

(2017) 05 SHI CK 0143
In the High Court Of Himachal Pradesh
Case No : 100 of 2010

Anu Kumari & Ors.

APPELLANT

Vs

The United India Insurance Co. Ltd. & Anr.

RESPONDENT

Date of Decision : 29-05-2017

Acts Referred:

[Workmens Compensation Act, 1923](#), [Section 4](#), [Section 30](#), [Section 22](#) -
Amount of compensation - Appeals - Form of application

Citation : (2017) 05 SHI CK 0143

Hon'ble Judges : Ajay Mohan Goel

Bench : Single Bench

Advocate : G.D. Verma, B.C. Verma, Ashwani K. Sharma, Jeevan Kumar

Judgement

1. By way of this appeal filed under Section 30 of the Workmen's Compensation Act, appellants/claimants have assailed the order passed by learned Commissioner under Workmen's Compensation Act, 1923 in Case No. 4 of 2005 decided on 22.12.2009 vide which, learned tribunal below has dismissed the application so filed for compensation by the present appellants/claimants.

2. Brief facts necessary for adjudication of the present case are that present appellants/claimants filed an application under Sections 4 and 22 of the Workmen's Compensation Act alleging therein that respondent No. 2, namely, Parkash Chand was owner of vehicle bearing registration No. HP35-0199 and husband of claimant No. 1-Anu Kumari late Sh. Sanjay Kumar was son of respondent No. 2-Parkash Chand, who was engaged by him as a driver on monthly wages of Rs. 3,500/-. Deceased Sanjay Kumar who at the relevant time was 28 years old died in an accident which took place at Behri on Luhri-Dalash road at around 9:00 p.m. on 4.4.2005. The factum of the said accident stood reported by way of FIR No. 31 of 2015 Ext. PW5/A. According to the claimants, death of Sanjay Kumar had occurred in the course of employment of respondent No. 2, as deceased was a workman under respondent No. 2 and was also a

licensed driver. He was on his way back from Rampur Bushar to Dalash after purchasing pesticides and other material from Rampur on the direction/asking of respondent No. 2. On these bases, claimants had prayed for grant of compensation to the tune of Rs. 05 lacs with interest.

3. Respondent No. 2 i.e. Parkash Chand in his reply acceded to the claim so filed by claimants. The same was opposed by respondent No. 1 i.e. Insurance Company. Said respondent took objection on the maintainability of the petition itself on the ground that there was no relation of employer and employee between the deceased and respondent No. 2-Parkash Chand and as per the Insurance Company death had even otherwise not occurred during the course of employment. Insurance Company denied the engagement of deceased by respondent No. 2 as driver in vehicle No. HP 35-0199. It also denied that deceased was drawing monthly wages of Rs. 3,500/- per month as alleged from respondent No. 2. As per the Insurance Company, the petition in fact was an act of collusion between claimants and respondent No. 2 with a view to extract money from the Insurance Company. It was also mentioned in the reply that neither there existed any relationship of employer and employee between the deceased and respondent No. 2 and further no bills of pesticides or any other material has been produced by the claimants to prove said facts. It was further mentioned in the reply that deceased being the son of respondent No. 2 might have been driving the ill-fated vehicle but the said act of his was without any remuneration. It was also mentioned in the reply that the vehicle in question was a private car and to this effect private car package policy was issued in favour of respondent No. 2 and no premium was charged for the insurance of passengers, as the vehicle was a private vehicle and not a commercial vehicle. On these bases, the claim petition so filed by claimants was resisted by respondent No. 1. Respondent-Insurance Company also denied that respondent No. 2 did not know how to drive the car.

4. On the basis of pleadings of the parties learned tribunal framed the following issues:- "1. Whether the deceased/workman was the workman within the meaning of the Act? OPP.

2. Whether the accident arose out of or in the course of the applicants/deceased appointments? OPP.

3. Whether the amount of compensation claimed is due or any part of that amount? OPP.

4. Whether the opposite party is liable to pay such compensation as is due? OPP.

5. Whether the petitioners are entitled for the interest and penalty (50%) of the amount due to the fault of the respondents? OPP.

6. Whether the petition is not maintainable in the present form? OPR.

7. Whether there is violation of mandatory terms and conditions of the Insurance Policy? OPR.

8. Whether the petitioner has been filed in collusion with the respondent No. 2? OPR."

5. On the basis of evidence both ocular as well as documentary, learned tribunal returned the following findings on the said issues:-

"Issue No. 1

No.

Issue No. 2

No.

Issue No. 3

No.

Issue No. 4

No.

Issue No. 5

No.

Issue No. 6

No, it is maintainable but rejected on merits.

Issue No. 7

Not decided

Issue No. 8

Yes."

6. Learned tribunal thus dismissed the application so filed by present appellants/ claimants under Sections 4 and 22 of the Workmen's Compensation Act.

