

(2014) 05 DEL CK 0189

Delhi High Court

Case No: FAO No. 45072012 and C.M. No. 18843/2012 (Stay)

Reliance General
Insurance Co. Ltd.

APPELLANT

Vs

Sapna Devi

RESPONDENT

Date of Decision: May 6, 2014

Acts Referred:

- Employees Compensation Act, 1923 - Section 30

Citation: (2015) ACJ 1817 : (2015) 144 FLR 633 : (2014) LLR 701 : (2014) 175 PLR 13

Hon'ble Judges: Valmiki J. Mehta, J

Bench: Single Bench

Advocate: Manish Kaushik, Advocate for the Appellant; Pratima N. Chauhan, Advocate for the Respondent

Judgement

Valmiki J Mehta, J.

This first appeal is filed u/s 30 of the Employee's Compensation Act, 1923 (hereinafter referred to as "the Act") challenging the impugned judgment of the Commissioner dated 13.8.20123 by which the Commissioner allowed the claim petition filed by the respondent Nos. 1 to 5 herein. Whereas the case of the respondents before the Commissioner was that the deceased employee Sh. Yogesh Kumar died as a result of stress/strain of/while driving as a driver of the vehicle bearing No. HR-55K-3214 (truck) as there was no second driver, the case of the appellant-insurance company was that as per the medical records filed by the respondents themselves, the deceased Sh. Yogesh Kumar died on account of malaria and thus the death did not happen out of and in the course of employment.

2. Learned counsel for the respondents has argued by placing reliance upon the judgment of the Supreme Court in the case of [Smt. T.S. Shylaja Vs. Oriental Insurance Co. and Another](#), that findings of fact can not be interfered with by this Court u/s 30 of the Act. Reliance is also placed on the judgment of the Supreme Court in the case of [Mst.](#)

[Param Pal Singh through Father Vs. National Insurance Company and Another](#), that a driver when he dies on account of stress/strain on driving, death therefrom will be an accident arising out of and in the course of employment.

3. In my opinion, this appeal is liable to be allowed because there exists a complete perversity in findings of facts and which results in arising of a substantial question of law. Where two views are possible and Commissioner adopts one view, then it would be a question of finding of fact which is not interfered by the appellate court u/s 30 of the Act, but, when only one view is possible as per the record/evidence and the Commissioner does not take only such possible view but takes a view/arrives at a conclusion, totally against the record/evidence, then there arises a substantial question of law. In the present case medical records do not show the death on account of stress/strain of driving, and in fact the medical record Ex. AW1/4 shows that platelet counts on account of malaria had fallen to as low as 16,000 whereas the normal platelet counts are between 1.5 lacs to 4.5 lacs/cumm and which therefore had resulted in the death. Admittedly, there is no other medical record filed by the respondent to show the death of the deceased Sh. Yogesh Kumar allegedly on account of stress and strain in driving. Once the only record shows death of the deceased Sh. Yogesh Kumar on account of having suffered from malaria, death caused on account of malaria, is surely not a death on account of stress/strain in driving and consequently the findings of the Commissioner are perverse in holding that the deceased died on account of an accident arising out of and in the course of employment. In fact, a reading of the impugned judgment shows that the Commissioner has skirted the issue of death of the deceased employee on account of malaria as per the medical record. In view of the above, appeal is allowed. Impugned judgment of the Commissioner dated 13.8.2012 is set aside and the claim petition will stand accordingly dismissed. Since the respondents have received part of the compensation, it will be open to the appellant/insurance company to recover the same from the respondents in accordance with law. Parties are left to bear their own costs.