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**(2014) 02 DEL CK 0039**  
**In the Delhi High Court**  
**Case No : FAO No. 234 of 2013**

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|------------------------------------------|------------|
| ICICI Lombard General Insurance Co. Ltd. | APPELLANT  |
| Vs                                       |            |
| Smt. Sonia and Others                    | RESPONDENT |

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**Date of Decision :** 14-02-2014

**Acts Referred:**

Employees Compensation Act, 1923 — Section 2(n) 3 30  
Penal Code, 1860 (IPC) — Section 302 34

**Citation :** (2015) 3 ACC 514 : (2015) ACJ 1108

**Hon'ble Judges :** Valmiki J. Mehta, J

**Bench :** Single Bench

**Advocate :** Manjusha Wadhwa and Ms. Harsh Lata, for the Appellant; M.K. Rathee and Mr. J.P. Sikka, Advocates for R-1 to 6, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Valmiki J. Mehta, J.

CM No. 8497/2013 (delay 25 days)

For the reasons stated in the application, delay is condoned.

CM stands disposed of.

FAO 234/2013 & CM No. 8498/2013(stay)

1. This first appeal is filed u/s 30 of the Employees' Compensation Act, 1923 (in short "the Act") by the insurance company impugning the judgment dated 22.1.2001 by which the claim petition filed by the dependants of the deceased Sh. Rakesh Yadav, employee/driver, was allowed. The facts as pleaded in the claim petition were that the deceased Sh. Rakesh Yadav was employed with Gopi Chand, respondent no. 1 before the Commissioner (respondent no. 7 herein), to drive the vehicle TATA 407 No. UP-17-C-0540. The salary of the employee Rakesh Yadav was Rs. 4500/- and a daily allowance of Rs. 50/- per day. It was pleaded in the claim petition that on 1.5.2008 in the morning owner/Sh. Gopi

Chand insisted that deceased employee drive the vehicle for supplying of milk to certain areas and which the deceased refused because he knew that there was a dispute between Gopi Chand and certain persons in the area and thus a mishappening may occur. However, on being compelled, the deceased Rakesh Yadav took the vehicle for supply of the milk. During the performance of his duty, at Maujpur; Delhi, at about 7.20 a.m., the deceased Rakesh Yadav was attacked by one Vikram and his two sons as they were having grudge for milk not being supplied. As a result of beating, the deceased Rakesh Yadav received multiple injuries and he was declared dead when brought to the G.T.B. Hospital. An FIR u/s 302/34 IPC bearing no. 178/2008 was registered with the police station Seelampur, Delhi where the accused persons are facing trial. It was pleaded that the beating of the deceased employee Rakesh Yadav took place when he was on duty i.e. the accident arose out of and in the course of employment, and therefore the dependants were entitled to compensation under the Act.

2. Sh. Gopi Chand/employer appeared and filed his written statement denying that the deceased Sh. Rakesh Yadav was his employee. It was pleaded that the vehicle in question was sold by respondent no. 1 to one Islamuddin.

3. On an application filed by the claimants/dependants, Islamuddin was impleaded, however, Islamuddin did not appear and did not file any written statement.

4. The appellant-insurance company was respondent no. 2 before the Commissioner. It filed its written statement inter alia pleading that the death of the deceased employee Sh. Rakesh Yadav did not arise out of and in the course of employment and that the deceased was not having a valid driving licence. It is also argued in tandem with the case of the employer Gopi Chand that since there was no relationship of employer and employee between Rakesh Yadav and Gopi Chand the claim petition was bound to be dismissed.

5. The Commissioner has framed the necessary issues, and given his findings thereafter in paras 7 and 11 to 14 of the impugned judgment and which read as under:-

7. Out of the pleadings of the parties the following issues were framed by my predecessor authority:-

(i) Whether there existed any employer-employee relationship between the deceased and Respondent?

(ii) Whether the claimants are entitled to the claimed amount, if so to what amount?

