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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% **Date of decision: 13th May, 2025**+ **FAO 592/2016****VINA DEVI & ORS**

.....Appellants

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

versus

SUDHIR NARWAL & ORS

.....Respondents

Through: **None for R-1****Ms. Hetu Arora Sethi and Mr. Arjun
Basra, Advs. for R-2****CORAM:****HON'BLE MR. JUSTICE DHARMESH SHARMA****DHARMESH SHARMA, J. (ORAL)**

1. The appellants, who are the widow, two children and the mother of the deceased Vikash Kumar, aged about 25 years at the time of the accident, have preferred the present appeal under Section 30 of the Employees' Compensation Act, 1923 ['E.C. Act'], challenging the judgment-cum-award dated 19.08.2016 passed by the learned Commissioner, Employees' Compensation, Labour Department, New Delhi, whereby the claim petition filed by the appellants under Section 22 of the E.C. Act on account of the death of deceased Vikash Kumar in a road accident on 23.12.2014 was dismissed.

2. No one appeared on behalf of the respondent No.1 when the matter was called.

3. Having heard the learned counsel for the appellants as well as the learned counsel for respondent No.2/Insurance Company, and upon perusal of the record, this Court has no hesitation in holding that



the impugned judgment-cum-award dated 19.08.2016 cannot be sustained in law.

4. In a nutshell, the case of the appellants/claimants was that the deceased Vikash Kumar was employed as a driver with respondent No.1 and was driving truck No. HR-37-C-8736 on 23.12.2014 when it met with an accident at 6:30 PM at Piyau Maniyari, G.T. Road, Haryana, under the jurisdiction of P.S. Sonipat. He succumbed to his injuries on 25.12.2014, on which date the matter was reported to the police. Accordingly, the appellants sought compensation to the tune of ₹15,00,000/- jointly and severally from respondent No.1 (employer/insured) and respondent No.2 (insurance company/insurer).

5. Respondent No.1 initially contested the claim petition and, in his written statement, denied the existence of an employer-employee relationship. Respondent No.2/Insurance Company also adopted the same line of defence, disputing the said relationship and thereby seeking to evade liability for payment of compensation to the appellants/claimants. It is a matter of record, however, that the vehicle in question was duly insured at the relevant time, and an additional premium had been charged by respondent No.2/insurer from the insured towards workmen's compensation for two employees.

6. The learned Commissioner, based on the pleadings of the parties, framed the following issues:-

- i. Whether employee-employer relationship exist between deceased Sh. Vilash Kumar and the respondent no.1?
- ii. Whether the accident took place out of and in the course of employment with the respondent no.1?
- iii. If yes, what relief and directions in this regard?



7. It would be apposite to reproduce the findings recorded by the learned Commissioner while decided the claim petition against the claimants, which read as under: -

ISSUE NO.1

The claimant in her claim has submitted that her husband Sh. Vikash Kumar was employed with respondent no.1 as a driver on vehicle bearing no. HR-37-C-8736 and he met with an accident on 23/12/2014 at Piyau Maniyari G.T. Road, Sonipat, Haryana, and sustained injuries out of and during the course of employment with the respondent no.1 Sh. Sudhir NanA/al, H.No.-91, Transport Nagao Ludhiana (30 Defence Colony Ambala Cantt.), Distt. Ambala, H.R. That Sh. Vikash Kumar died due to the injuries sustained by him during the course of employment with the respondent no.1. The claimant has not produced any document which shows that Sh. Vikash Kumar was the employee of respondent no.1. However the claimant has produced an eyewitness Sh. Gunjan Kumar (PW2/A) who has stated in his evidence that Sh. Vikash Kumar was working as driver with Sh. Sudhir Narwal S/o Sh. Sultan Singh. As per the claim statement filed by the claimant the address of Sh. Sudhir Narwal is H.No.-91, Transport Nagar, Ludhiana (30 Defence Colony Ambala Cantt.), Distt. Ambala, H.R., whereas Sh. Gunjan Kumar in his statement before Police which is mentioned in the DD entry of Police Station, Kundli, Sonipat, H.R., has stated that he along with Sh. Vikash Kumar were employed with Western Green Farm House Company of Delhi and were working on vehicle bearing no. HR-37-C-8736. Further Sh. Gunjan Kumar in his cross examination has stated that Police came on the spot of accident at about half an hour after the accident i.e. 23/12/2014. My statement was recorded by Police after due discussion at Police Station but the DD entry in the Police Station has been made on 25/12/2014 shows that Sh. Gunjan Kumar has given his statement to the Police on 25/12/2014 at 7:50 pm. In view of the conflicting statements made by the eyewitness Sh. Gunjan Kumar who is also real brother of deceased Sh. Vikash Kumar, cannot be relied. Further the claimant herself in her cross examination has stated that my husband was working at Mahipalpur but she has not impleaded the company which is based at Delhi. The claimant has failed to prove that Sh. Vikas Kumar was the employee of respondent no.1. Therefore this issue is decided against the claimant and in favour of respondent.

ISSUENO.2&3

The claimant witness in his statement before police has stated that after accident ambulance at 102 was called and Sh. Vikas Kumar



was taken to Government Hospital Sonipat in Government ambulance and after first-aid he was referred to PGMS Rohtak. Further in his cross examination he has stated that MLC in respect of Sh. Vikash Kumar was prepared at Hospital. But the claimant has neither filed admission/discharge summary of the hospital, where Sh. Vikas Kumar is stated to have been admitted after accident, nor MLC is filed on record. The claimant has also failed to prove employer-employee relationship between the respondent and deceased Sh. Vikas Kumar, which is one of the main ingredient for entitlement of compensation under Employees Compensation Act, 1923, therefore Issue no.2 & 3 are also decided against the claimant and in favour of respondent.

