



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

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+ **FAO 260/2023 & CM APPL. 52260/2023**

BAJAJ ALLIANZ GENERAL INSURANCE CO LTD.....Appellant
Through: Mr. A.K. Soni, Advocate (through
V.C.)

versus

SH RINKU & ANR.Respondents
Through: Mr. Ram Kanwar, Advocate for
Respondent No. 1.
Ms. Ayushi Bansal, Advocate for
Respondent No. 2/company.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeal has been filed by the insurance company assailing the order dated 08.06.2023 passed by the learned Commissioner under Employee's Compensation Act, 1923, Govt. of NCT of *Delhi*, Labour Department, Central District, *Delhi* in Case No. CEC/05/I/CD/23/3363.

Vide the impugned order, the learned Commissioner allowed the compensation application filed by respondent no.1/injured and directed the appellant to pay compensation of Rs.9,98,304/- along with interest @ 12% per annum with effect from 25.05.2019 till the date of realisation.

Notably, pursuant to the aforesaid, an amount of Rs.14,99,480/-



stands deposited and receipt dated 29.09.2023 issued by the learned Commissioner has been placed on record.

2. Respondent no. 1/*Rinku* filed the subject claim application seeking injury compensation, claiming that he was employed as a cleaner on the vehicle bearing no. HR-55P-2910, which was owned by respondent no. 2. It was claimed that he was employed on the aforesaid vehicle and had undertaken a round-trip journey from *Delhi* to *Hyderabad*. On the return journey, when the vehicle reached *Madhya Pradesh*, it met with an accident. While the driver of the vehicle died due to injuries caused in the accident, the claimant survived and remained admitted in the hospital for about one week. On account of the accident, he suffered an injury to his right lower limb, because of which he has become 100% disabled for the purpose of his employment as a cleaner, as he is not in a position to mount the vehicle, attend to a punctured tyre, or do *tirpaul* (to tie a tarp). The said vehicle was owned by respondent no. 2 and insured by the present appellant, who had charged additional premium for three persons. It was further claimed that the claimant was 30 years of age and could not be re-employed on account of his injury.

3. Mr. *Soni*, learned counsel for the appellant, raised two-fold submissions. It was contended that the learned Commissioner erred in passing the impugned order in respect of the fact that the owner had denied the employer-employee relationship. It was next contended that 26% permanent physical disability was wrongly taken as 100% loss of earning capacity.

4. Learned counsel for the claimant/respondent no. 1 defended the



impugned judgment. It was submitted that this Court has limited scope in a challenge raised under Section 30 of the Employee's Compensation Act, 1923 (hereinafter "EC Act"). Moreover, it was argued that the impugned award is well-reasoned and was passed upon proper appreciation of the facts and evidence that came on record.

5. Learned counsel for respondent no. 2 submits that the employer-employee relationship was denied, though the vehicle was insured.

6. Coming first to the scope of Section 30 of the EC Act, it is indeed settled through a number of decisions that the scope of appeal under Section 30 is limited. Under the scheme of the EC Act, the Commissioner is the last authority on facts. Being a welfare legislation, the Parliament thought it fit to restrict appeal only to a substantial question of law (CR: Golla Rajanna & Ors. Vs. Divisional Manager & Anr.¹).

7. Keeping the aforesaid limited scope in view, I shall now deal with the contention that the employer-employee relationship remained unproved.

8. In the present case, the injured claimed that he had been employed as a cleaner on a truck by the deceased driver. The vehicle, being a truck, was engaged for transportation of goods, and the driver would engage a cleaner to help him in the long journey, which also had the tacit consent of the employer. Though the employer completely washed his hands off the incident by denying any knowledge of the injured being employed on the said vehicle, the injured had examined one *Mahar Singh*, another driver on a different truck employed by respondent no. 2.

