

(2013) 01 RAJ CK 0043

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 205 of 2011

Bajaj Allianz General Insurance Co.

APPELLANT

Vs

Hemraj and Another

RESPONDENT

Date of Decision : 22-01-2013

Acts Referred:

Citation : (2013) 01 RAJ CK 0043

Hon'ble Judges : Mahesh Chandra Sharma, J

Bench : Single Bench

Advocate : Virendra Agarwal, for the Appellant; Vikram Singh for the Respondent No. 1, for the Respondent

Judgement

Mahesh Chandra Sharma, J.—This appeal has been filed by the insurance company against the award of the Workmen Compensation Commissioner, Jaipur Distt. I, Jaipur in claim case No. 182/2008 whereby an award for Rs. 1,95,219 along with interest has been passed in favour of the claimant respondent. Brief facts of the case are that on 27.8.2008 in a road accident the claimant sustained injuries during course of employment as he was working as Khalasi of Truck No. RJ 20 GA 1280 which was owned by respondent No. 2 and insured with the appellant insurance company.

2. In the claim petition the claimant stated that due to accident he sustained number of injuries over his body and he became permanently disabled and the permanent disability certificate was produced showing 36% permanent disability. The respondent No. 2 despite service of notice did not appear before the Commissioner and as such the order to proceed ex parte was passed against him on 4.8.2009.

3. The insurance company submitted reply to the claimant petition denying the averments. It was pleaded that no notice u/s 10 of the Workmen Compensation Act, 1923 was served upon the insurance company. Alleged incident took place on 27.8.2009 and the claim petition was filed on 3.9.2008 it means only after 7

days of the alleged incident. From the FIR it is clear that the claimant was working as labourer only to unload the Bajri and hence he cannot be said to be the Khalasi and as such the insurer is not liable and only in order to get compensation the claimant has claimed himself to be the Khalasi. The claimant examined himself as a witness and produced documents Ex. 1 to 20. On behalf of the insurance company Manoj Verma was examined as NAW 1 and documents Ex. NA 1 to N A 10 were produced. After hearing the parties the Commissioner awarded Rs. 1,95,219 to the claimant vide award dated 28.5.2010.

4. The learned counsel for the appellant has argued that the notice u/s 10 of the Workmen Compensation Act, 1923 was not served upon the insurer. The claimant was not working as Khalasi of the insured and thus there was no relationship of workman and employee the claimant and the respondent No. 2 in existence. The FIR lodged by the claimant indicates that the claimant was working as open labourer to unload the Bajri being carried in the vehicle and he was never given employment by the insured as Khalasi and the insurer has charged the premium only to cover the risk of driver and Khalasi and thus the risk of labourer is not assumed and hence the insurer cannot be held liable to pay compensation.

5. Mr. Vikram Singh, counsel appearing for the claimant has argued that the claimant was working as Khalasi and the Commissioner Workmen Compensation after appreciating the material produced by both the parties, rightly decided the claim of the claimant and the claimant has been awarded compensation as the policy of the insurance company. The order of the Commissioner cannot be said to be perverse.

6. I have heard the learned counsel for the parties. I have also perused the order passed by the Commissioner Workmen Compensation. On issue No. 1 the Commissioner in the order dated 28.5.2010 observed as under:

7. On issue No. 2 the Commissioner observed as under:

8. On issue No. 3 the Commissioner observed as under:

9. As per the documents submitted by the claimant and as per the evidence produced by the claimant the Commissioner determined the age of the claimant to be 25 years. Since the claimant has not been able to produce any document relating to payment of Rs. 4,000/- per month from the owner of the truck, the Commissioner as per the provisions of Minimum Wages Act determined the income of the claimant Rs. 100 per day and in this manner Rs. 3,000/- per month was determined and in this manner the Commissioner awarded a sum of 1,95,219/-. On the basis of the rulings submitted by the counsel for the claimant the Commissioner awarded interest at the rate of 12 per cent per annum after one month from 27.8.2008. I am in agreement with the findings arrived at by the Commissioner. There is no illegality or perversity in the order passed by the Commissioner. The appeal filed by the insurance company being devoid of merit stands dismissed. The stay order granted by this court on January 20, 2011 stands vacated. The stay application stands rejected.