



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

% **Judgment reserved on: 23 April 2025**
Judgment pronounced on: 13 May 2025

+ **FAO 392/2017 & CM APPL. 36775/2017**

UNITED INDIA INSURANCE CO LTDAppellant

Through: **Ms. Khushi Sachdeva, Proxy
Counsel**

Versus

ZAMIL AHMED & ANR.Respondents

Through: **None.**

HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

DHARMESH SHARMA, J.

1. The appellant/insurance company has preferred this appeal under Section 30 of the Employee's Compensation Act, 1923 ["**EC Act**"] for setting aside/quashing of judgment-cum-award dated 14.02.2017 passed by the learned Commissioner, Employee's Compensation ["**Commissioner**"], allowing the claim petition of the respondent No.1/claimant on account of his death on the intervening night of 16/17.09.2009 during the course of his employment.

2. Briefly stated, it was claimed that the claimant/respondent No. 1 was employed as a driver by respondent No. 2, operating an Auto TSR bearing registration No. D1-IRL-1550; and that on the intervening night of 16/17.09.2009, at around 1:00 A.M., the claimant was returning home from ISBT *via* Outer Ring Road and when he reached near the



red light at Gopalpur on Outer Ring Road, the driver of a tempo, which was moving ahead of the TSR, suddenly applied brakes and stopped and as a result, the TSR being driven by the claimant collided with the tempo and in the melee an unknown truck ran over the claimant's left leg, resulting in crush injuries to the left leg besides fractures to the 4th, 5th, and 6th ribs on the left side, and the 2nd and 3rd ribs on the right side. It was stated that the injured was initially admitted to the Trauma Center and later referred to J.P.N. Hospital.

3. It was thus claimed by the claimant/respondent No.2 that he has sustained 60% permanent disability on his left leg. Evidently, the vehicle was fully insured with the appellant *vide* cover note No. 1502 valid w.e.f. 06.09.2009 to 05.09.2010.

4. Based on the pleadings, the learned Commissioner framed the following issues: -

“i) Whether employer-employee relationship exist between management (R-1) and claimant or not?

ii) Whether accident occurred during the course of and out of employment with the respondent No.1 ?

iii) If so what amount is claimant is entitled and what directions are necessary in this regard?”

5. In the aforesaid backdrop, the learned Commissioner Employee's Compensation found that there existed a relationship of employer and employee between the claimant/respondent No. 1 and the registered owner of the vehicle and the accident occurred during the course of and out of employment with the respondent No.2. Further, the



learned Commissioner assessed and granted a total compensation of Rs. 5,53,363/- with interest as per Section 4A(3)(a) of the E.C. Act @ 12% per annum w.e.f. 18.10.2009 till its realization. The liability to pay compensation was however fastened upon the shoulders of the appellant/Insurance Company.

SUBMISSIONS ON BEHALF OF THE PARTIES

6. It is submitted by the learned counsel for the appellants that the learned Commissioner determined the income of the claimant in the absence of any documentary proof and that the onus to prove gainful employment with respondent No.2 and the corresponding income was upon respondent No.1, which, according to the appellant, was not discharged in accordance with law.

7. Further, it was contended by the appellant that the learned Commissioner wrongly decided the compensation claim without there being any cogent evidence to establish the employer-employee relationship between respondent No.1 and respondent No.2, or to show that the injuries were sustained by respondent No.1 during the course of employment. The claim was allegedly allowed solely on the basis of the testimony of respondent No.1, without any corroborative evidence on record. The learned counsel for the appellant also pointed out that the respondent No.2, in his statement, had stated that respondent No.1 was not working with him at the time of the accident and had only borrowed the vehicle to attend a marriage ceremony of a relative. It was thus submitted that no employer-employee relationship existed between



respondent No.1 and respondent No.2 at the relevant time.

8. The main plank of the submission was that the learned Commissioner failed to consider the appellant's plea that the offending vehicle was not insured with the appellant on the date of the accident. The accident occurred on 16.09.2009 at around 1:20 A.M., whereas the insurance policy commenced from 18.09.2009 and was valid up to 17.09.2010. As such, the appellant argued that the risk was not covered under the policy at the relevant time, and therefore, the appellant was not liable to pay compensation. It had been specifically pleaded and established that the policy document relied upon before the learned Commissioner (cover note No. 1502) was fake, and a police complaint in this regard was filed by the appellant's officer at Police Station Kalkaji. Additionally, the policy in question was an "Act only" policy, and did not cover the risk of a paid driver or passengers.

