

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

FAO 4/2019 & CM. APPL. 295/2019

Reserved on : 31.10.2022

Date of Decision : 04.11.2022

IN THE MATTER OF:

M/S ICICI LOMBARD GENERAL INSURANCE COMPANY LTD

..... Appellant

Through: Mr. Ankit Kalra, Advocate

versus

SAROJ GAUTAM & ORS

..... Respondents

Through: Mr. S.N. Parashar, Advocate for respondents
No.1 and 2

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J.

1. The appellant has preferred the present appeal under Section 30 of the Employees' Compensation Act, 1923 (hereinafter, referred to as the 'Act'), assailing the order dated 16.04.2018 passed by the learned Commissioner, Employees' Compensation in Case No.CEC-D/NE/18/2017/1125-1127, whereby death compensation was awarded to respondent Nos.1 and 2/claimants and the appellant directed to deposit Rs.8,90,840/- alongwith interest @ 12% p.a. with effect from 19.07.2017 till realization.

2. Brief facts, as emerge from the records, are that respondent Nos.1 and 2 had filed a petition under Section 22 of the Act, claiming compensation on account of death of their son/*Nitish Gautam*. As per the averments, *Nitish*

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Gautam, aged 20 years, was employed as a driver with respondent No.3 on the latter's car bearing *No. DL 7CM 0135* and was drawing wages @ Rs.12,000/- per month. The car was insured with the appellant. On 19.07.2013, while *Nitish Gautam* was driving the car in discharge of his duty at about 2:15 P.M., it went out of control near *Sector-7, GT Road, Haryana* and collided with an Innova Car coming from the opposite side. The body of *Nitish Gautam* was recovered by police officials and his postmortem was conducted at Government Hospital, Sonipat, Haryana. On account of fatal injuries received by the deceased in the accident, an FIR bearing No.207/2013 was registered under Sections 279/337/304A IPC at P.S. Murthal, Sonipat, Haryana.

3. Learned counsel for the appellant contended that the claimants failed to establish employer-employee relationship between the deceased/*Nitish Gautam* and respondent No.3/employer in the proceedings before the learned Commissioner. In this regard, he submitted that respondent No.3 is in fact real uncle of the deceased and could not have been his employer. In support of his submission, learned counsel referred to the pleadings made before the MACT in cases filed separately on behalf of the present claimants as well as one *Srishti Rustagi*, who was statedly a co-passenger of the deceased on the date of the accident. To support his case, reliance was also placed by learned counsel on a decision of the Karnataka High Court in Divisional Manager, United India Insurance Company Ltd., Davanagere v. Gujjamma and others reported as **2004 SCC OnLine Kar 30**.

4. On the other hand, learned counsel for respondent Nos. 1 and 2 refuted the submissions made on behalf of the appellant by contending that the employer-employee relationship between deceased and respondent No.3 was duly proved in the proceedings before the learned Commissioner.

5. I have heard learned counsels for the parties as well as perused the entire material placed on record.

6. At the outset, it is pertinent to observe that in terms of Section 30 of the Act, a challenge to the order of a Commissioner can be made only on a substantial question of law. In this regard, the Supreme Court in North East Karnataka Road Transport Corporation v. Sujatha reported as **(2019) 11 SCC 514** has held the scope of an appeal under Section 30 of the Act to be limited to substantial questions of law, and that findings of facts proved either way are not to be likely interfered with. Relevant excerpt from the decision is reproduced hereunder:-

“9. At the outset, we may take note of the fact, being a settled principle, that the question as to whether the employee met with an accident, whether the accident occurred during the course of employment, whether it arose out of an employment, how and in what manner the accident occurred, who was negligent in causing the accident, whether there existed any relationship of employee and employer, what was the age and monthly salary of the employee, how many are the dependents of the deceased employee, the extent of disability caused to the employee due to injuries suffered in an accident, whether there was any insurance coverage obtained by the employer to cover the incident etc. are some of the material issues which arise for the just decision of the Commissioner in a claim petition when an employee suffers any bodily injury or dies during the course of his employment and he/his LRs sue(s) his employer to claim compensation under the Act.

10. The aforementioned questions are essentially the questions of fact and therefore, they are required to be proved with the aid of evidence. Once they are proved either way, the findings recorded thereon are regarded as the findings of fact.

11. The appeal provided under Section 30 of the Act to the High Court against the order of the Commissioner lies only against the

specific orders set out in clauses (a) to (e) of Section 30 of the Act with a further rider contained in the first proviso to the section that the appeal must involve substantial questions of law.

12. In other words, the appeal provided under Section 30 of the Act to the High Court against the order of the Commissioner is not like a regular first appeal akin to Section 96 of the Code of Civil Procedure, 1908 which can be heard both on facts and law. The appellate jurisdiction of the High Court to decide the appeal is confined only to examine the substantial questions of law arising in the case.”

7. Recently, the same view has been voiced again by the Supreme Court in Shahajahan and another v. Shriram General Ins. Co. Ltd. and another reported as **2022 ACJ 203**.

8. The only challenge made in the present appeal is to the employer-employee relationship between the deceased and respondent No.3, for which learned counsel for the appellant has relied upon the pleadings in MACT case by co-passenger/*Srishti Rustagi*, wherein it was stated that none of the passengers in the car was employed on the day of the accident.

9. On this aspect, it is noted that before the Commissioner, the claimants had categorically averred that the deceased was employed with respondent No.3, who was also admittedly his uncle. Respondent No.3 (Respondent No.1 before the learned Commissioner) supported the case of the claimants and his averments were summarized in the impugned order as follows:-

“Respondent No.1 admitted that deceased Nitish Gautam was employed by him as driver and he was paid salary Rs. 12,000/- p.m. Plus Rs. 100/- as diet money. Respondent No. 1 stated that deceased Nitish Gautam was employed as driver by him on his vehicle number DL-7-CM-0135 and the said vehicle was insured with respondent No. 2 i.e. ICICI Lombard General Insurance Company Ltd., vide Certificate cum Policy No.

3001/62159525/02/000 valid from 21 November 2012 to 20 November 2013 and the said insurance company is liable to pay the compensation.”

10. It is not disputed by the appellant that the car in which the deceased was travelling on the date of the accident was insured with it. It is also not disputed that the insurance policy in question was valid and subsisting on the said date.

11. Though reliance is sought to be placed by the appellant on the statement of co-passenger/*Srishti Rustagi*, as well as written statement of respondent No.3 filed before the MACT, this Court is of the opinion that the same are of no avail to the appellant in view of the specific averments made in the claim proceedings before the learned Commissioner by the claimants as well as admission by respondent No.3 in his written statement, to the effect that at the time of the accident, the deceased was employed with respondent No.3. It is worthwhile to note that co-passenger/*Srishti Rustagi* was admittedly not examined in the proceedings before the learned Commissioner.

In this view of the matter, reliance sought to be placed by the appellant on the decision in Gujamma (Supra) is misplaced. The contention that the employer-employee relationship between the deceased and respondent No.3 is not established as respondent No.3 is an uncle of the deceased, is specious and being meritless is rejected.

12. The appellant having failed to make out any case for interference, the impugned order is upheld and the present appeal is dismissed alongwith the pending application. Let the compensation amount deposited by the appellant with the learned Commissioner, alongwith any interest accrued thereupon, be released to the claimants forthwith.

13. A copy of this judgment be communicated to the concerned Commissioner for information.

(MANOJ KUMAR OHRI)
JUDGE

NOVEMBER 04, 2022

