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BEFORE THE COMMISSIONER, EMPLOYEE'S COMPENSATION  
GOVT. OF NCT OF DELHI  
OFFICE OF THE DY. LABOUR COMMISSIONER  
LABOUR DEPARTMENT (EAST DISTRICT)  
VISHWAKARMA NAGAR, JHILMIL COLONY, DELHI-110095

No.CWC/D/ED/03/2013 7043-46

Dated:- 08/10/12

In the matter of:-

1. Smt. Seema W/o Late Sh. Dalip Kumar
2. Parul D/o Late Sh. Dalip Kumar
3. Pari D/o Latge Sh. Dalip Kumar
4. Komal D/o Late Sh. Dalip Kumar
5. Santosh Devi (Mother of deceased Sh. Dalip Kumar)  
All R/o H No. C-59, Ashok Nagar,  
New Delhi- 110018

.....Claimant

Through its Advocate Sh. Karan Bal  
Chamber No. 164-165, Western Wing  
(Near State Bank of India)  
Tis Hazari Courts, Delhi-110054

..... Claimant AR

Versus

1. Sh. Narinder Singh S/o Sh. Joginder Singh  
R/o 138, Rani Garden, Shashtri Nagar,  
Delhi-110031
2. M/s HDFC EGRO General Insurance Company Ltd.  
Plot No. C-9, 3<sup>rd</sup> Floor, Pearl Best Heights-II,  
Netaji Subhash Place, Pitampura, Delhi-110034

.....Respondent

**ORDER**

1. A claim petition was filed by Smt. Seema and ors. under Employee's Compensation Act, 1923 against Sh. Narinder Singh (R-1) and M/s HDFC EGRO General Insurance Company Ltd. (R-2), claiming death compensation of Rs.15,00,000/- alongwith interest before the Commissioner on 11.12.2012. In the claim, it is mentioned that Sh. Dalip Kumar was employed as a 'Driver' with R-1 who met with an accident on 07.11.2012 while driving a TSR No. DL-1RL-4343 Near Mayur Vihar, Metro Station under the jurisdiction of Pandav Nagar, Police Station. The deceased was 34 years of age and was drawing Rs.10,000/- salary p.m. The deceased was the only bread earner of the family and the petitioners are dependent upon him. The accident was registered at P.S. Pandav Nagar, vide FIR no.491/2012 and post-mortem was conducted at GTB Hospital. The petitioner alleged that R-1 & R-2 both are liable for



payment of death compensation in the accident during the course of employment.

2. Upon issuance of summon dated 11.12.2012 and 07.02.2013, the respondent no.2 appeared and filed W.S. wherein it is mentioned that the policy is not covered under Employee's Compensation Act, 1923. Under section 10 of the Act, the petitioner has not issued notice. The deceased was not the employee of R-1 and the fatal injury not caused in the course of employment. The deceased driver was not holding valid license to drive the said vehicle. The accident took place out of the jurisdiction of compensation court. The claim has been filed to harass the respondents and to gain monetary benefits. The deceased has taken the Alcohol at the time of accident which is mentioned in the MLC of Lal Bahadur Shastri Hospital. The liability of R-2 is subject to compliance of section 64 VB of the insurance Act. The permit and fitness certificate of the vehicle is also required under the Act. The insurance was taken by the R-1 vide policy number 2312300183909800000 for the period 07.01.2012 to 06.01.2013. The said policy is subject to terms & conditions of the M.V.Act. It was prayed by the R-2 to dismiss the petition as non-maintainable as per above mentioned averments.