9. The testimony of the said *Mahar Singh* reveals that he claimed to be

¹ (2017) 1 SCC 45



employed as a driver by respondent no. 2 on another truck for a trip from *Delhi to Hyderabad*. He deposed that on 24.04.2019 at about 7.00 AM, he received a call from one *Dinesh*, who was also a driver employed by respondent no. 2, about the subject vehicle bearing no. HR-55P-2910 meeting with an accident. He reached the place of the accident and came to know that both the driver and cleaner were admitted to a government hospital in *Burhanpur, Madhya Pradesh*. While the driver had expired, the cleaner had sustained grievous injuries. He received the dead body of the deceased and took the injured in his vehicle to native place. He categorically deposed that the injured was posted as a cleaner on the damaged vehicle. He also withstood the cross-examination conducted on behalf of the employer as well as the present appellant. He deposed that he started his return journey from *Mirchal in Andhra Pradesh to Delhi* on 25.04.2019. He admitted that, as per company policy, only one driver is employed on one vehicle. He further stated that the only proof that he was employed with the company were the cash vouchers given by the company. It is pertinent to note that no suggestion was given that this witness was not employed by the employer.

10. The injured also underwent the rigours of cross-examination and reiterated that the accident occurred on 24.04.2019 at *Burhanpur, M.P.*, where he was admitted. He denied the suggestion that the injuries suffered by him were not on account of the said accident. He deposed that he was employed by the deceased driver and was being given a salary of Rs.8,000/- per month along with Rs.200/- per day as food allowance. He stated that due to the accident, he was unable to perform any work on a day-to-day basis as



he sustained 26% permanent disability. The injured also placed on record his disability certificate dated 06.12.2019 issued by the Medical Board of *Aruna Asaf Ali Hospital*.

11. At this stage, the Court takes note of clauses (e) & (f) of Section 2 sub-section (1) of the EC Act, which read as under:

“2. Definitions.—(1) In this Act, unless there is anything repugnant in the subject or context,—

** * **

(e) “employer” includes anybody of persons whether incorporated or not and 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;

(f) “managing agent” means any person appointed or acting as the representative of another person for the purpose of carrying on such other person’s trade or business, but does not include an individual manager subordinate to an employer;

** * *”*

12. A plain reading of the position of law would indicate that a cleaner hired by the driver of a truck also falls in the definition of an employee who can maintain a claim application to receive compensation under the EC Act. A gainful reference in this regard may be made to the decision of the Coordinate Bench of this Court in *Oriental Insurance Co Ltd. Vs. Hari Prasad Kamkar & Ors.*² wherein, while relying on the decision of the Supreme Court in *Fazlu Rahman Ansari Vs. National Insurance Company Limited*³, the Court came to the conclusion that when a person is temporarily hired by another person who is an employee or has entered into a contract of service with the employer, the person so hired also becomes an employee of

² 2023 SCC OnLine Del 7475

³ (2019) 13 SCC 806



the principal employer. In *Fazlu Rahman Ansarai (supra)*, the services rendered through sub-contract were held to be governed under Section 2(1)(e) of the EC Act. The relevant observations from *Oriental Insurance Co. Ltd. (supra)* are as follows:

“13. Needless to state that the material placed on record has been perused. At the outset, this Court finds that the present appeal is bereft of any merits. First things first, there is no denial to the fact that deceased sustained injuries in a motor vehicle accident involving truck belonging to the registered owner in the intervening night of 13th & 14th September 2016. The accident was reported vide DD No. 42/16 marked PW-1/A on 15.09.2016 at PS Kotwali Kehat, District Bulandshar, Uttar Pradesh. It is also an admitted fact that the deceased had suffered multiple grievous injuries all over his body, rushed to Civil Hospital, Bulandshar, Uttar Pradesh, and thereafter he was referred to Lok Nayak Hospital, Delhi, where he was admitted on 15.09.2016 and eventually succumbed to his injuries on 21.09.2016. The post mortem report bearing No. 971/2016 on 21.09.2016 categorically opines that the deceased died due to multiple injuries sustained in a motor vehicle accident.

14. In the face of such facts established on the record, although the registered owner of the truck denied that he had ever employed the deceased, there is unrebutted and uncontroverted testimony of the truck driver Mr. Bhola Singh that the vehicle was loaded with iron metal and they met with an accident in the area of Bulandshar, Uttar Pradesh while driving from Durgapur, West Bengal to Delhi. He testified without any challenge that the deceased was a cleaner accompanying him at the time of accident. In his cross-examination he also deposed that deceased was getting wages of Rs. 6,000/- per month.

