



2025:DHC:3792



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

Date of decision: 13th May, 2025

+ **FAO 82/2019 & CM APPL. 9373/2019**

RAM VIJAY RAUTAppellant

Through: **Mr. Prashant Kumar Sisodia &
Mr. Shyam Singh Sisodia,
Adv.**

versus

TARA CHAND & ANRRespondents

Through: **Ms. Rakhi Dubey, Mr. Sandeep
Dubey & Ms. Arpita
Srivastava, Adv. for R-2.**

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

% **13.05.2025**

DHARMESH SHARMA, J. (ORAL)

1. The appellant/plaintiff has preferred this appeal under Section 30 of the Employee's Compensation Act, 1923 ('EC Act') challenging the impugned judgment cum award dated 03.08.2018 whereby the learned Commissioner, Employee's Compensation, North District, has dismissed the claim petition no.WC/26/ND/17 titled as *Sh. Ram Vijay Raut v. Sh. Tara Chand & Anr.* whereby the appellant/claimant sought compensation for suffering injuries during the course of his employment with the respondent no.1.

2. Having heard the learned counsel for the appellant and respondent no.2/insurance company and on perusal of the record, this Court has no hesitation in holding that the impugned judgment cum award dated 03.08.2018 cannot be sustained in law.



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3. Briefly stated, it was the case of the claimant that he was employed with the respondent no.1 as driver on vehicle bearing no.DL-1GB-7424 and drawing wages at the rate of rate of ₹12,000/- per month. He claimed that on 16.05.2014, he was on duty and was driving the truck from Meerut to Delhi and at about 4.00 a.m. when he reached Mohan Nagar Signal, the driver of the another vehicle which was going in front suddenly applied brakes without giving any signal and as a result of which the aforesaid vehicle rammed into the dumper, resulting in grievous injuries to him. He claimed that intimation of the accident was given to P.S. Sahibabad, UP *vide* GD No.37 dated 16.05.2014 and he was admitted and given treatment for his injuries at GTB Hospital, Shahdara, Delhi.

4. Claiming that he sustained injuries out of his employment with the respondent no.1, the claimant/appellant claimed compensation with interest from the date of the accident till its realization from the respondents who are liable to pay the same jointly and severally.

5. The respondent no.1 was served notice of the claim petition but he did not appear in the matter and was, therefore, proceeded *ex parte*.

6. Respondent no.2/insurance company, however, contested the claim petition thereby agitating that no document in the nature of employment certificate, wages/salary certificate and driving license of the claimant besides the permit and fitness of the vehicle had been supplied. It was claimed that the claimant did not have an effective and valid driving license on the date of accident, and therefore, it was not liable to indemnify the respondent no.1/registered owner for any loss or damage for any injury sustained by the claimant.

7. Learned Commissioner, Employee's Compensation based on



the pleadings of the parties framed the following issues:-

- i. Whether the accident which caused injury happened during and in course of employment.
- ii. What amount of compensation is applicant entitled to ?
- iii. Relief, if any?"

8. The appellant/claimant in order to prove his case came in the witness box and he was examined as CW-1. On the other hand, Sh. Dharmendra Arya, an official of the respondent no.2 was examined as R2W-1. At this juncture, it would be apposite to reproduce the reasons that prevailed in the mind of the learned Commissioner, Employee's Compensation while dismissing the claim petition which read as under:-

"8. From the perusal of record of the case. I find that the Claimant has filed discharge summary of GuruTeg BahadurHospital (Ex. CW1/1) in which there is over writing on the date of admission and also on the date of discharge and the same has not been authenticated by the doctor concerned. Otherwise also the discharge certificate has not also been proved by summoning the concerned doctor. Further the Claimant has filed on record a complaint given by Tara Chand Respondent No. 1 / owner of the vehicle to SHO Sahibabad and the same has also not been proved by summoning the SHO Sahibabad or even the complainant / Respondent No. 1 in this case.

