
(2014) 05 DEL CK 0009

In the Delhi High Court

Case No : FAO 193/2013

The Oriental Insurance Company Limited

APPELLANT

Vs

Satender Kumar

RESPONDENT

Date of Decision : 23-05-2014

Acts Referred:

Workmens Compensation Act, 1923 — Section 3(1)(b), 30, 30(1), 4(1)(B)

Citation : (2014) LLR 787

Hon'ble Judges : Valmiki J. Mehta, J

Bench : Single Bench

Advocate : R.C. Mahajan, Advocate for the Appellant; Pratima N. Chauhan, Advocate and S.S. Choudhary, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—This first appeal is filed u/s 30(1) of the Workmen's Compensation Act, 1923 impugning the judgment of the Commissioner dated 07.2.2013, by which the Commissioner has allowed the compensation claim of the respondent No. 1/claimant. The facts of the case are that the respondent No. 1 was working as a Driver on vehicle/bus bearing No. DL-IPA 6592 owned by the respondent No. 2 herein and he was drawing wages of Rs. 6000 per month with Rs. 200 per day for diet and lodging allowances. On 02.1.2005, the respondent No. 1 was driving the vehicle on route No. 263 and coming towards Bhajanpura side. When the bus was coming down from the Gokulpuri Flyover, a Maruti Zen bearing No. DL-2CP 1108 suddenly came before the bus and, though the respondent No. 1 tried to avoid any impact with the Maruti Zen by turning the bus towards middle line of the road, another DTC bus bearing No. DL-1PA 7739, which was coming towards the Gokulpuri Flyover rammed into the bus which the respondent No. 1 was driving. As a result of the accident, respondent No. 1 as also other passengers suffered multiple injuries. The respondent No. 1 claimed that the appellant is wrongly said to be negligent in driving the bus. As a result of the accident, respondent No. 1 suffered multiple injuries and fractured his

right lower leg and had become permanently disabled and cannot do his work of the driver, which he was doing prior to the accident. An iron rod has been inserted in the right leg of the respondent No. 1 because of the accident.

2. The appellant, Insurance Company was the respondent No. 2 before the Commissioner and it pleaded that it had no intimation of the accident by the insured. It was prayed that the claim petition of the respondent No. 1 be dismissed.

3. The Commissioner has held that since the accident took place in the course of the employment of the claimant/respondent No. 1 with respondent No. 2 herein, the claim petition was allowed by granting compensation of Rs. 1,99,661 along with simple interest @ 12% per annum.

4. Before me, the learned counsel for the appellant/Insurance company firstly urges that the respondent No. 1 was himself guilty of negligence and, therefore, he could not be granted compensation under the Act. The second argument which is raised is that the Commissioner has fallen into an error in taking the figure of wages of the respondent No. 1 as Rs. 4000.

5. So far as the first argument is concerned, learned counsel for the appellant sought to place reliance upon Section 3(1)(b) proviso (ii) of the Act which provides that compensation cannot be granted when there is wilful disobedience by the employee of an order expressly given or to a rule expressly framed. However, when the counsel for the appellant was asked to show which is the order which was given and breached by the employee or rule which was not observed, learned counsel for the appellant argued that once there is negligence due to rash and negligent driving that should be taken as wilful disobedience by an employee of an order/rule. In my opinion, this argument does not help the appellant because the order or rule which is stated to be breached must be substantially pleaded so that notice is given to the opposite party/respondent No. 1 to meet the same. Not only a specific case has to be pleaded in this regard, but also by establishing facts the aspect of wilful disobedience ingredient of the order/rule had to be proved. In the present case, it has not been pointed out by the appellant that a specific pleading before the Commissioner in this regard is taken by the Insurance Company and consequently established by leading evidence, the argument raised before this Court by the appellant has no merit and the first argument on the part of the appellant is hence rejected.

6. So far as the second argument is concerned that the Commissioner has wrongly taken the figure of wages at Rs. 4000, when the learned counsel for the appellant was put to notice of Section 4(1)(B) of the Act which was enacted by the legislature by the Act 45 of 2009 to do away with the disputes with respect to quantum of salary by taking the minimum wage fixed by the Government under the Minimum Wages Act, 1948 the learned counsel for the appellant concedes that no ground has been raised in the appeal that the amount of Rs. 4000 as wages taken by the Commissioner is not the figure of monthly wages as per the

Gazette Notification of the Government. The second argument of the appellant is also, therefore, without any merit and is rejected. I may note that an appeal u/s 30 of the Workmen's Compensation Act only lies if there is a substantial question of law. No substantial question of law arises as per the arguments urged on behalf of the appellant, and therefore, this appeal is dismissed, leaving parties to bear their own costs.