



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Judgment reserved on: 23 April 2025**
Judgment pronounced on: 13 May 2025

+ FAO 422/2018, CM APPL. 36807/2018, CM APPL.
36809/2018, CM APPL. 36810/2018, CM APPL. 36811/2018,
CM APPL. 6724/2024 & CM APPL. 6951/2024

JASPAL SINGH KOHLIAppellant
Through: Ms. Ritu Jain, Adv.

versus

URMILA & ORS.Respondents
Through: Mr. Mahesh Ranjan, Adv. for R-
1 to R-4

HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

DHARMESH SHARMA, J.

1. The appellant, who happens to be both the insured of the motor vehicle and the employer of one Satender Kumar, has preferred this appeal under Section 30 of the Employee's Compensation Act, 1923 ["EC Act"] for setting aside/quashing of order dated 28.06.2017 passed by the learned Commissioner, Employee's Compensation, East District, Delhi ["Commissioner"], whereby the claim for compensation moved by the respondents, being the widow and children of deceased Satender Kumar, was allowed and compensation of Rs.7,02,160/- with interest @ 12% per annum w.e.f. 14.06.2013 has been awarded.



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2. In a nutshell, the respondents No. 1 to 4/claimants moved an application seeking compensation on 22.01.2015 on account of presumed death of Satender Kumar, who was employed as driver under respondent No.2/appellant herein, being the proprietor of M/s. Kohli Transport Co. since 2000. The claimants asserted that Satender Kumar had gone to the office of respondent No.2/appellant on 14.06.2006 and failed to return home thereafter. They were later informed by respondent No.2 that Satender Kumar had been sent to deliver goods in Truck No. HR-38J-229 and would return back within a month.

3. It was stated that even after a month had passed, Satender Kumar had not returned, and the claimants continued to visit respondent No. 2. On each occasion, she was reassured not to worry about her husband's whereabouts, as he was safe and would return soon. However, it was further alleged that when the wife-claimant visited the office of respondent No. 2 on 13.09.2006, she was subjected to abuse. Consequently, she approached the Seemapuri Police Station in Delhi to file a complaint, but neither a complaint nor an FIR was registered.

4. It was stated that on 15.06.2006, the respondent No.2 informed her that the Truck No. HR38J-229 was found in an abandoned condition on 17.06.2006 and the said Truck was released along with the goods loaded upon it on orders from the Court concerned at J.P. Nagar; and both the driver and cleaner were missing.

5. It appears that claimant filed a complaint under Section 200 of the Code of Criminal Procedure, 1973 before the concerned Court at



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Karkardooma Courts, Delhi, which was eventually dismissed *vide* order dated 27.05.2014 for want of jurisdiction.

6. In the said backdrop the claimants raised a plea that whereabouts of Satender Kumar were not known for more than 8 years, and therefore, the cause of action for filing claim petition commenced from 13.06.2014, and accordingly, they instituted the claim petition.

7. Initially, the learned Commissioner, by an earlier judgment dated 20.01.2016, disposed of the claim petition by ordering its closure to enable the claimants to obtain proof of death or a death certificate in respect of the missing person, Satender Kumar. It was further provided that the claimants would be at liberty to reopen the proceedings upon procuring the requisite proof.

8. The claimant Smt. Urmila then preferred a Suit for declaration and mandatory injunction bearing No. 10664/2016 and the same came to be decided by the learned Civil Judge *vide* judgment dated 27.08.2016. It would be apposite to reproduce the findings recorded by the learned Civil Judge while dismissing the suit, which read as under:

“In the light of the aforesaid observation, I find that in the present suit, this Court cannot declare the civil death of Sh. Satender Kumar with effect from 14.06.2006 because the plaintiff has not sought any declaration to the effect that she is entitled to any legal character or properly on account of alleged death of Sh. Satender Kumar because in my view Section 108 of the Evidence Act, 1872 is only a rule of evidence that does not confer any right on a party to seek declaration of civil death of person who has remained and missing/unheard of for more than 7 years and because the plaintiff has no basis to state that Sh. Satender Kumar should be presumed to have died within the jurisdiction of this Court or the defendant No.3 and not at J.P. Nagar, U.P. , where the truck of Sh. Satender Kumar was found by the



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defendant No.1.”

9. On pronouncement of such judgment, a review application was filed by the claimants seeking re-opening of their petition for compensation, which was earlier disposed of *vide* order dated 20.01.2016. It appears that notice was issued to the respondent No.2/ appellant and a reply was filed contesting the claim of the claimants and eventually the learned Commissioner passed the impugned order dated 28.06.2017 and allowed the review as well as claim petition thereby, directing payment of compensation of Rs. 7,02,160/- to the claimants with interest @ 12% per annum w.e.f. 14.06.2013 till realization besides issuing notice to both respondent No.1/Insurance Company as well as respondent No.2 to show cause by penalty under Section 4A(3)(b) of the EC Act be not imposed.

ANALYSIS AND DECISION

10. Having heard the learned counsel for the parties and upon perusal of the record, it may be stated that the only grievance submitted by the learned counsel for the appellant is that after hearing the matter on the review application, the matter was reserved for orders on the review application but instead the claim petition has been decided on merits without framing any issue and without enabling the parties to lead evidence on the matters in issue.

11. Suffice it to state that the learned Commissioner has referred to plethora of authorities to hold that where the whereabouts of the deceased/victim workman has not been known for more than 7 years,



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the claim petition under the EC Act is maintainable and compensation can be granted to the legal heirs. While, there can be no disagreement to the case law that has been cited by the learned Commissioner, certainly the issues were required to be framed and the parties should have been afforded an opportunity to lead evidence on the matters in issue. Although, much time has been elapsed and the respondents/claimants are almost remediless, it would be appropriate that the matter be remanded back to the learned Commissioner with the directions that appropriate issues may be framed and the parties may be allowed to lead evidence; and thereafter the claim petition be decided in accordance with law.

12. Accordingly, the present appeal is allowed providing that the review application moved on behalf of the respondents/ claimants shall stand allowed. The learned Commissioner shall frame appropriate issues and allow the parties to lead evidence and then the matter be decided in accordance with law within six months of this order.

13. A copy of this order be sent to the learned Commissioner, Employee's Compensation, East District, Delhi for information and necessary compliance.

14. The present appeal along with pending applications stand disposed of accordingly.

DHARMESH SHARMA, J.

MAY 13, 2025

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