8. Unhesitatingly, the aforesaid findings recorded by the learned Commissioner are unsustainable, perverse, and cannot be upheld in law. It is pertinent to mention that, in order to prove the factum of the accident as well as the employer-employee relationship, the claimants examined PW-1, Gunjan Kumar, the brother of the deceased Vikash Kumar. He categorically testified that his brother was driving truck bearing registration No. HR-37-C-8736, which belonged to respondent No.1/employer. He further testified that he himself was employed as a cleaner on the said truck and that the vehicle met with an accident near Piyau Maniyari, G.T. Road, Haryana, under the jurisdiction of P.S. Sonipat. He testified that he too received minor injuries in the accident, whereas his brother sustained grievous injuries and eventually succumbed to the same. He also deposed that his deceased brother was earning a monthly salary of ₹10,000/-.

9. It would be relevant to reproduce the entire cross-examination of PW-1 in *toto* which goes as under:-



“On SA.

I Gunjan Kumar S/o Sh. Girdliari Yadav Aged about 25 years R/o Village/Town Bhandar Post Khapda, PS Tateia Bamvar Praldiaand Tateira District Munger, Biliar.

I, tender my evidence by way of affidavit Ex. PW2/A which bears my signature at point 'A' and 'B'. The contents of the affidavit filed by me is correct as per my knowledge. I am eye witness to the accident. Which occurred on 23/12/2014.

xxxx by Sh. Surai Kumar AR of respondent No.2

I am 7th standard pass. I cannot read and written English vernaculan language. At present am working as a Labour. I know how the accident took place. On 23/12/2014 at about 06:30 A.M. accident took place at Piyau Maniyari GT Road while driving a Truck. I do not know the Truck No. against which our truck was Collided. The front portion of our truck was hit at the back of the other vehicle. After the accident the other truck against which our truck hit run away from the spot. At the time of the accident we would driving at the speed of about 60 KPH. It is correct that other vehicle also damaged in this accident as per my knowledge. The cabin of our truck was destroyed completely. At the time of accident deceased Sh. Vikash was driving our truck. I was setting with deceased Sh. Vikash as I was employed as a cleaner in the same truck. The deceased Sh. Vikas is my real brother and the claimant are in blood relation with me. Police came on the soot of accident at about half an Hour after the accident. My statement was "recorded by the Police after the due discussion at police station. It is correct that I and my deceased brother was working with the same employer. We were employee of Sh. Sudhir Narwal. It is correct that complaint got registered on 25/12/2014 (The witness confronted with the document in Dy. Labour Commissioner office, Claimpetation). It is wrong to suggest that I reported the said accident 23/12/2014 and give the statement to the police on 25/12/2014.it is correct that my brother was taken to the hospital after the accident and the MLC was prepared. I have no knowledge that the same MLC is on record or not. It is wrong to suggest that we have not intaintialy filed MLC of deceased because at the time of the accident he was drunk. It is correct that I have also injured. I also went to hospital with my brother. My MLC was not prepared as the injuries were miner in nature. It is wrong to suggest that at the time of the accident I was not with my deceased brother. It is wrong to suggest that I deposing falsly. It is also wrong to suggest that I am giving flase evidence to help my blood relatives to get the claim compensation from the insurance company.



XXXX by Sh. Raiendra Yadav AR of respondent No.1.

I adopt the cross examination done by AR of respondent No.2.

It is wrong to suggest that deceased Vikash not working with Sudhir narwal as driver who is respondent no.1 in the said petition.

It is correct as per my knowledge that claimant has not filed any written document in respect of employment with Mr. Sudhir Nanwal.”

10. It is interesting to note that there was no defence or suggestion put forth by the respondents to the effect that the deceased was not driving the ill-fated truck at the time of the accident. It is apparent that, since the victim driver Vikash Kumar had sustained grievous injuries, PW-1 Gunjan Kumar was completely engrossed in ensuring proper medical treatment for his brother. It was beyond his control if the police did not choose to register an FIR at the earliest possible time. In any case, the record contains DD No. [time not legible] dated 25.12.2014, in which Gunjan Kumar reported the entire incident to the police, almost verbatim as stated in his affidavit Ex. PW1/A. Notably, there was no meaningful cross-examination of PW-1 by respondent No.1. No effort was made to elicit any information from PW-1 regarding how the deceased came to be driving the truck. There was no defence or suggestion that any other person was deputed as a driver at the relevant time.

11. Evidently, it appears to be a case where respondent No.1/employer has taken a completely sham and evasive defence in an attempt to escape financial liability for payment of compensation to the claimants. This is further fortified by the testimony of RW-1 Sudhir Narwal, who admitted that he was the owner of the truck



bearing registration No. HR-37-C-8736 and had secured its release on *superdari*. He also confirmed that the registration number of the said vehicle was mentioned in the DD entry recorded on 25.12.2014 at P.S. Sonipat. Though he denied that the deceased was employed as his driver, strangely he attempted to conceal the material truth by claiming ignorance regarding who was driving the vehicle at the time of the accident.

12. In view of the aforesaid discussion, the impugned judgment-cum-award dated 19.08.2016 is hereby set-aside. The matter is remanded back to the learned Commissioner, Employees' Compensation, Labour Department, New Delhi, with a direction to assess the quantum of compensation after hearing the parties, permitting them to lead further evidence, if so required, and thereafter pass an appropriate order/award in accordance with law.

13. The parties shall appear before the learned Commissioner, Employees' Compensation, Labour Department, New Delhi, for further hearing on 02.06.2025. The learned Commissioner is further directed to dispose of the matter and pass a reasoned decision on the claim application within six months.

DHARMESH SHARMA, J.

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