

Kamlesh Kumar vs.ravi Kumar

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Court : Delhi

Decided On : Jan-29-2018

Appellant : Kamlesh Kumar

Respondent : Ravi Kumar

Judgement :

\$~5 * % + IN THE HIGH COURT OF DELHI AT NEW DELHI FAO4572016
KAMLESH KUMAR Judgment delivered on:

29. 01.2018 Appellant Through: Mr. Sudhir Naagar and Ms. Chetna Singh, Advs. versus RAVI KUMAR Respondent Through: None. CORAM: HON'BLE MR. JUSTICE NAJMI WAZIRI NAJMI WAZIRI, J (Oral) 1. None appears for the respondent despite a passover of the case in the pre-lunch session.

2. This appeal impugns an order dated 29.03.2016 which allowed the respondent/claimants claim for compensation for permanent disability of 50% physical disability, resulting in 100% loss of earning capacity, under the Employees Compensation Act, 1923.

3. The appellant has argued that substantial question of law raised in the petition is whether in the absence of any material evidence, the claimant can be considered to be an employee of the appellant?. FAO4572016 Page 1 of 7 4. It was the case of the respondent/claimant that he was employed from March, 2014 as a driver for a medical ambulance service run by the appellant. During one such

duty on 07.11.2014, he suffered the debilitating injury in a motor vehicle accident at Dival, near Police Station Badaun, Uttar Pradesh while he was ferrying a patient in the ambulance. The accident resulted in the loss of his right leg, hence a permanent disability. His request for compensation and medical expenses was declined by the appellant. The claimant had stated that his last drawn salary was Rs.10,000/- per month; the ambulance being driven by him bore Registration No.UP14 1593. The appellant had denied that the said vehicle belonged to him or that the claimant was ever employed by him. Nevertheless, the claim was allowed on the ground inter alia that the appellant did not file the list of vehicles and the ambulances owned by him in the written statement, but disclosed it only in his affidavit of evidence in defence. This, the impugned order considered to be a ploy to take advantage of the non-mentioning of the number of vehicles owned by the claimant in his claim petition, who was poorly represented. The impugned order concluded that the appellant was waiting for the disclosure of the number of the vehicle by the claimant, only to deny its ownership or use by him. The impugned order further reasoned that even though the driver is supposed to keep all the papers of the vehicle while the vehicle is on the roads but no driver would envisage that on the road somewhere some day he would meet an accident and for the purpose of filing a claim petition he should keep photocopies of all the documents in his possession always. The affidavit of the respondent/RW-1 is beyond pleadings and is of no use to him. The claimant, his father and his brothers deposed in his favour. The claimants witnesses were not cross-examined. FAO4572016 Page 2 of 7 All of them supported the claimants version that he was driving vehicle No.UP14 1593 at the time of accident which took place on 07.11.2014. None of them was present at the time of accident. However, no documents or records of the accident were shown. The witnesses also stated that they had gone to Aligarh Medical Hospital where the claimant was taken for treatment but the MLC prepared by the said hospital was not given to him. The claimants witnesses were not cross-examined. The impugned order also noted the appellants submission, that he was not issuing appointment letters to all the drivers nor was he maintaining the Attendance Register nor was he was issuing wage slips to them. The evidence of Mr. Sunil Kumar/R-2, led by the appellant, was disbelieved on the ground that he was working with the appellant in the

capacity of driver for plying his ambulance, therefore he was deemed to be under the influence and pressure of the appellant. In the aforesaid circumstance, the Employees Compensation Commissioner held that the claimant was employed with M/s. Shobhan Sarkar Ambulance Sewa owned by the appellant and went on to award the compensation.

5. The Court would note that on the face of it, there is no document to support the factum of the accident having been recorded anywhere by anyone, either by the police or by any authority through any other document of intimation. There is no evidence that the claimant was driving an ambulance bearing No.UP14 1593; that the accident happened at 10 pm on 7.11.2014 at the place mentioned. If the accident was so severe as to result in the loss of a limb, then obvious extensive damage must have been caused to the vehicle also, along with the passengers in the ambulance i.e. FAO4572016 Page 3 of 7 the attendants and the patient; the vehicle would have been subject to repairs and insurance claims, but there is no evidence in this regard. The passengers and the patient are stated to have suffered injuries. In his cross-examination, the claimant deposed that the 5-6 passengers and the patient in the ambulance vehicle suffered injuries but they took care of the same at their own expenses. However, there is no evidence of their injuries or of their treatment or of any report in his regard. There is no MLC from the Aligarh Medical Hospital where the injured - claimant was taken for treatment. The medical report does not specify the place, time or the nature of accident nor does it mention the vehicle in which the accident happened. It is also surprising that if the claimant was working from March till November i.e. for seven months with the appellant, he would not have known of any other driver or registration number of any other vehicle or about the structure of the business which was being run by the appellant or that he would have not even a shred of paper/document to substantiate his employment with the appellant. He showed no document of the vehicle allegedly being driven by him. The only evidence led by him was his own statement and his fathers and brothers saying that he was working with the appellant and was injured in an accident in an ambulance bearing registration No.UP14 1593.

