



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

% **Judgment reserved on : 06 November 2023**

Judgment pronounced on: 21 November 2023

+ **FAO 56/2016 & CM APPL. 11273/2019**

NEELU KUMARI & ORS

..... Appellants

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

versus

OM & ANR (BAJAJ ALLIANCE GEN INS CO LTD)

..... Respondent

Through: **Ms. Ashwarya K., Adv.**
on behalf of **Mr. Navneet Kumar, Adv. for R-2.**

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA
J U D G M E N T

1. This appeal is filed by the appellant under Section 30 of the Employee Compensation Act, 1923¹ assailing the impugned order dated 30.11.2015 passed by Labour Commissioner, Vishwakarma Nagar, Jhilmil Colony, Delhi- 110095, in claim petition No. CWC-D/NE/02/2013/40 dated 21.01.2013 filed by the claimant / appellant, wherein, the claim petition was dismissed.

FACTUAL BACKGROUND

2. To put it succinctly, the claimant, i.e., the appellant before this Court, is the wife of the deceased Brij Kishore Gupta @ Brij Kishore Sah. He died on 25.12.2012 at the age of 38 years, while plying

¹ The E.C. Act



vehicle i.e., TSR bearing No. DL-IRF-0941. The claim petition was based on the premise that the deceased was an employee of Sh. Shri Om i.e., respondent No.1, drawing a monthly salary of Rs. 10,000/- and died in the course of the employment. His legal heirs being solely dependent on his earnings, prayed for compensation according to the provisions under the Act.

3. The impugned order, while encapsulating the events, noted the submission of claimant/appellant that on 25.02.2012 at about 10.00 P.M. the deceased was murdered while on duty on said vehicle during the course of his employment with respondent No. 1. It was also stated that the accident was registered in P.S. Karawal Nagar, Delhi vide FIR No. 509/2012 dated 27.12.2012 under Section 302/34 Indian Penal Code, 1860, and the post-mortem of the deceased was conducted in GTB Hospital, Delhi.

4. In the ensuing proceedings, respondent No. 1 submitted that the deceased was never his employee and that he never paid any wages to him. He further stated that the vehicle even though was owned by, respondent No. 1, it was driven by both him and the deceased on a sharing basis. On the night of the accident, the deceased had taken the auto rickshaw for only a night at around 10:00 P.M. in order to take his relatives from Anand Vihar Railway Station.

5. Respondent No. 2 i.e., M/s Bajaj Allianz General Insurance Company Ltd., also towed the same line of defence for denial of claim submitting that they are not liable to pay any compensation to the petitioners (appellants herein) as deceased Brij Kishore Gupta @ Brij



Kishore Sah was not an employee of the R-1 and was not the employee, within the provision of Sec. 2(1)(n) of the Act.

6. Thus, the following issues were framed for consideration before the Labour Commissioner:

- i. Whether there existed employer - employee relationship between the deceased and Respondent No. 1.
- ii. If so, whether the accident resulting into death of deceased Brij Kishore Gupta occurred during his employment with R-1 or was he murdered during his employment with R-1?
- iii. Whether the Claimants are entitled to compensation under Employees Compensation Act.
- iv. Any other directions?"

7. The claimants in order to substantiate the claim examined CW-1 i.e. wife of the deceased while no other witness was examined by her as well as the defence. No witness was examined on behalf of the respondent. Suffice to say that both issues Nos. 1 and 2 were answered against the claimants and the Commissioner relied on decision in **Malikarjuna G. Hiremath Vs. Branch Manager, Oriental Insurance Company Ltd. & Anr.**² and observed as under: -

“11. In the case of Malikarjuna the facts were that the deceased / Claimant / the driver of the vehicle which was insured with the Insurance Company went to the pond and while taking bath at a pit, he had slipped and fell down and had drowned and breathed his last. The claim petition was filed taking the stand that the death of the deceased had occurred during the course of and within the employment under the appellant. The vehicle was the subject - matter of insurance with the insurer and, therefore, it was the subject-matter of insurance with the insurer and, therefore, it was claimed that the insurer was liable to pay the compensation as the risk of the driver was covered under the policy. The Commissioner, Bellary by his order dated 11 July, 2002

² (2009) 13 SCC 405.



allowed the petition and determined the compensation payable at Rs. 2,20,046/- with 12% interest. It was held that the insurer was liable to pay the compensation. Insurer filed an appeal before the High Court. As noted above, the stand taken by both the insurer and the appellant was that there was no connection between the accident causing death of the workman and the vehicle and therefore, neither the insurer nor the insured had any liability to pay any compensation. The High Court allowed the appeal filed by the insurer holding that there was no casual connection and therefore the Insurance Company was not liable. Further, the High Court granted the liberty to recover the compensation awarded from the appellant.

12. Against the above order of the High Court the insured i.e. the owner of the vehicle filed an appeal in the Supreme Court. The Supreme Court allowed the appeal with observations as under: -

“It is the specific case of the claimants that on 30 November, 2000 the deceased who was driving the vehicle on the direction of the insured had gone to Gurugunta from Siraguppa. There he had gone to a temple and was sitting on the steps of the pond in the temple and he slipped and fell into the water and died due to drowning. This according to us is not sufficient in view of the legal principles delineated above to fasten liability on either the insurer or the insured. The High Court was not justified in holding that the present appellant was liable to pay compensation. The appeal is allowed with no order as to costs”.

13. In view of the position as above, I am of the opinion that accident i.e. murder of the deceased has no connection with his employment. Further I also find, it difficult to believe plying of TSR on the basis of salary by the deceased. The Claimants have not stated any details of employment except receipt of salary from R-1. Plying TSR on a basis of contractual basis i.e. on the basis of per day rent, may be explainable, though it would also be illegal. In the circumstances as above, I find the Claim Petition being as without merit and accordingly dismiss the same.”

8. The impugned order dated 01.11.2015 is assailed in the present appeal for the findings rendered on facts that there was no relationship between employer and employee as also on the issue of law that the



Commissioner wrongly went to hold that murder of an employee could not entitle the legal heirs to seek any claim under the E.C. Act.

DECISION

9. Having heard learned counsel for the parties and on perusal of the digital record of the main proceedings, the instant appeal in so far as it assails the decision on the issue of existence of relationship of employer and employee between the parties concerned, is devoid of any merits. The initial burden of providing employer and employee relationship was upon the appellants/claimants, which was not discharged. The Commissioner rightly held that CW-1 i.e., the wife of the deceased miserably failed to substantiate that her husband was employed with respondent no. 1 and her testimony that her husband was getting wages of Rs. 10,000/- per month from respondent No. 1 is does not inspire confidence. Her deposition about her husband being employed under respondent No. 1 is not corroborated by any independent witness. Further, no other material was brought on the record during the proceedings before the Commissioner to prove that the deceased was plying the TSR as employee of respondent No.1.

10. However, only from an academic point of view, the finding by the Commissioner that murder of an employee during the course of performance of his duties would not bring the case within the ambit of Section 2(1)(n) of the E.C. Act, is flawed. For which reliance can be placed on decision in **Rita Devi Vs. New India Insurance Company**



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Ltd.³, as also decision by this Court in **National Insurance Company Ltd. Vs. Munesh Devi⁴.**

11. In view of the foregoing discussion, the present appeal is dismissed. The pending application also stands disposed of.

DHARMESH SHARMA, J.

NOVEMBER 21, 2023

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³ (2000) 5 SCC 113.

⁴ 2012 SCC OnLine Del 2603.