3. The R-1 filed their WS stating that the application is not supported by affidavit as per Hon'ble Delhi High Court Rules. The claim filed by petitioner is not maintainable because the true facts have not been mentioned and is based upon fabricated facts. The claimants have misrepresented the case before the Commissioner and is without any merit. The claim is been filed without any court fees and hence with mala-fide intention. The deceased Sh. Dalip Kumar was not the driver with R-1 and was not doing any job with R-1, but sometimes was running the TSR of R-1 occasionally on rental basis. When the TSR was free and available it was given to deceased on per day rental basis. The R-1 has denied that the deceased was drawing salary of Rs.10,000/-. No documents have been filed by the petitioner to show that the deceased was employee of R-1. The R-1 prayed that CEC to dismiss the petition as per the above mentioned averments.

4. Two separate rejoinders but having similar contents were filed by the petitioner on the WS of R-1 and R-2 in which all the statement made by R-1 & R-2 were denied re-affirming the contents of the petition and relying upon the fact that the vehicle owner Sh. Narinder Singh has insured his vehicle with the insurance company.

5. Amended claim application was filed by the counsel of petitioner under section 151 of the C.P.C stating that due to the typing mistake in the original application the deceased was mentioned as unmarried person whereas he is married and accordingly requested to accept the amended application.

6. On 21.10.2013, following issues were framed :-

1. Whether the deceased was employee with the respondent or not ?



II. Whether the deceased died during the course of employment ?

III. Whether the claimant is entitled to get compensation on behalf of deceased ?

7. The claimant filed her evidence by way of affidavit which was tendered on 26.05.2015 and was cross examined by counsel of R-1 and R-2 separately.

8. On 15.07.2015, witness of R-1 Sh. Narinder Singh appeared whose evidence was tendered and cross examined by counsel of R-2 and counsel of petitioner.

9. Upon summoning the attending doctor from Lal Bahadur Shashtri Hospital alongwith relevant records, Dr. Rakesh Singh appeared on 23.09.2015 alongwith records who was further cross-examined by counsel of petitioner and counsel of R-1 separately.

10. Written arguments were filed by claimant and R-2 on 29.10.2015. Parties have also filed supporting judgments in favour of their contentions.

11. On 30.11.2015/01.12.2015, the then Ld. CEC vide separate speaking order has dismissed the claim petition of the applicants under section 3(1) of the Act as deceased was found to have taken alcohol which has also been reflected in the MLC.

12. Against the aforesaid order dated 30.11.2015/01.12.2015 the claimant Smt. Seema and others filed an appeal before the Hon'ble High Court of Delhi vide FAO No. 413/2016 and while deciding the said appeal the Hon'ble Court vide its order dated 18.12.2017 set-aside the order of the CEC and remanded the case back to the CEC to record all the findings on all the issues involved in the claim petition and parties were directed to appear before the CEC on 08.01.2018.

13. On 08.01.2018, 24.01.2018 and 02.02.2018, since none appeared on behalf of claimant, the petition was dismissed in default.

14. On 16.02.2018, the petitioner counsel filed application restoration of case under Order IX and Rule 4 of the CPC giving the reasons that due to traffic jam he could not reach the Jhilmil Colony on time while coming from Rohini Court and therefore the case was already dismissed by the time when he reached the CEC court and accordingly prayed the CEC to set-aside the order dated 02.02.2018. Thereafter, summon was issued to R-1 and R-2 for appearance before the CEC on 27.03.2018 through dasti. However, on this date the claimant did not file service report of summon and upon his request another dasti summon was issued for appearance of other parties on N.D.O.H 09.08.2018.

*Duty*



15. On 09.08.2018, the then Ld. CEC vide separate speaking order dismissed the restoration application as no service report supporting by affidavit was filed by the claimant counsel.

16. On 16.10.2018, another application was filed by the claimant side for review of the order dated 09.08.2018 dispatched on 13.08.2018 under Order 47 and Rule 1 of the CPC. Accordingly summon was again issued to both R-1 and R-2 for their appearance on 26.11.2018.