9. *Per Contra*, the learned counsel for the respondent No. 1 argued that the insurance policy covers the date of accident as the Cover Note No. 1502 dated 06.09.2009 (Ex. AW-1/2) was issued by the agent of the appellant for the period w.e.f. 06.09.2009 to 05.09.2010 and received Rs. 1650/-.

10. The learned counsel for the respondent No. 1 submitted that Sh. Rakesh Kumar Taneja-Assistant Officer of the Appellant has been produced by the Appellant as R2W1 who has deposed on 06.10.2016 and has specifically deposed and admitted in his cross-examination that the agent of the appellant has deposited the premium with the Company



for the vehicle bearing No.DL-IRL-1550 on 16.09.2009 at about 16:47 hours against the Policy No.221605/31/09/02/00003866 and prior inspection of the vehicle on 16.09.2009 the Policy was issued. The accident took place on 16/17.09.2016 at about 1.00 am.

ANALYSIS & DECISION

11. I have heard the learned counsels for the parties and carefully perused the material on record including the digitized Trial Court record.

12. **First things first**, it would be apposite to reproduce the reasons recorded by the learned Commissioner while deciding the issues, which reads as under:-

“10. That, vide disability certificate number No. 252/08/03/10 dated 08/03/2010 issued by the Medical Superintendent Dr. U.C. Verma, G.T.B Hospital, the Medical Board assessed 60% partial permanent disability of the claimant for injuries received by him and as a result of this accident, he has lost his 60% earning capacity.

11. That on examination of pleadings/documents on record, hearing of arguments, respondent stopped appearing after filing reply in this case, it has been established that the claimant was in the employment of respondent management and received injuries out of and in the course of his employment. Further, in view of the above facts, circumstances and the documents on record, there is nothing to disbelieve the unchallenged and unrebutted statement/evidence of claimant. Since the respondent management opted not to defend itself, this authority has no alternative but to believe the facts of the claim petition. As such, Issue No.1 and 2 are decided in favour of claimant

12. That as per the records, the petitioner was 37 years old at the time of the accident. As far as the wages of the claimant is concerned, the claimant has stated that he takes wages as Rs. 8,000/- per month. That in view of the above facts and circumstances and on the basis of 37 years of age the relevant applicable factor 192.14 and Rs. 8000/- per month wages, the payable amount of



compensation is calculated as under:-

i.	Relevant factor of 37 years of age	= 192.14
ii.	60% of last drawn salary @ 8,000	= 4800
iii.	Percentage of disability	= 60%
iv.	Amount of compensation	$\frac{192.14 \times 4800 \times 60}{100} = 5,53,363/-$

13. It is therefore, held that the claimant/petitioner is entitled to receive an amount of Rs. 5,53,363/- from the respondent on account of the injury compensation.

14. That as per the provisions of the Act, the respondent should have make the payment of compensation to the claimant within one month from the date of accident/ it injured i.e. on 16-17/09/2009, but the compensation has not paid accordingly. Therefore, as per the provisions of Clause (a) of Sub Section (3) of Section 4A of the Act, the claimant is also entitled for simple interest on the amount of compensation of. Rs. 5,53,363/- @ 12% p.a. w.e.f. 18/10/2009 till the date of realization of the compensation amount by the respondent.”

13. At the outset, insofar as the findings recorded by the learned Commissioner that there existed a relationship of employer and employee between the claimant and the respondent No.2, the same is beyond any challenge and does not raise any substantial question of law. There is raised no challenge to the quantum of compensation also assessed and awarded by the learned Commissioner.

14. The only plea that has been advanced by the learned counsel for the appellants which is worth consideration is that vehicle was insured as per the policy of insurance from 18.09.2009 to 17.09.2010 whereas the accident occurred in the intervening night of 16th and 17th September, 2009 at about 1.20 a.m. It is also borne out from the record that the vehicle was inspected on 16.09.2009 at 16:47 hrs. In the said circumstance, the issue that is to be answered is whether the



appellant/insurance company can be held liable to make payment of compensation to the injured/respondent No.1.

