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

\# **CNR No. DLHC011551622016**

\+ FAO 278/2016

TATA AIG GENERAL INSURANCE CO LTD .....Appellant

Through: Ms. Vandana Kahlon and Mr. Rudra Kahlon, Advocates

versus

MOHAN SINGH MAHAR AND ANR .....Respondent

Through: Mr. R.K. Nain, Mr. Chandan Prajapati, Advocates for respondent no.l.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

O R D E R

% 05.10.2026

CM APPL. 49370/2026 (early hearing)

1. By way of present application, the applicant seeks early hearing of the present case.

2. Learned counsel for the appellant appears and states that he has no objection to the early hearing of the present appeal.

3. As the matter has itself been taken up for consideration, the present application has become infructuous and is disposed of.

FAO 278/2016

1. Learned counsel for the appellant submits that the insurer has preferred the present challenge, thereby seeking setting aside of the award dated 28.03.2016 passed by the learned Commissioner under the Employee's Compensation Act, 1923 in ECC/52/NW/14/31. Vide the impugned award, the learned Commissioner had allowed the claim

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application and directed the insurer to pay compensation of Rs.9,09,988/- to the claimant/respondent No.1.

2. Briefly, the claim application came to be filed with the averments that the claimant was employed as a driver on vehicle bearing No. HR-55K-7032, a truck owned by respondent No.2. It was further claimed that on 09.10.2013, the claimant had received grievous injuries which arose out of and during the course of employment, when, at about 12:30 PM, the claimant was tightening the rope around the goods loaded in the vehicle and the rope suddenly snapped. The claimant fell down and received injuries to his spine as well as his right wrist. He was rushed to a nearby hospital, where he was got admitted, and was thereafter taken to Delhi and admitted to *Saket City Hospital*, where he remained admitted for three days. Thereafter, he was shifted to *Safdarjung Hospital, New Delhi*, where he remained hospitalized for about one week. It was claimed that the injuries suffered had rendered him 100% disabled to carry out his vocation as a driver. It was further claimed that the vehicle was duly insured with the insurer under a valid policy subsisting for the period 15.05.2013 to 14.05.2014 and that an additional premium was also charged under the EC Act. It was stated that the claimant was drawing wages @ Rs.8,000/- per month along with Rs.150/- per day as food allowance. He was aged 35 years at the time of the accident.

3. On the claim being filed, notice of the claim application was issued and respondent No.2, i.e. the employer, appeared and stated that though the claimant was not a regular employee but on the day of the incident, the claimant was posted as a driver on the said vehicle when he suffered the injuries. It was further admitted that the claimant was being paid Rs.9,000/-

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per month with allowances.

4. The insurer also appeared and contested the claim, though it admitted the factum of insurance.

5. Before this Court, learned counsel for the appellant has raised two-fold contentions. It is firstly contended that the claimant has not filed any proof of his employment with respondent No.2 and, secondly, that the learned Commissioner erred in treating the physical disability of 20% as resulting in 100% loss of earning capacity.

6. Insofar as the first contention is concerned, in view of the admission by respondent No.2, the issue itself was not raised before the learned Commissioner. Be that as it may, in light of the written statement filed by the employer, wherein he categorically admitted the factum of employment of the claimant with him and further stated that, on the day of the incident, the claimant was employed as a driver on the said vehicle, the issue does not require any reconsideration. Even otherwise, the existence of an employer-employee relationship is essentially a finding of fact and is not liable to be interfered with in an appeal under Section 30 of the Act unless the finding is shown to be perverse. Reference in this regard may be made to *North-East Karnataka Road Transport Corporation v. Sujatha*[1], and *Golla Rajanna & Ors. Vs. Divisional Manager & Anr.*[2] wherein the Supreme Court has held that questions relating to the existence of an employer-employee relationship and the extent of disability are essentially questions of fact and that the appellate jurisdiction under Section 30 is confined to substantial questions of law.

[1] (2019) 11 SCC 514
[2] (2017) 1 SCC 45

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7. Coming to the second contention, it is noted that the claimant has placed on record a medical disability certificate dated 20.09.2014 issued by the Office of *the Medical Superintendent, Aruna Asaf Ali Government Hospital, Delhi.* As per the said certificate, the claimant was found to have 20% permanent physical impairment in relation to his "*right upper limb, spine and pelvis",* and the condition was stated to be not likely to improve. It is not disputed that the claimant was working as a driver. The issue, therefore, is not merely the extent of physical disability, but the extent to which such disability has affected his earning capacity in the vocation which he was undertaking at the time of the accident. In this regard, gainful reference may be made to the decision of the Supreme Court in *Pratap Narain Singh Deo v. Srinivas Sabata*[3], wherein it was held that where the injury renders a workman incapable of performing the work which he was capable of performing at the time of the accident, the disablement may amount to total disablement notwithstanding the percentage of physical disability. The said principle was reiterated in *S. Suresh v. Oriental Insurance Co. Ltd*.[4], wherein the Supreme Court held that, in the case of a lorry driver who had lost his right leg below the knee, the loss of earning capacity as a driver was 100%.

8. In the present case, as noted above, the claimant has suffered injuries not only to his right upper limb but also to his spine and pelvis, which have resulted in permanent physical impairment. The medical certificate records that the condition is not likely to improve. The learned Commissioner, while taking note of the fact that the physical disability was assessed at 20%,

[3] (1976) 1 SCC 289
[4] (2010) 13 SCC 777

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considered the nature of the injuries and the vocation of the claimant as a driver and concluded that the injuries rendered him incapable of pursuing his vocation, thereby resulting in 100% loss of earning capacity.

9. Keeping the aforesaid in view, this Court is of the considered opinion that the decision of the learned Commissioner requires no interference. Consequently, the appeal stands dismissed. An amount equivalent to 20% of the award amount already stands released to the claimant, the remaining amount lying deposited with the Commissioner alongwith interest be released to the claimant

MANOJ KUMAR OHRI, J

OCTOBER 5, 2026
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