9. Further I find that the Claimant has not filed on record the MLC even though in the discharge summary (not proved) it is written that pain and wound B/L LR blowing head on colliding standing truck Mark CW1/1. Further I find that the Claimant has not filed on record any GR / LR (the Claimant has stated that sugar was loaded from Meerut and the truck was coming to Uttam Nagar Delhi and the sugar was to be delivered to M/s Vipin Traders). Further the Claimant has not filed on record any toll tax receipt for the goods being carried to UP or being imported in Delhi while commuting the journey between Meerut and Delhi. Further the Claimant in his cross examination has deposed that he was having the bill for sugar loaded from Meerut but the same has been taken by Respondent No. 1 / Tara Chand. However no application was made to summon Respondent No. 1 as a witness or the proprietor of M/s Vipin Trader as a witness in this case.

10. Further I find that the Claimant has not filed any documentary proof of his employment mainly pay slip, wage slip etc received



from the employer.

11. Further I find that the accident is alleged to have been due to colliding of the vehicle No DL-IGB-7424 in which the Claimant was the employee with another vehicle in front of him. In the cross examination the Claimant has stated that the vehicle in his front would be running at a speed of 30 km. However, no registration number has been given of the offending vehicle.

12. I find that R2W1 Sh. Dharmender Kumar who is examined as defence witness on behalf of Respondent No. 2 has admitted that the name of driver is Ram Vijay Raut in the OD claim. However, for allowing OD claim by the insurance company it is not necessary that the driver should be the employee of the owner of the vehicle. The OD claim can be allowed even when the vehicle is being driven by a person who would be having a proper driving licence but would not be the employee driver. No trustworthy evidence is led by the Claimant that he was the employee driver of the owner of the truck.

13. Further I find that the medical bills (Ex. CWI/2 Colly 09 pages) have been filed on record in which the name of the hospital which has prescribed the medicines has not been filed on record. Further I find that copy of RTI application (Ex. CWI/5) also does not help the case of the Claimant.”

9. The learned Commissioner also relied on the decision in the case of **Ravjibhai Chhotubhai Waghela v. Prashant Kishan Shinde**¹, wherein it was held that merely because the appellant/claimant happens to be an employee of someone, he would not be eligible for grant of compensation unless the employee is able to substantiate that he has suffered injuries of the nature specified under the EC Act. It was thus opined that the appellant/claimant had failed to prove that he was employed as a driver with the respondent no.1 and though OD claim was sanctioned by the respondent no.2/insurer, the same was on a different footing.

10. First things first, the testimony of CW-1 that he was employed as a driver with the respondent no.1 was not assailed in his cross-examination except for giving bald suggestion on behalf of the



respondent no.2/insurer. Mere fact that the claimant was not able to produce any documentary proof of his employment in the nature of pay slips would not be decisive. In our country, we can take cognizance of the fact that such kind of formal appointment letters are rarely issued and even the wages are paid in cash instead of any electronic mode.

11. Reference can be invited to the decision of this Court in the case of **Oriental Insurance Co Ltd. v. Hari Prasad Kamkar²**, wherein while dealing with the objection thrown by the appellant/insurance company that the deceased was not employed as a cleaner on the insured truck, this Court summarised the legal position as under:-

15. At this juncture, it becomes imperative to refer to relevant provisions in the EC Act. Section 2 (1) (dd) defines the word ‘employee’ to mean *a person who is recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle*. Further, Section 2 (1) (e) of the Act defines the term ‘employer’ as under:-

“ ‘employer’ includes any body of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer, and, *when the services of an employee are temporarily lent or let on hire to another person by the person with whom the employee has entered into a contract of service or apprenticeship, means such other person while the employee is working for him*” **{italics emphasized}**

16. A careful perusal of Section 2(e) of the EC Act would show that it is an inclusive definition and whether a person is temporarily hired by another person, who is an employee or has entered into contract of service with the employer, the person so hired also becomes an employee of the principal employer. In this regard, reference can be made to a decision cited by the learned counsel for the respondent in the case of **Fazlu Rahman Ansari (supra)** wherein the Supreme Court categorically held that “Section 2(1) (e) of the Act would cover the kind of employment by virtue of which the workman was rendering services and even services through sub-contractors are covered in the definition”.