11. The respondent no. 1 and III were proceeded ex-parte.

12. On behalf of respondent no. II/Insurance Company, Legal Manager namely Sh. Mohit, Raj Nagar filed his affidavit alongwith computerized copy of policy No. 3003/63548937/00/000 insuring vehicle No. UP-17C-0540, a public carrier

vehicle with Shri Gopi Chand as insured. He also filed particular of Driving Licence in the form of Accident Information Report of Sh. Rakesh Kumar vide bearing No. R-640/BPT/2002 dated 2.1.2002 issued by the R.T.O., Bhagpat, U.P. which was issued for driving motor-cycle and LMV(T) only valid for the period 2.1.2002 to 1.1.2005 only. He was also cross examined by the A.R. of the petitioner.

13. The matter was placed for arguments. Written arguments alongwith case laws were filed by the petitioner and oral argument were also heard of the parties.

14. I have to give my findings issue-wise as under:

#### ISSUE NO. 1

The case of the petitioner is that her husband namely Rakesh Yadav was employed with the respondent no. 1 as driver at his vehicle Tata 407 No. UP-17C-0540. That on 01.05.008, in the morning at about 7.20 a.m. the deceased/driver namely Rakesh while engaged as driver by the respondent no. 1 and he was driving the said vehicle on the same day at Maujpur, Delhi and was supplying the milk during this process he was attacked by the accused Vikram and his two sons. After receiving the multiple injuries he was taken to the G.T.B. Hospital, where he was declared dead. A case was registered vide FIR No. 178/2008, U/s. 302/34 IPC with P.S. Seelampur, Delhi. In support of the claim, petitioner namely Soniya filed an affidavit alongwith documents, certified copy of the FIR, Charge-sheet, Post Mortem Report, Site Plan and statement of witness. Petitioner namely Ram Chander also filed his affidavit alongwith the documents i.e. Certified copy of FIR, Superdari order of the said vehicle dated 3.5.2008, Superdarinama of the said of the said vehicle and Election I-card of respondent no. 1. On going through the documents filed by the claimants i.e. FIR, Charge-sheet, P.M.R., Site plan and statement of witness, it is established that deceased namely Rakesh Kumar Yadav husband of claimant no. 1 was employed as driver on the above said vehicle. It is also established as driver on the above said vehicle. It is also established that incident occurred on 1.5.2008 out of and during the course of employment. After going through the documents which was filed by petitioner namely Ram Chander i.e. Superdari order, Superdarinama and Election I-card of respondent no. 1 proved that respondent no. 1 was the owner of the above said vehicle at the time of accident. It is further established that the insurance policy of the vehicle shown the name of the owner as Gopi Chand. In this accident deceased sustained grievous injuries and he was taken to the G.T.B. Hospital, where he was declared dead by the doctor of said hospital. Therefore, in the light of the FIR, P.M.R., Chargesheet and Superdari order I hold that deceased driver Rakesh Kumar Yadav died during the course of and out of employment with respondent no. 1 not respondent no. III.

In view of the above discussion Issue no. 1 is decided in favour of the petitioner and against the respondent.

(underlining added)

6. A reading of the aforesaid paras show that the Commissioner gave a finding of fact of existence of the relationship of an employer and the employee between Sh. Gopi Chand and the deceased Sh. Rakesh Yadav on the basis of documents in the criminal case being FIR, charge-sheet and statement of witnesses. The Commissioner has also arrived at this finding of fact of the relationship of employer and employee on account of the Superdari order, Superdarinama and election I-card of Gopi Chand and accordingly it was held that Gopi Chand was the owner of the vehicle at the time of accident.

7. The issue with respect to the deceased not having a valid driving licence and therefore whether the appellant herein could be liable has been dealt with in paras 18 and 19 of the impugned judgment and which read as under:-

18. The respondent no. II/Insurance Company contended that the policy of the vehicle issued to the respondent no. 1 and the driver of the vehicle was not holding a valid driving licence, the vehicle was not driven as per the terms and conditions of the permit issued to it. Hence the answering respondent not liable to pay any compensation. The respondent no. II has also filed Accident Information Report form with his affidavit.