6. The appellant had all along denied any involvement in the case. It is his case that he runs only four ambulance vehicles, which he had specified in the affidavit; that the claimant is a stranger and a trumped up case has been filed against the appellant. FAO4572016 Page 4 of 7 7. From the above, the Court is unable to conclude that the claimant was ever employed by the appellant. Furthermore, on the last date of hearing i.e. 22.01.2018, the Court had recorded as under: The for vehicle learned counsel the appellant submits that the impugned Award is a glaring example of the success of a fraudulent claim. The claimant claimed to have been driving a medical ambulance bearing registration No.UP14T1593. This fact was neither examined nor verified. The learned counsel submits that the said registration No.belongs to not an Ambulance but a two-wheeler motor cycle. He has extracted a print out obtained from the website of the Ministry of Road Transport & Highways, which shows that the vehicle by the said number is a Bajaj Boxer (Petrol) Motor Cycle, registered in the name of one Mr, Mohd. Shahnawaj, Ghaziabad, Uttar Pradesh. He seeks and is permitted to bring the same on record before the next date supported by an affidavit. 8. An affidavit has been filed by the appellant stating inter alia that: the registration number of 2. That it is respectfully submitted that the respondent/ claimant, although did not mention about the vehicle allegedly involved in the accident but had stated in his cross-examination that he was driving an ambulance bearing Registration No.UP14 1593. The same registration number was also provided by other witnesses examined by the claimant/ respondent.

3. That the appellant does not own any vehicle having Registration No.UP14 1593. As per the website - <http://vahan.nic.in> maintained by Ministry FAO4572016 Page 5 of 7 of Road Transport & Highways, Govt. of India, the said Vehicle bearing Registration No.UP14 1593 is, in fact, a vehicle belonging to Vehicle Class : M-Cycle/Scooter. The copy of printout dated 22.01.2018 - https://vahan.nic.in/nrservices/faces/user/jsp/Search_Status.jsp is enclosed herewith as Annexure A/1. webpage obtained from information about 4. That in pursuance of an enquiry made by the appellant by using the SMS (by sending SMS on mobile No.7738299899) provided by the Ministry for availing the details of registration of a vehicle, an SMS was received from VAHAN service, as per which, the said vehicle i.e. UP141593 is a Motor Cycle of make Bajaj Boxer and the same

is owned by one Mohd. Shahnawaz. The printout of screen-shot of the SMS received from VK-VAHAN on 22.01.2018 is enclosed herewith as Annexure A/2.

5. That it is respectfully submitted that the present appeal has been filed by the appellant on the ground is no employer-employee relationship between the appellant and that no such vehicle was ever owned by the appellant and no such accident had ever happened. there that 6. That the appellant could not place these details before the Ld. Commissioner on account of inadvertence and being under the bonafide impression that the onus was upon the claimant to prove that the appellant was the owner of the alleged vehicle involved in the alleged incident. 9. In view of the aforesaid, it is evident that the claimants claim is belied because the vehicle bearing registration No.UP14 1593 is a motorcycle and not a medical ambulance in which 5-6 persons could travel simultaneously with the patient. The substratum of the claim being that the FAO4572016 Page 6 of 7 said ambulance met with an accident is shattered in view of the affidavit and the Registration Certificate of a motorcycle bearing registration No.UP14 1593. It is not in dispute that two vehicles in the country cannot bear the same registration number.

10. In view of the preceding discussion, the question of law raised is answered in the negative. It is odd that even in the absence of a bare minimum evidence regarding: i) proof of employment; ii) proof of the accident, any record, any FIR; iii) MLC of the other injured persons; iv) their treatment records; v) their claims, if any; vi) claimants lack of knowledge about other vehicles engaged in the business by the employer; vii) the names of other drivers and co-workers; viii) the nature and structure of business; ix) the area of operations, etc. the claim was allowed. The decision clearly lacks basis on facts.

11. In the circumstances, the impugned order cannot be sustained. It is set aside. The appeal is allowed. The amount deposited by the appellant be released to him alongwith the interest accrued thereon.

12. A copy of this order be sent to the Labour Commissioner, Government of NCT of Delhi for information. NAJMI WAZIRI, J JANUARY29 2018/acm FAO4572016
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