15. Firstly, it would be relevant to reproduce the provisions of Section 64-VB of the Insurance Act, 1938 which provides as under:

“64VB. No risk to be assumed unless premium is received in advance.—(1) No insurer shall assume any risk in India in respect of any insurance business on which premium is not ordinarily payable outside India unless and until the premium payable is received by him or is guaranteed to be paid by such person in such manner and within such time as may be prescribed or unless and until deposit of such amount as may be prescribed, is made in advance in the prescribed manner.

(2) For the purposes of this section, in the case of risks for which premium can be ascertained in advance, the risk may be assumed not earlier than the date on which the premium has been paid in cash or by cheque to the insurer.

Explanation. —Where the premium is tendered by postal money order or cheque sent by post, the risk may be assumed on the date on which the money order is booked or the cheque is posted, as the case may be.

(3) Any refund of premium which may become due to an insured on account of the cancellation of a policy or alteration in its terms and conditions or otherwise shall be paid by the insurer directly to the insured by a crossed or order cheque or by postal money order and a proper receipt shall be obtained by the insurer from the insured, and such refund shall in no case be credited to the account of the agent.

(4) Where an insurance agent collects a premium on a policy of insurance on behalf of an insurer, he shall deposit with, or dispatch by post to, the insurer, the premium so collected in full without deduction of his commission within twenty-four hours of the collection excluding bank and postal holidays.

(5) The Central Government may, by rules, relax the requirements of sub-section (1) in respect of particular categories in insurance policies. (6) The Authority may, from time to time, specify, by the regulations made by it, the manner of receipt of premium by the insurer.”



16. Thus, a bare perusal of the aforesaid provision would show that the insurer can only assume a risk under an insurance policy unless and until a premium has been received or granted. However, it is also well ordained in law that Motor Vehicle Insurance Policy is effective only from the date specified in the policy and not from the date of expiry of the earlier policy, if any, in respect of the same vehicle even though insured by the same insurer. It is also well settled that the policy of insurance and thereby liability of the insurer to indemnify the insurer would commence from the date and time mentioned in the policy of insurance and no fictional or some other time or date including the time of making of payment of insurance.

17. In support of our decision, we can place reliance on the decision in the case of **Oriental Insurance Co. Ltd. v. Sunitha Rathi**¹, wherein an issue was raised before the Supreme Court for consideration of whether the liability under the policy of insurance issued subsequent to the accident, though it was issued sometime later on the same day, was binding upon the insurer to indemnify the insured. It was a case where the accident occurred at 2.20 p.m. on 10.12.1991 and the insurance policy and cover noted were obtained by the insured/owner of the motor vehicle at about 2.55 p.m. The Supreme Court answered the issue in negative holding that the insurer cannot be held liable to indemnify the insured.

¹ [1998 ACJ 121 (SC)]



18. In another case titled **New India Assurance Co. Ltd. v. Bhagwati Devi**² the policy was taken at 4.00 p.m. on 17.02.1989 but the accident had taken place at 9.00 a.m. on the same day. In the said backdrop it was held by the Supreme Court that since there was a special contract mentioned in the policy at the time when it was brought into effect, the policy would be operative from that time alone and not fictionally from the previous midnight.

19. The sum and substance of the aforesaid discussion is that unless the insurance company accepts or enters into a specific stipulation to indemnify from the time of making payment of the insurance policy, the policy of insurance shall come into effect or become operative from the time and date mentioned in the policy of insurance and not from any time previous thereto.

20. In view of the foregoing discussion, this Court has no hesitation in allowing the present appeal filed by the appellant/insurance company. Accordingly, the impugned judgment-cum-award dated 14.02.2017 is set aside to the extent that it imposes the liability to pay compensation upon the appellant.

21. Resultantly, the respondent No.1/claimant shall be entitled to recover the amount of compensation from the respondent No.2/employer in accordance with law. The amount of compensation, if any, deposited by the appellant/insurance company with the learned Commissioner shall be refunded forthwith.

² [1999 ACJ 534]



22. The present appeal stands disposed of accordingly.
23. The pending application also stands disposed of.

DHARMESH SHARMA, J.

MAY 13, 2025

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