The A.R. of the petitioner has argued that it is the matter between the owner of vehicle and insurer and victims should not be allowed to suffer. The policy of insurance which the insurance company issued was a representation upon which the authorities to third parties are entitled to act. In this regard, he drew my attention towards a case titled as Oriental Insurance Co. Ltd. Vs. Hazira Begum and Others, Karnataka High Court:-

The compensation that is being paid is to be the workman and not either to driver, skilled artisan or mechanic as the case may be. The accent of the legislation is on the question whether the victim of the accident was a "workman" as defined in the Act. If the legal representatives of the deceased establish that the deceased was a "workman" as defined u/s 2(n) of the Act, then the provision of the Act is attracted. Section 3 holds the employer liable for payment of compensation if such a workman suffers personal injury in an accident arising out of and in the course of employment. The legislation thus anchors the claim on three premises, namely (i) Workman, (ii) Personal injury/death, (iii) Accident arising out of and in the course of employment. If these three requirements exist, then, the employer is liable to pay compensation under the Act. The question whether the worker violated any of the conditions of agreement between the employer and the Insurance Company may not be a germane issue. Unless there is clear terms in the contract of insurance excluding their liability, it is not open to this Court to accept the plea of Insurance Company by a process of judicial interpretation of the provisions of the Motor Vehicles Act.

In another judgment titled as National Insurance Co. Ltd. Vs. Mastan and Another, ) held that:-

Section 143 of the 1988 Act limits its applicability to the 1923 Act in a case where the liability arises despite the fact that the accident might have taken place without any fault on the part of the driver of the vehicle or others in control thereof. Under the 1923 Act also, as noticed hereinbefore, a workman is entitled to compensation even if no negligence is proved against the owner or any other person in charge of the vehicle. It is thus, not possible to extend the applicability of Section 143 of the 1988 Act to include Chapter XI thereof to a claim under the 1923 Act.

... In a case falling under the 1923 Act, negligence on the part of the owner may not be required to be proved. Therein what is required to be proved is that the workman suffered injuries or died in course of employment...

The A.R. of petitioner drew my attention towards Accident Information Report Form regarding the Driving Licence of deceased which is incomplete and is not attracted to the provision of W.C. Act.

19. In view of the above discussions and keeping in view the case laws of the Apex Court and various superior courts and I order the respondent no. II/ Insurance Company to make the payment to the petitioner and they are also at liberty to recover the same from the respondent no. 1/owner of the vehicle through appropriate court. If he has breached any terms and conditions of the policy at the time of accident/death of the driver.

8. Before me, on behalf of the appellant-insurance company, it was firstly argued that once there was no relationship of employer and employee the appellant-insurance company cannot be fastened any liability. Secondly, it was argued that the death in the present case was a murder u/s 302 IPC and therefore, the incident cannot be an accident arising out of and in the course of employment. Thirdly and finally, it is argued that since the deceased did not have a valid driving licence, no liability can be fastened on to the appellant-insurance company. Reliance in support of this third argument is placed upon the judgment of the Supreme Court in the case of National Insurance Co. Ltd. Vs. Vidhyadhar Mahariwala and Others, Counsel for the dependants/claimants/respondent nos. 1 to 6 in this Court refuted the arguments urged on behalf of the appellant and prayed for dismissal of the appeal.

9. Before advertng to the arguments urged on behalf of the appellant, it is necessary to note that an appeal which is filed u/s 30 of the Act can only be entertained if there is a substantial question of law. Findings of facts unless they are perverse do not result in arising of a substantial question of law. This Court hearing an appeal u/s 30 is not empowered to substitute its own findings for the findings and conclusions of the Commissioner once two views are possible and plausible.

