

(2018) 01 DEL CK 0195

In the Delhi High Court

Case No : First Appeal From Order No. 319 Of 2016, Civil Miscellaneous
Application No. 25100 Of 2016

New India Assurance Co Ltd

APPELLANT

Vs

Amresh & Ors

RESPONDENT

Date of Decision : 04-01-2018

Acts Referred:

Indian Penal Code, 1860 — Section 304

Employee's Compensation Act, 1923 — Section 3, 30

Citation : (2018) 01 DEL CK 0195

Hon'ble Judges : J.R. Midha, J

Bench : Single Bench

Advocate : Ravinder Singh, Raveesha Gupta, Rachna Aggarwal

Final Decision : Dismissed

Judgement

J.R. Midha, J

1. The appellant has challenged the order dated 10th February, 2016, whereby the Commissioner, Employees' Compensation has awarded compensation of Rs.4,30,560/- to respondents No.1 to 3.

2. Respondents No.1 to 3 are the widow and two minor children of late Satinder and they filed an application for compensation before the Commissioner, Employees' Compensation claiming that late Satinder was working as a helper-cum-conductor on bus No.DL-1PB-1490. On the night of 28th May, 2004, Satinder was sleeping on the roof of the aforesaid bus parked opposite house No.2150/3, Patel Nagar near Shadipur Depot, Delhi when Bijender @ Vijay, driver of the bus, picked up a quarrel with Satinder and Satinder fell down from the roof of the bus and suffered fatal injuries.

3. The Commissioner, Employees' Compensation held that the deceased was working as a helper-cum-conductor with Respondent No.4 at bus No.DL-1PB-1490 and he fell down from the aforesaid bus during the night of 28th

May, 2004 after a quarrel with Bijender @ Vijay and suffered fatal injuries. The Commissioner relied upon the judgment dated 26th September, 2011 of the Sessions Court whereby Bijender @ Vijay was convicted under second part of Section 304 IPC.

4. Learned counsel for the appellant urged at the time of hearing that the deceased was not having a valid licence at the time of the accident; the FIR under Section 304 IPC was registered against the son of Respondent No.4 which is not an accident in terms of Section 3 of the Employees Compensation Act; and the incident did not occur during the course of employment as the accident occurred during the night hours when the deceased was sleeping.

5. The record of the Claims Tribunal has been perused. The record contains the certified copy of the judgment dated 26th September, 2011, whereby the Additional Sessions Judge has convicted Bijender @ Vijay under Part II of Section 304 IPC holding that the accused Bijender @ Vijay pushed deceased, Satinder from the roof of the bus on the intervening night of 28th/29th May, 2004, which resulted in the untimely death of Satinder. The judgment also records that Satinder was working on bus bearing No.DL-1PB-1490 and on the intervening night of 28th and 29th May, 2004, Satinder was sleeping on the roof of bus No.DL-1PB-1490 when the accused Bijender @ Vijay beat him and took away Rs.1,000/- from his pocket and threw him down from the roof of the bus which resulted in fatal injuries. The law, in this regard, is well-settled that a murder can be an accident for the purpose of Section 3 of the Employees Compensation Act. Reference be made to the judgment of Supreme Court in Rita Devi v. New India Assurance Co. Ltd., 2000 ACJ 801 (SC) and to the recent judgments of this Court in United India Insurance Co. Ltd. v. Kamlesh, 2017 SCC OnLine Del 9853, Ram Niwas Gupta v. Bindu Singh, 2017 SCC OnLine Del 7847 and Star Press v. Meena Devi, 2017 SCC OnLine Del 7849.

6. There is no merit in the appellant's contention that the deceased did not have any driving licence. The deceased was a helper-cum-conductor and, therefore, the deceased was not required to hold a valid driving licence.

7. No substantial question of law arises for consideration in this appeal, which is a sine qua non under Section 30 of the Employees Compensation Act. That apart, there is no merit in the contentions urged by the appellant.

8. The appeal is dismissed.

9. Pending application is disposed of.

10. List for reporting compliance on 12th January, 2018 for compliance of the order dated 12th April, 2017 by State Bank of India, Tiz Hazari Court Branch.

11. Copy of this judgement be given dasti to counsels for the parties as well as to Mr. Sanjiv Kakra, Advocate under signatures of Court Master.