

(2018) 05 J&K CK 0024
In the Jammu And Kashmir High Court
Case No : CIMA--207 OF 2015

BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD.	APPELLANT
Vs	
ANITA KUMARI AND OTHERS	RESPONDENT

Date of Decision : 17-05-2018

Acts Referred:

Employees' Compensation Act, 1923 — Section 30

Citation : (2018) 05 J&K CK 0024

Hon'ble Judges : TASHI RABSTAN

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. Instant appeal has been preferred by the appellant-Insurer under Section 30 of Employeesâ?? Compensation Act, 1923 against the award dated 20th of April, 2015 passed by the Commissioner, Employeesâ?? Compensation Act (Assistant Labour Commissioner), Udhampur in File No. DWC/017/6, titled â??Anita Kumari and ors. vs. Sanjay Kumar and anotherâ??.

2. The main facts as emanated from the case set up by the appellant are that on 12th day of September, 2010, deceased-Yog Raj was driving the Toyota Qualis, Taxi Cab bearing registration No. JK02AP 5005 and was going towards Jammu to pick the passengers/tourists for their onward journey towards Srinagar and back after dropping the passengers/tourists at Patnitop. It is contended that on the ill fated day i.e., 12th day of September, 2010, the said offending vehicle met with a tragic accident and the passengers/tourist on board received several injuries and the driver of the vehicle Yog Raj died on the spot. It is contended that the deceased was 25 years of age at the time of accident and was earning Rs. 5500/- per

month. It is also contended that Insurer was also intimated about the said accident, who visited the site of accident, however, the Insurance Company has refused to pay the compensation to the dependants of the deceased. Thereafter, the petitioners (claimants/respondents herein) filed the claim

petition before the Commissioner, Employees' Compensation Act, Udhampur and claimed compensation to the tune of Rs. 25,00,000/- by

projecting their case that the offending vehicle was duly insured with the Insurance Company and respondent Nos. 1 and 2 (appellant and respondent

No. 4 herein) are jointly liable to pay the compensation to the applicants. It is further contended that the respondent No. 4 (Sanjay Kumar), the owner

of the aforesaid Toyota Qualis Taxi Cab was set ex-parte before the Commission, however, appellant-Insurance Company had objected the claim

petition by filing the detailed objections before the Assistant Labour Commissioner, Udhampur. After considering the claim of the petitioner, the

Commission has framed the following issues:

1. Whether the deceased Yog Raj was employed as driver for plying his vehicle bearing No. JK02AP 5005 and met with an accident on

12.09.2010 and died on spot during the course of his employment?

2. What was the age and wages of the deceased at the time of accident?

3. Whether the deceased was not holding a valid and effective driving license at the time of accident?

4. Whether the R. No. 1 had insured his offending vehicle with R. No. 2?

5. Relief sought.

It is further contended that the petitioner No.1 was directed by the Assistant Labour Commissioner, Udhampur to lead evidence in support of his claim

petition and accordingly, his counsel examined Babli Devi (petitioner No.3) who deposed that the deceased Yog Raj was driving the aforesaid Taxi of

respondent No.1 and was getting Rs. 5,500/- as monthly salary from respondent No. 1 and, additionally she has also deposed that his age was 25

years at the time of death.

On cross-examination by Insurance Company, she deposed that she did not know the date of birth of the deceased reason being that he was totally

illiterate and she further deposed that the deceased was married with Anita Kumari-petitioner No. 1 (claimant-respondent No.1 herein) three years

prior to his death and at the time of marriage he was 21 years old. She also deposed that Shri Sanjay Kumar, the owner of the vehicle had visited her

house many times. She also deposed that the deceased was having a valid driving license at the time of his death which was issued by Assistant

Transport Officer, Udhampur under No.JK1420100011547.Â

Thereafter, learned counsel for the petitioners produced another witness, namely, Shri Ali Mohammed as evidence, who deposed the age of the

deceased at the time of accident was 25 years, was a driver by profession who died in a road accident on 12th day of September, 2010 and used to

drive Tata Qualis owned by respondent No.1 and was getting Rs. 5,000-6,000/- per month as wages. Additionally, he also admitted that the

petitioners are surviving family members, are legal heirs of the deceased-Yog Raj and are his dependents.

On cross examination by learned counsel for the respondent No. 2, the said Ali Mohammad deposed that he do not know the date of birth of the

deceased and had never met with Shri Sanjay Kumar, the owner of the Taxi.

On rebuttal, learned counsel for the Insurance Company produced Shri Munish Kotwal, Manager Bajaj Allianz as evidence who stated on oath that

the Policy No. OG-11-1204-181200000266 has been issued by Bajaj Allianz Insurance Company by virtue of which vehicle No. JK02P5005, a

passenger carrying vehicle was insured in the name of Shri Sanjay Kumar. He further deposed that the Insurance Company got the investigation done

with respect to the accident and it was found that the license of the driver was valid and effective for light motor vehicle and not for transport which is

required in this case as the vehicle was passenger carrying vehicle. He also deposed that fitness was not valid at the time of accident and the relation

between the employer and employee has not been established.