10. The first argument urged on behalf of the appellant does not merit acceptance because the Commissioner has arrived at a finding of fact that there is a relationship of employer and employee between the deceased Rakesh Yadav

and Sh. Gopi Chand in view of the documents filed in the criminal case being FIR, chargesheet, Superdari order and Superdarinama and which documents showed that it was Gopi Chand who was the owner of the vehicle. I may also state that the insurance policy is admittedly in the name of Gopi Chand as the owner of the subject vehicle. The applicants filed affidavits by way of evidence of the widow of the deceased Smt. Sonia, (respondent no. 1 herein) as also the father Ram Chander (respondent no. 5 herein) that the deceased was working as a driver with Sh. Gopi Chand. Once this was done alongwith the documents of the criminal case, I do not find that there is any perversity in the finding of fact that the deceased Rakesh Yadav was an employee of Gopi Chand who was the owner of the subject truck. I may note that though the respondent no. 1 before the Commissioner-Sh. Gopi Chand contended that he had transferred the vehicle to one Islamuddin who was impleaded as respondent no. 3 before the Commissioner, however, whether or not the vehicle has been transferred was to be proved either by the appellant herein or by Sh. Gopi Chand but none of them have led any evidence that the vehicle in question stood transferred to Islamuddin.

11. Therefore, the position which emerges is that there was a valid insurance policy with respect to the subject vehicle, incident of death took place during the currency of the policy, as per the documents which emerged on record Gopi Chand was the owner of the vehicle, and consequently, there is no perversity in the conclusions arrived at by the Commissioner that the deceased was an employee of Gopi Chand. No substantial question of law arises so far as this argument which is urged on behalf of the appellant is concerned.

12. The second argument urged on behalf of the appellant also has no merit because the expression "arising out of and in the course of employment" is wide enough for taking into its fold a death of employee who is attacked while performing the duties of a driver. In the present case, the applicants before the Commissioner have sufficiently discharged their onus of proof by filing of their own affidavits as also the documents in the criminal case including the FIR which was registered that deceased Rakesh Yadav was in fact attacked by the accused Vikram and his two sons which caused serious injuries to the deceased Rakesh Yadav who was declared as brought dead at G.T.B. hospital. Therefore, the accident in this case, being the murder of the deceased, clearly arises out of and in the course of employment. The expression "arising out of and in the course of employment" does not mean that there has to be death only because of driving of the vehicle. Accordingly, I reject the second argument which is urged on behalf of the insurance company.

13. The last argument which is urged before this Court is that since the deceased did not have a valid driving licence, and the deceased only had a driving licence of LMV(T), and that too validity of which licence was only from 2.1.2002 to 1.1.2005 and the accident in question happened on 1.5.2008, the case is squarely covered by the judgment in the case of Vidhyadhar Mahariwala (supra)

which holds that once there is no valid driving licence, the insurance company cannot be held to be liable.

14. Before discussing the third argument urged on behalf of the appellant-insurance company, let me reproduce the relevant para of the appellant-insurance company of its written statement before the court below on the basis of which this argument of the appellant-insurance company not being liable is urged. This para-(i) of the preliminary objection of the written statement reads as under:-

(i) That the driver of the vehicle was not holding a valid driving licence and hence the terms and conditions of the insurance company have been violated. Thus no liability can be imposed on the answering respondent.

