though every man of common sense who knew the circumstances would think it certain to happen."

14. In view of the aforesaid proposition of law, it goes without saying that there was no dispute regarding the existence of employer and employee relationship between the deceased and the respondent No.2. Further, on perusal of the insurance policy which is annexure A-7, it is also brought on the record that an additional premium had been paid by the respondent No.2/employer which is categorized as 'Legal Liability for Operation/Maintenance for 3 person' to the tune of Rs. 150/-, and thus, the appellant insurance company cannot avoid its liability to indemnify the insured/employer.

15. However, another plea that is raised by the learned counsel for the appellant/Insurance Company is that the deceased was survived by his widowed mother and she too died during the course of proceedings on 21.11.2023 even before the pronouncement of the judgment-cum-award dated 16.12.2024.
16. Learned counsel for the appellant/Insurance Company has invited the attention of this Court to sub-clause (4) and (5) to Section 8 of the B.C. Act and it is vehemently urged that the deceased was unmarried and after his death and the death of his mother, who was a sole legal heir, no amount of compensation is payable to the legal heirs of the deceased mother since none of the other legal heirs were financially dependent upon the deceased.
17. Per contra, learned counsel for the legal heirs of the deceased respondent has urged that as per Section 4 of the B.C. Act, the amount of compensation becomes due as on the date when some injury or death is suffered by the workman.
18. The issue raised to the said extent requires some deeper examination.
19. Issue notice. Notice is accepted. There is no need to file any reply.
20. Let written submissions be filed by the learned counsels for the parties with relevant case laws."

3. Today, learned counsel for the respondent/workman submits that the right to receive the compensation survives to the legal heirs of the sole dependant even if the sole dependant has expired during the pendency of the proceedings.

4. The contention is repelled by the learned counsel for the appellant.

5. The expression "dependant" has been defined under Section 2(d) of the Employees Compensation Act as to mean:-

"2(d) "dependant" means any of the following relatives of a deceased 9 [employee], namely:-
(i) a widow, a minor [legitimate or adopted] son, and unmarried [legitimate or adopted] daughter, or a widowed mother; and
(ii) if wholly dependent on the earnings of the [employee] at the time of his death, a son or a daughter who has attained the age of 18 years and who is infirm;
(iii) if wholly or in part dependent on the earnings of the [employee] at the

time of his death,
(a) a widower,
(b) a parent other than a widowed mother,
(c) a minor illegitimate son, an unmarried illegitimate daughter or a daughter [legitimate or illegitimate or adopted] if married and a minor or if widowed and a minor,
(d) a minor brother or a unmarried sister or a widowed sister if a minor,
(e) a widowed daughter-in-law,
(f) a minor child of a pre-deceased son,
(g) a minor child of a pre-deceased daughter where no parent of the child is alive, or
(h) a paternal grandparent if no parent of the [employee] is alive.

6. In the present case, upon the death of the deceased, *Jasvir*, the claim application was filed by his mother. Undisputedly, during the pendency of the claim proceedings before the Commissioner, the mother also expired, whereafter the claim was pursued by the legal heirs, namely the siblings of the deceased, being the sons and daughters of the sole dependant. The issue as to whether, in such an eventuality, the legal heirs would be entitled to pursue and receive the compensation has been answered in the affirmative by a Division Bench of the Karnataka High Court in *Kaveri Structurals v. Bhagyam, K.G.F*[1]., wherein it has been held as under:-

"5. The question that, therefore, arises in this appeal is whether when a "dependant" as defined under S. 2 (d) of the Act, who preferred a claim, died during the pendency of the proceedings, his or her legal representatives could prosecute the claim for compensation.
6. There is authority for the proposition that where the sole dependant of the deceased died even without having made a claim before the commissioner, the right of the dependant passed to his or her executor. The legal basis for this position is that the right remained vested in the dependant to the time of his or her death and upon death passed to his or her heirs or legal representatives. See United Collieries Ltd. v. Simpson.

[1] 1976 SCC OnLine Kar 184

7. In Pasupati Dutt v. Kelvin Jute Mills a Bench of the Calcutta High Court, consisting of Derbyshire, C. J. and B. K. Mukherjee J., after referring with approval to the said decision in United Collieries Ltd. v. Simpson stated: (Per Derbyshine C.J.).

"Here the only person in the class of dependants at the death of the workman was the applicant's mother. Consequently the right to the compensation money vested in her. It was not competent in my view for the Commissioner to divest her of that right. Therefore it remained vested in her to the time of her death. Upon her death the right passed to her heirs or legal representatives subject to the conditions of the Succession Act being complied with. In my view 'dependant' in Section 8 includes the heirs or legal representatives of the dependant as defined by Section 2 where the dependant has died since the death of the workman. It is noteworthy that in the English Workmens Compensation Act of 1925, which replaced the Act of 1906, it is provided in Section 2 (3):

"Where a dependant dies before a claim under this Act is made, or 'if a claim has been made, before an agreement or award has been arrived at or made, the legal personal representative of the dependant shall have no right to payment of compensation, and the amount of compensation shall be calculated and apportioned as if that dependant had died before the workman'.

This was obviously intended to alter the law as laid down in United Collieries v. Simpson. There is no corresponding provision in the Indian Act. If the conclusion at which I have arrived is wrong, the position would be that the right to compensation would depend upon the accident of the time when the Commissioner made his inquiry or when the dependant dies. If the Commissioner were delayed in making his inquiry through some cause such as a heavy list or some other unavoidable delay, dependants might die uncompensated after suffering privations through the loss of the workman upon whom they were dependent. I cannot think that such is the position under the Act".

8. We are in respectful agreement with the view taken by their Lordships of the Calcutta High Court in Pasupati Dutt's case and, adopting the principle laid down therein, hold that the Commissioner was right in awarding the compensation to the said Thangaraj, who was held to be the brother and heir of the deceased Smt. Bhagyam."

7. To the same extent is the view taken by Rajasthan High Court, Jodhpur Bench in <u>*National Insurance Co. Ltd. v. LR's of Dhapu Kanwar W/o*</u>

late Tej Singh in **S.B. Civil Misc. Appeal No. 974/2015** as well as Punjab and Haryana High Court in *Kamlesh and others v. Gian Chand and others* reported as **2015 SCC OnLine P&H 931**.

8. This Court finds itself in complete agreement with the view taken in the aforesaid decisions and thus repels the appellant's contention.

9. At this stage, learned counsel for the appellant has contended that the amount of penalty was imposed on the appellant without there being any findings of extra payment charge. The said contention is also misplaced in view of the categorical noting of paragraph 14 in the order dated 06.05.2025. Further, the contention that the penalty amount of @15% has been imposed on both the insurance company as well as employer, is also found to be misplaced as due show cause notice was served on both the insurance company as well as employer, however, none of them responded. Even otherwise from a perusal of the Section 4A(3)(b) of the Employee's Compensation Act, the learned Commissioner is empowered to impose a penalty upto 50% of the compensation amount.

10. Finding neither arbitrary nor arbitrary exercise of the power, the impugned order is upheld and the appeal is dismissed alongwith the pending applications, if any.

MANOJ KUMAR OHRI, J

FEBRUARY 4, 2026
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