7. While dismissing the application it was held by learned tribunal below that wife of the deceased in the course of her cross objection had admitted that her father-in-law i.e. respondent No. 2 was working as a Superintendent in the Education Department at Dalash and their family was a joint family. Learned tribunal also took note of the fact that said witness (PW1) had also admitted that they had a shop in the village and the proprietor of the same was her mother-in-law i.e. applicant No. 3. This witness further admitted that her husband was not having a commercial vehicle licence. Learned tribunal below also relied on Claim Form dated 7.4.2005, Ext. R1, submitted to the Insurance Company by respondent No. 2-Parkash Chand in which form it was mentioned by respondent No. 2 that the driver who was engaged by him for the purpose of driving of the said vehicle was his relative and not a paid driver.

8. Relevant finding returned by learned tribunal to this effect are quoted herein below:- "Thus it is clear that Sh. Sanjay Kumar deceased was the son of respondent No. 2-Parkash Chand. Who in his own cross-examination has admitted that the salary of Sanjay Kumar was paid from the accounts of a shop owned by Smt. Tara Verma i.e. the wife of the respondent No. 2 Sh. Parkash Chand. Respondent No. 2 is an educated person working as a superintendent in the Education Department at Dalash. He himself in his own handwriting while submitting the claim form regarding the accident before the Insurance Company has stated that the driver of the ill fated vehicle was his relative and not a paid driver. The claim form submitted before the Insurance Company soon after the accident is more reliable as people are generally more truthful and God fearing at that stage. The later statement coated with greed and manipulation are sheer afterthoughts and hence not reliable."

9. Learned tribunal below also took note of the fact that respondent No. 2 during the course of his examination had admitted that salary of deceased (Sanjay Kumar) was paid from the expenditure of the shop and the owner of the shop in question was Smt. Tara Verma.

10. It was further held by learned tribunal that though respondent No. 2 had deposed that since the purchase of the vehicle in the year 2002 deceased was engaged as a driver from day one, but in his statement which was made before learned Motor Accident Claims Tribunal, Kinnaur at Rampur on 28.8.2006, the said witness had deposed that initially his vehicle was driven by one Shakti Singh who was paid Rs. 3,000/- per month by him. It was held by learned tribunal below that in fact respondent No. 2 was not a reliable witness.

11. On these basis it was concluded by learned tribunal that it was evident that deceased was the son of respondent No. 2 who had in his cross-examination had admitted that salary of deceased was paid from the accounts of the shop of applicant No. 3 (Smt. Tara Verma) who happened to be the wife of respondent No. 2 and in fact respondent No. 2 was Government official who was serving as a Superintendent in the Education Department at Dalash who himself in his own handwriting while submitting the Claim Form regarding the accident before the Insurance Company has stated that the driver of the vehicle in issue was his relative and not a paid driver.

12. On these bases it was concluded by learned tribunal below that the subsequent statement given by said witness was coated with greed and manipulation and was a sheer afterthoughts and not reliable. It was further held by learned tribunal that as the payment of the deceased was made from the accounts of the shop owned by Smt. Tara Verma, in these circumstances deceased could not have been treated as a workman employed by Parkash Chand. On the basis of findings so returned, learned tribunal dismissed the application so filed by applicant under Workmen's Compensation Act.

13. Feeling aggrieved by the order so passed by learned tribunal below,

applicants/claimants filed the present appeal.

14. I have heard learned counsel for the parties and have also gone through the records of the case as well as judgment passed by learned Tribunal below.

15. In the present case in order to have had succeeded before learned Commissioner under the provisions of Workmen's Compensation Act onus was upon the complainants to have had proved on record that deceased was a workman of respondent No. 2. Admittedly claimants were the wife, minor daughter and mother of the deceased whereas respondent No. 2 happened to be the father of the deceased. The case put forth by claimants was that the deceased was a paid driver engaged as such by respondent No. 2 on payment of monthly wages of Rs. 3,500/-. Unfortunately this fact the claimants have miserably failed to prove on record. There is not even an iota of evidence from which it can be inferred that respondent No. 2 had engaged his son i.e. the deceased as a paid driver to drive the vehicle in issue. Not only this, it is apparent from the evidence produced on record that respondent No. 2 was a Government employee and there was a shop which was being run in the name of applicant No. 3 i.e. Smt. Tara Verma who happened to be the wife of respondent No. 2 and mother of the deceased. The case of the claimants that deceased died in the course of his employment under respondent No. 2 is further belied from the fact that it has come in the cross examination of respondent No. 2 that deceased was being paid from the accounts of the shop which was owned by applicant No. 3. A perusal of the claim application demonstrates that all these facts have been concealed from the Court by the claimants. Therefore, it is apparent and evident that there was a shop which was being run in the name of applicant No. 3 and the deceased was drawing his salary from the accounts of the shop so owned by applicant No. 3 whereas there is nothing on record from which it can be inferred that deceased was engaged as a paid driver by his father i.e. respondent No. 2 to drive his car i.e. vehicle bearing registration No. HP35-0199 as allegedly respondent No. 2 did not know how to drive the vehicle.

16. Accordingly, in view of the discussion held above in my considered view there is neither any merit in the present appeal nor there is any infirmity or perversity with the order which has been passed by learned tribunal below, as the findings so returned by learned tribunal below are duly borne out from the records of the case. Therefore, this appeal is dismissed. No order as to cost. Appeal Dismissed.