On cross-examination by the counsel for the petitioner, the witness deposed that he has not conducted the investigation of the present case and no

investigation report is attached in this regard with the file. He further deposed that the investigation has been done by BS Nathial and he has been

posted as Manager in the Insurance Company since 2011. It is further stated by him that the present case was released in the year 2010 and he had

got verified driving license, route permit and fitness from the office of Assistant Regional Transport Officer, Udhampur. He further deposed that he

did not know the distinction between LMV and HMV and could not produce the application which is his officer but can produce the certificate issued

by the authority concerned. It is further stated by him that for light motor vehicle no fitness is required whereas for commercial fitness is required.

Learned counsel for the Insurance Company has also produced Sh. Rattan Lal, Record Clerk ARTO Office Udhampur, deposed that license No.

1420100011547 issued on 12th of May, 2010 in favour of deceased Yog Raj, for driving motor cycle with gear, Light Motor Vehicle, non transport and

stated that the aforesaid license was valid upto 11th of May, 2030 for non transport. He produced original license issued by ARTO, Udhampur and

stated that driving passenger vehicle PSV endorsement is required.

On cross examination by the learned counsel for the petitioner, Shri Rattan Lal stated that he was posted as record keeper in the office of ARTO,

Udhampur and the record is available in the office since 1990 till date. He further deposed that he had not brought the original record pertaining to

license of the deceased-Yog Raj as the computerized record is being maintained by the department. He produced two certificates one is driving

license verification certificate in the computerized copy signed by ARTO but not sealed and stamped. He further deposed that he do not know the

name of the ARTO who has signed the computerized copy which has been signed by him in the Court, the said computerized copy does not bear any

number and date on it. He further deposed that he is not competent to make statement on his behalf but the authority concerned i.e., ARTO,

Udhampur has authorized him to make statement on his behalf as he was posted as record clerk in the said office since 2009.

Thereafter on considering the evidence put-forth and record of the file, learned Assistant Labour Commissioner, Udhampur came to the conclusion

and passed an award of an amount of Rs. 4,33,820/- in favour of applicants (respondents herein).Â

3. Mr Baldev Singh, learned counsel for the appellant has vehemently argued that the deceased namely, Yog Raj was not having a valid license and on

the basis that there is no PSV endorsement made in the license of the deceased for driving transport vehicle, the learned Assistant Labour

Commissioner, Udhampur, has awarded the compensation in favour of the claimants, is not sustainable, therefore, he prays for setting aside of the

same.Â

4. The Supreme Court has rendered a decision on 3rd of July, 2017 in case title â??Mukund Dewangan Vs. Oriental Insurance Company Limitedâ?

reported in 2017 AIR (SCW) 3668. It would be appropriate to reproduce the relevant portion of paragraph No. 46 (iv) hereunder:

â??46(iv) The effect of amendment of Form 4 by insertion of â??transport vehicleâ? is related only to the categories which were substituted in the

year 1994 and the procedure to obtain driving license for transport vehicle of class of â??light motor vehicleâ? continues to be the same as it was and

has not been changed and there is no requirement to obtain separate endorsement to drive transport vehicle, and if a driver is holding license to drive

light motor vehicle, he can drive transport vehicle of such class without any endorsement to that effect.â??

5. The vehicle involved in the accident was, admittedly, insured at the relevant point of time with the present appellant (insurer), namely, Bajaj Allianz

General Insurance Co. Ltd., through Shri. Munish Kotwal, Assistant Manager and the driver was also holding a valid driving license to drive Motor

Cycle with gear, Light Motor Vehicle, non-transport.

6. In the memo of the appeal, the insurer-appellant has challenged the impugned award on the basis of grounds taken in it, such grounds of challenge

cannot be considered as substantial questions of law. There is a vast difference between question of law and substantial question of law. The

substantial question of law is based on the facts and the same cannot be considered as substantial question of law in terms of the Section 30 of the

Employeeâ??s Compensation Act, 1923.Â Â

7. In view of the above observations and after considering the arguments advanced by learned counsel for the parties as well as the law laid down by

the Apex Court, I am of the opinion that the learned Assistant Labour Commissioner, Udhampur, has not committed any error in deciding workman

compensation application bearing File No. DWC/017/6, filed by the claimants (respondents herein) and the findings rendered by him cannot be

considered as baseless and perverse. On the contrary, learned Assistant Labour Commissioner, Udhampur, has decided the matter on the basis of

legal evidence. Therefore, no interference is required by this Court in the award dated 20th of April, 2015 passed by learned Assistant Labour

Commissioner, Udampur. Hence, there is no substance in the present appeal and, as such, the same is, accordingly, dismissed.

8. Registry is directed to release the awarded amount deposited before it, strictly in terms of award dated 20th of April, 2015 passed by Assistant

Labour Commissioner, Udampur, in favour of the claimants after their proper identification and verification.