¹ (2014) 6 Mah LJ 333

² 2023 SCC OnLine Del 7475



17. Incidentally, in another decision by Bombay High Court in case titled *Mohammed Anis Mohd. Eleya Khan (supra)* cited by the learned counsel for the respondent, it was held that “ a cleaner, who is engaged or employed by a driver during the course of a trip, also is deemed to be an employee of the owner of the vehicle”. It was a case where driver was paid some amount in lump sum and out of the same, driver was allowed to engage somebody to work as a cleaner with him on the truck.

18. Evidently, in the instant case the registered owner had not appointed any cleaner directly as such but at the same time cognizance of the fact can be taken that it is a normal practice in the transport business where the driver is paid lump sum amount and he engages somebody to work as a cleaner with him on the truck. This is a practical commercial practice prevalent in transport business. Be that as it may, there is no denying the fact that even at the time of examination of the driver of the ill fated truck, no request was made by on behalf of the appellant/Insurance Company seeking permission to cross-examine the driver.

19. Therefore, a contest thrown by the appellant/Insurance Company in the instant appeal that there was no ‘employer-employee’ relationship, is not *worth its salt* since the appellant despite having vast resources at its disposal failed to conduct any field survey so as to produce any evidence that the deceased was not working as a cleaner on the ill-fated truck at the time of accident or that the version of the driver was false. There is no gainsaying that a bald denial on the part of the registered owner on the said aspect is hardly of any legal consequence so as to support the appellant.

12. Insofar as the decision in the case of *Ravjibhai Chhotubhai Waghela (supra)* is concerned, it was a case where the injured was held to be a party paying rent or commission for taking a motor vehicle on hire from the registered owner and thereby sharing profits from the income earned from plying the vehicle. It was in the said context that it was held that the injured was not getting the wages and remuneration from the registered owner of the vehicle and therefore, there was no relationship of employee-employer between them and the claim was dismissed.

13. Be that as it may, it was acknowledged by R2W1/Sh.



Dharmender Kumar in his cross-examination states that the OD claim i.e. damage claim to the truck was also sanctioned by the respondent no.2/insurer, and it was further acknowledged that in the OD claim the name of the driver was found to be Sh. Ram Vijay Raut, that is the present appellant/claimant. It is well-known fact that the insurance companies have their own paraphernalia of surveyors & investigators and since the OD claim was sanctioned, it is not brought out that the appellant/claimant had lodged any false or bogus claim seeking compensation on account of injuries sustained in the accident.

14. As per the disability certificate placed on the record by the appellant, he had sustained 47% of permanent disability/impairment in relation to the right lower limb, which certificate is CW-1/3. There is no evidence that such injuries were attributable to some other mishap or accident other than the one in question. It is also brought on the record that the policy of insurance had been subscribed by the respondent no.1/registered owner for the vehicle in question for the relevant time so much so that an additional premium had been paid by the insured for additional liability covering the insurance for their workmen upto three employees.

15. In view of the foregoing discussion, this Court finds that the impugned judgment cum award dated 03.08.2018 is not sustainable in law. The appellant/claimant has been able to prove that there existed a relationship of employee-employer between the respondent no.1/registered owner/insurer and appellant/claimant.

16. Hence, the instant appeal is allowed. The matter is remanded back to the Commissioner, Employee's Compensation with a direction to allow the parties to lead any further evidence, if so advised, and



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assess the quantum of compensation payable to the appellant/claimant within six months after hearing the parties in accordance with law.

17. The parties shall appear before the learned Commissioner, Employee's Compensation for further hearing on 02.06.2025.

DHARMESH SHARMA, J.

MAY 13, 2025
Ch/Sa