

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO.291 OF 2022
(ARISING OUT OF SLP (CIVIL) NO. 13522 OF 2021)**

M/S MANGILAL VISHNOI

.....APPELLANT(S)

VERSUS

NATIONAL INSURANCE COMPANY LIMITED &
ORS.

.....RESPONDENT(S)

ORDER

HEMANT GUPTA, J.

1. Leave granted.
2. The employer is in appeal against an order passed by the High Court of Judicature for Rajasthan at Jodhpur on 25.9.2019 whereby the appeal of the Insurance Company under Section 30 of the Employees Compensation Act, 1923¹ was allowed.

¹ For short, the 'Act'

3. Tej Singh, deceased was engaged by the appellant as a Helper who died in the course of employment of the appellant on his borewell vehicle No. RJ-06-J2725 on 11.10.2002 due to collapse of soil surrounding the well. The petition was filed before the Employees Commissioner² under the Act for grant of compensation. The learned Commissioner passed an award dated 2.12.2005 awarding a sum of Rs.3,27,555/- along with Rs.2,500/- as expenses for the last rites. The legal heirs of deceased were also granted interest @18% p.a. from the date of accident.
4. The insurance company filed an appeal under Section 30 of the Act before the High Court. The High Court accepted the appeal holding that the deceased was a Helper though the policy covered Cleaner or Driver of the Vehicle in question. The High Court reduced the interest to 12% p.a. Since the insurance company has paid the amount, liberty was granted to it to recover the sum from the present appellant.
5. Learned counsel for the appellant submits that there is not much difference between the duties of a Cleaner and a Helper. It is a nomenclature which is used interchangeably by all the employers. Still further, reliance is placed upon insurance policy which indemnifies the owner in respect of two drivers, one cleaner and other employees for which extra premium has been paid by the

² For short, the 'Commissioner'

owner. The premium paid by the owner was Rs.45/- i.e. Rs.15 each for two drivers and a Cleaner and Rs.75/- for other employees.

6. Learned counsel also refers to India Motor Tariff 17³ issued under the provisions of the Insurance Act, 1938. As per such endorsement, the insurance company has agreed to indemnify any claim of personal injury to any paid driver or cleaner or persons employed in loading or unloading but in any case, not exceeding seven in number including driver and cleaner while engaged in service of the insured. The relevant clause reads as under:

"IMT- 17 legal liability to person employed in connection with the operation and or maintain and / or unloading of goods carrying commercial vehicle in consideration of payment of an additional premium it is hereby under stood and agreed that notwithstanding anything contained herein to the contrary the company shall indemnify the insured against his legal liability under the workmen's compensation act, 1923 and subsequent amendment of that act prior to the date of this endorsement the fatal accident act 1855 or at common law in respect of personal injury to any paid driver or cleaner of persons employed in loading/ or unloading but it any case not exceeding seven in number including driver and cleaner whilst engaged in the service of the insured in such occupation in connection with the goods carrying commercia! vehicle and will in addition be responsible for ail cost and expenses incurred with its written consent."

7. On the other hand, learned counsel for the Insurance Company contended that the deceased was working as a Helper and not as

³IMT 17

a Cleaner. He was not engaged in the loading or unloading either. Therefore, the deceased was not covered by the Endorsement IMT 17. However, he could not point out any distinction between the duties of Cleaner or Helper. It was contended that it was for the employer to prove the nature of work assigned to the deceased.

8. We have heard learned counsel for the parties and find that the High Court has accepted appeal on a make-believe argument that Cleaner or Helper engaged by the employer are engaged in two different duties and that a Helper is not covered by the insurance policy. The High Court has recorded a finding that admittedly deceased was a Helper. In the absence of any clear demarcation of duties of a Helper or a Cleaner and in view of the fact that Helper and Cleaner are interchangeably used, therefore, declining claim for the reason that deceased was engaged as a helper and not Cleaner is wholly unjustified. Additionally, the employer sought indemnification of five other employees engaged in loading or unloading activities by paying extra premium. It was for the insurance company to cross examine the witnesses produced by the claimant or by the owner to prove the fact that deceased was not engaged in loading or unloading activities. We find that the High Court has drawn a distinction between Helper and a Cleaner when none existed.

9. Consequently, the order of the High Court is set aside to the extent the Insurance Company was absolved of its responsibilities to pay the amount of compensation so as to indemnify the employer. However, the order regarding payment of interest @12% p.a. does not warrant any interference.

10. The appeal is allowed. The order passed by the High Court so as to absolve the insurance company from its liability to indemnify the owner is set aside with no order as to cost.

.....J.
(HEMANT GUPTA)

.....J.
(V. RAMASUBRAMANIAN)

**NEW DELHI;
JANUARY 10, 2022.**