15. The law with respect to what is the extent of enquiry which an owner has to undertake with respect to validity of a driving licence is now made clear by the judgment of the Supreme Court in the case of United India Insurance Company Ltd. Vs. Leheru and Others, and para 20 of the same judgment reads as under:-

20. When an owner is hiring a driver he will therefore have to check whether the driver has a driving licence. If the driver produces a driving licence which on the face of it looks genuine, the owner is not expected to find out whether the licence has in fact been issued by a competent authority or not. The owner should then take the test of the driver. If he finds that the driver is competent to drive the vehicle, he will hire the driver. We find it rather strange that Insurance Companies expect owners to make enquiries with RTO's, which are spread all over the country, whether the driving licence shown to them is valid or not. Thus where the owner has satisfied himself that the driver has a licence and is driving competently there would be no breach of Section 149(2)(a)(ii). The Insurance Company would not then be absolved of liability. If it ultimately turns out that the licence was fake the Insurance Company would continue to remain liable unless they prove that the owner/insured was aware or had notice that the licence was fake and still permitted that person to drive. More importantly even in such a case the Insurance Company would remain liable to the innocent third party, but it may be able to recover from the insured. This is the law which has been laid down in *Skiandia*, *Sohan Lal Passi's* and *Kamla's* cases. We are in full agreement with the views expressed therein and see no reason to take a different view.

16. A reading of the aforesaid para in the case of *Leheru* (supra) shows that the owner and the claimants before the Commissioner should be put to notice by a specific pleading of the insurance company that the driving licence of the workman/driver is not valid or fake or hit by the terms of the policy. It is only when a specific defence is raised against the employer or the dependants of the deceased that the employer or the dependants can come into the witness box and depose that while employing the driver a valid driving licence was shown. In the present case, I have already reproduced preliminary objection no. 1 of the

written statement of the appellant before the Commissioner, and suffice to state that the defence is far too general. A defence that there is no valid licence can have many connotations and many aspects. A defence of invalid driving licence can mean that the driving licence is a fake driving licence or that it is not valid on the date when the accident took place or a driving licence is for a different type of vehicle than the vehicle which the deceased driver was driving at the time of accident etc. In the facts of the present case, in my opinion, it was incumbent upon the insurance company in view of the ratio laid down in the case of *Lehru* (supra) if the appellant-insurance company was of the opinion that the driving licence was not valid on the date of the accident or being only for driving of LMV(T), then such specific defences ought to have been pleaded in the written statement so that the applicants/claimants were put to notice for leading evidence in this regard. Without a specific pleading in this regard the applicants/claimants cannot be taken by surprise by the witness of the insurance company for the first time stating in the affidavit by way of evidence that on the enquiry from the RTO it transpires that the driving licence was not valid on the date of the accident and was of LMV(T) only. It is settled law that no amount of evidence can be looked into on a pleading which does not exist. Also, this aspect of lack of valid driving licence for the date of the accident had to be put as a specific defence because in such a case applicants/claimants could have given the date of commencement of the employment of the deceased respondent no. 4 and proved/deposed that driving licence was valid on the date of commencement of the employment which was seen by the owner of the vehicle. In the absence of the requisite specific pleading, the claimants/applicants therefore were not required to lead any evidence with respect to the validity of the driving licence on the date of the accident. As already held in *Lehru's* case (supra) the owner of the vehicle does not have to make full-fledged enquiry with respect to the validity of the driving licence except at the commencement of the employment unless and until subsequently it is specifically brought to the notice of the employer that the driver is driving with a fake driving licence or an expired driving licence. As already stated in the absence of any such pleading by the appellant, any evidence which is led, which is beyond the pleading, especially as it causes prejudice and surprise to the applicants cannot be considered either by this Court and need not have been considered by the Commissioner also.

17. The judgment relied upon on behalf of the appellant-insurance company in the case of *Vidhyadhar Mahariwala* (supra) has no application in the facts of the present case because in para 4 of the cited judgment it is specifically noted that the insurance company had filed its objections before the MACT taking up a specific stand of the driving licence being not valid on the date of the accident and therefore the appellant-insurance policy had no liability. As already stated above, there is no specific defence of this nature in the pleading which is filed by the appellant-insurance company before the Commissioner, and therefore the ratio in the decision of *Vidhyadhar Mahariwala* (supra) has no application to the facts of the present case which are different. In view of the above, I do not find

any merit in the appeal, and the same is therefore dismissed, leaving the parties to bear their own costs.