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”.

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.”

13. The Bombay High Court in *Mohd. Anis Mohd. Eleya Khan Vs. Iltiza & Co. & Ors.*⁴, under similar facts and circumstances, held that a cleaner

⁴ 1999 SCC OnLine Bom 569



who is engaged or employed by a driver during the course of a trip is deemed to be an employee of the owner.

14. In the present case, the fact that the driver was employed on the concerned truck as a cleaner has been categorically stated by another driver, *Mahar Singh*, who was employed by the same owner. *Mahar Singh* also deposed as a witness before the learned Commissioner that the insurance company charged a premium for three persons per vehicle, i.e., an additional premium or charge, which would include a driver and two other persons. The factum of the accident is not denied by the employer, and even otherwise, a copy of the FIR reflecting the name of the deceased as well as the injured has also been placed on record.

15. Keeping in view the limited scope of the present appeal, this Court has no hesitation in holding that no grounds are made out to interfere with the finding of the learned Commissioner that the injured, though engaged by the deceased driver, is an employee under Section 2(1)(e) of the EC Act and is accordingly entitled to compensation.

16. Coming to the next contention that the learned Commissioner erred in treating 26% permanent disability as the loss of 100% earning capacity. The Court is reminded of the observations of the Supreme Court in *Golla Rajanna (supra)*. In the said case, the Supreme Court observed that the findings of the learned Commissioner are not to be re-appreciated by the High Court by giving its own finding on disability without basis.

17. In the present case, the job of the cleaner involves helping the driver in tasks such as changing tyres, roping, *tirpaul*, etc., which the injured claimed he was unable to do after the injury suffered in the accident. The



record indicates that the learned Commissioner made a reference to the Medical Board of *Aruna Asaf Ali Hospital* to medically examine the injured and issue a disability certificate. The reference read as under:

“In assessing the earning capacity: you shall have due regard to the percentages of loss of earning capacity in relation to different injuries specified in Schedule I of the Act.”

18. The Medical Board, upon examining the injured, gave its report wherein, noting the dislocation of the right ankle, it assessed the physical disability to be 26% permanent physical disability. The learned Commissioner referred to the decision in *Rayapati Venkateswara Rao Vs. Mantai Sambasiva Rao & Anr.*⁵ (delivered by Justice N. V. Ramanna, as His Lordship then was). In the said decision, the injured had sustained 20-25% physical disability and had suffered the injury while employed as a cleaner; it was held that the injured was incapacitated and unable to perform his duties, and even though the physical disability was 20-25%, the loss of earning capacity was held to be 100%.

19. The meaning of total disability has been explained in *Pratap Narain Singh Deo Vs. Srinivas Sabata & Anr.*⁶, where the 4-Judge Bench of the Supreme Court observed that when a carpenter suffered amputation of the left hand from the elbow, the same was held to be a 100% loss of earning capacity.

20. Though learned counsel for the appellant contended the finding of 100% loss of earning capacity could only have been given by the doctor who examined the injured, the same is in complete contrast to the observations of

⁵ II (2001) ACC 300

⁶ (1976) 1 SCC 289



the Supreme Court in Raj Kumar vs. Ajay Kumar⁷, wherein the Court summarized the relevant principles as under:

“13. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.”

21. The learned Commissioner reached his conclusion based on the aforesaid precedents and the practical facts of the present case, rightly holding that the injured suffered loss of 100% earning capacity on account of the accident.
22. Finding no ground to interfere with the impugned judgment passed by the learned Commissioner, the present appeal is dismissed.
23. Let the remaining sum of interest be deposited with the learned Commissioner within two weeks from today, and the concerned compensation amount along with the interest deposited be immediately released to the injured thereafter.
24. The present appeal, along with pending application, is disposed of in the above terms.

⁷ (2011) 1 SCC 343



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25. A copy of this judgment also be communicated to the learned Commissioner.

**MANOJ KUMAR OHRI
(JUDGE)**

FEBRUARY 12, 2026
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