17. On 14.05.2019, proxy counsel Sh. Ajeet Singh appeared on behalf of claimant but R-1 and R-2 remained absent and therefore summon dated 27.05.2019 was issued to both R-1 and R-2 for appearance on 16.07.2019. On 02.08.2019, the claimant was directed to provide copy of the review application to the respondent for filing their reply. Although R-1 appeared on 02.08.2019, 19.09.2019 and 06.11.2019, the reply was not filed by the R-1 which was later filed on 21.11.2019 alongwith judgments on non-maintainability of review application. Summon was issued to claimant and R-2 for appearance on 20.12.2019. On 23.01.2020, all the parties' representative appeared and reply filed by R-1 was supplied to claimant for filing their comments within 02 weeks and case was kept for order. On 12.02.2020, rejoinder was filed by the claimant counsel on the reply of R-1, which was supplied to R-1 counsel. Till the end the insurance company did not file any reply of the review application of the claimant.

18. On perusal of the complete case file, it appears that the claimant has always remained very casual after the case was remanded back from the Hon'ble Delhi High Court. The case was twice dismissed second on 09.08.2018 and first on 02.02.2018. The Hon'ble High Court remanded the case back for deciding all the issues involved in the claim vide its direction dated 18.12.2017. In the instant case, proper evidence was lead by the parties on 28.09.2015, 15.07.2015, 26.05.2015 and therefore there is no point in going through the same process of evidence, chief and cross examination of the parties. The issues framed in this case on 21.10.2013 is decided as under:-

*Dalip*  
**Issue No.1- Regarding employment relationship of the deceased with the respondent no.1.** On perusal of para 8 of the WS, it can be seen that the deceased was not the driver of the Respondent no.1 but was running the TSR of Respondent no.1 occasionally on per day rental basis which was paid by the R1 to the deceased. In the rejoinder to this W.S. nothing substantial is placed on record by the claimant side. During the chief and cross examination of Smt. Seema it has come before the CEC that the deceased wife was not bale to produce any proof of employment of her husband with the R1. Smt. Seema gave the similar statement during her cross examination by R1 & R2 counsel.

**Issue No.2 - Regarding death during employment.** It is true that late Sh. Dalip Kumar met with an accident while driving the TSR therefore the death during running the vehicle is admitted; however, the death during the employment



with the R-1 has not been proved by the claimant beyond doubt. At most, it appears to be the case of utilizing some other unused vehicle (TSR) to gain self employment on rental basis which is mostly prevalent in the case of three vehicle, Rikshaw/Auto Rikshaw drivers.

Issue No.3 - Regarding compensation under the Act - Since there is no employment relationship proof at the level of claimant and also the R-1 has not admitted the employment of the deceased and prayed for dismissal of the claim petition, Issue no.1 &2 already decided against the claimant and therefore there is no question of granting any relief under the Employees Compensation Act.

Since all the three issues 1, 2 & 3 are decided against the claimant in view of the non-prevalence of employment relationship which is the basis for applying the provisions of Employees Compensation Act 1923.

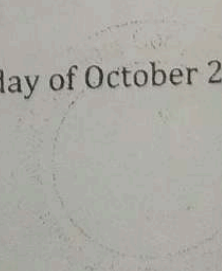
19. There could be some cases decided by the CEC Court granting relief to the deceased TSR driver, this does not means that all the TSR drivers are eligible for compensation under the Act as the Facts varies from case to case.

20. The claimants are at liberty to approach the MACT Court in case they wish to seek relief from the Insurance Company under the provisions of Motor Vehicles Act as Employees Compensation Act is not Attractable in this case.

In view of the above, the case filed by Smt. Seemfa and others against Sh. Narinder Singh & others is disposed off as per the directions of Hon'ble Delhi High Court.

21. The delay in passing the order is due to the twice incidence of lock down associated with Covid-19 in the year 2020 and 2021 and transfer of the CEC during the interregnum period.

Given under my hand and seal of this 7<sup>th</sup> day of October 2021

  
*U.K. Sinha*  
07/10/2021  
(U.K. Sinha)  
Commissioner, Employee's Compensation/  
Dy. Labour Commissioner

*U.K.*