
(2019) 06 J&K CK 0015
In the Jammu And Kashmir High Court
Case No : MA No. 272 Of 2014

Bajaj Allianz General Insurance Co. Ltd	APPELLANT
Vs	
Vijay Kumar And Others	RESPONDENT

Date of Decision : 07-06-2019

Acts Referred:

Employees Compensation Act, 1923 — Section 4, 30
Motor Vehicles Act, 1988 — Section 2(40), 29

Citation : (2019) 06 J&K CK 0015

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : Raghu Mehta

Final Decision : Dismissed

Judgement

Sanjeev Kumar, J

1. Bajaj Allianz General Insurance Co. Ltd. (hereinafter referred to as "the insurer") is in appeal under Section 30 of the Employees compensation Act, 1923 against the award dated 28th February, 2014 passed by the Commissioner workmen (Assistant Labour Commissioner), Kathua (hereinafter referred to as "the Commissioner") in Claim File titled Vijay Kumar and another v. Kishore Kumar and others, whereby legal representatives of the deceased workman, namely, Deepak Kumar have been awarded a compensation of Rs.2,80,000/-.

2. Briefly stated, the facts leading to the filing of instant appeal are that a claim application under Section 4 of the Employees Compensation Act, 1923 (hereinafter referred to as "the Act") for grant of compensation was filed by the parents of the deceased Deepak Kumar on the allegation that their son, aged 20 years, was employed as Conductor with Truck No.JK02X/7568 on payment of Rs.2,500/- per month and in the month of August/September, 2008 while coming from Leh to Manali, he got ill. His condition deteriorated because of high altitude. He was taken to Army Hospital at Sarchu where the doctors declared him

brought dead. It is claimed that the death of their son Deepak Kumar occurred out of and during the course of his employment with respondent Nos. 3 and 4.

3. In response to the notice issued by the Commissioner, respondent No.4 appeared and filed his objections wherein respondent No.4 claimed that he was driver of the vehicle which is owned by respondent No.3 Smt. Swarna Attri. In his objections, respondent No.4 also stated that the deceased was employed by respondent No.3 as a Conductor. Since initially, the claim had been filed against respondent No.4, the driver of the vehicle, but in view of the stand taken by respondent No.4, respondent No.3 and the appellant-insurer was also impleaded as party respondents. The appellant-Insurance Company as well as the owner-Swarna Attri filed their respective objections.

4. On the basis of the pleadings of the parties, the Commissioner framed the following issues:-

- "i. Whether the deceased was workman within the definition of W.C.Act? O.P.P.
- ii. Whether deceased died out of an accident occurred during and in the course of his employment with the respondent No.1? O.P.P.
- iii. Age and wages of deceased at the time of accident? OPP.
- iv. Whether the employer-owner is liable to pay compensation? OPP.
- v. Any other relief etc."

5. On the basis of the evidence led by the parties, the Commissioner concluded that at the relevant point of time, Mr. Deepak Kumar was working as a Conductor with the Truck No.JK02X-7568 owned by respondent No.3 and driven by respondent No.4. Because of the high altitude and the weather conditions prevailing in Leh-Manali road, said Deepak Kumar suffered from pneumonia. He was taken to the Army Hospital at Sarchu and was declared brought dead by the Army doctors. The Commissioner, thus, held that the death of Deepak Kumar was out of and during the course of his employment with respondent No.3, therefore, held respondent Nos. 1 and 2, parents of Deepak Kumar, entitled to compensation of Rs.2,80,000/-. The appellant-Insurance Company, being insurer of the truck in question, was directed to pay compensation by way of indemnification. It is this award passed by the Commissioner, which is impugned in this appeal by the insurer. Apart from raising certain disputed question of fact in this appeal, the appellant has raised a question of law which can be put in the following manner:-

"Whether the deceased without having license to act as Conductor in terms of Section 29 of the Motor Vehicles Act, 1988 could have acted as Conductor of the vehicle in question and in case of violation whether the insurer could have been fastened with the liability to satisfy the award?

6. Although, the insurer has not taken this specific objection before the Commissioner nor the Commissioner in this regard has struck any issue, yet in

view of the vehement insistence of the learned counsel for the insurer, I have permitted him to raise this question. However, on careful consideration of the issue raised by the appellant-insurer, I find that the issue raised is not a pure question of law but a mixed question of law and fact. Whether or not the deceased was possessing the Conductor's license issued by the licensing authority in terms of Section 29 of the Motor Vehicles Act is a disputed question of fact which could have been proved by the party concerned by leading evidence. Since no objection in this regard was taken by the appellant-insurer or other respondents to the claim petition, as such there was no occasion for the Commissioner to return a finding on the issue.

7. Learned counsel for the appellant-insurer claimed that in view of the violation of Section 29 of the Motor Vehicle Act, the appellant-insurer is not liable to indemnify the owner, in that, he had engaged the deceased as Conductor, who was not possessed of a valid Conductor's License issued by the licensing authority in terms of Section 29 of the Motor Vehicle Act. There is inherent fallacy in the argument raised by the learned counsel for the appellant-insurer. Before proceeding further, it would be appropriate to reproduce Section 29 of the Motor Vehicle Act, which reads as under:-

"29. Necessity for conductor's licence. - (1) No person shall act as a conductor of a stage carriage unless he holds an effective conductor's licence issued to him authorising him to act as such conductor, and no person shall employ or permit any person who is not so licensed to act as a conductor of a stage carriage.

(2) A State Government may prescribe the conditions subject to which subsection (1) shall not apply to a driver of a stage carriage performing the functions of a conductor or to a person employed to act a conductor for a period not exceeding one month."

8. From the perusal of Section 29 of the Motor Vehicle Act, it is abundantly clear that Conductor's license is required only for a person who is engaged as such on a stage carriage and 'stage carriage' is defined in Section 2(40) of the Motor Vehicle Act, which may also be noticed for facility of reference:-

"2(40) "stage carriage" means a motor vehicle constructed or adapted to carry more than six passengers excluding the driver for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey."

9. From a conjoint reading of Section 29 and Section 2(40) of the Motor Vehicle Act, it is crystal clear that license to act as Conductor is required only, if such person is employed as Conductor on a 'stage carriage' and 'stage carriage' is a motor vehicle constructed or adapted to carry more than six passengers excluding the driver for hire or reward at separate fares paid or for individual passengers either for the whole journey or for stages of the journey. There is no requirement of any license for a person to act as conductor/helper in a goods vehicle.

10. In that view of the matter, the plea of the learned counsel for the appellant-Insurance Company that since the deceased-Deepak Kumar was not possessing a valid Conductor's license issued in terms of Section 29 of the Motor Vehicles Act and, therefore, the appellant-insurer was absolved of its liability to indemnify the owner of the vehicle is misconceived and is rejected.

11. Learned counsel for the appellant-Insurance Company has relied upon several judgments of this Court as well as various other High Courts which pertain to the cases of driver/workman, who were not possessing a valid driving license and suffered injuries or died during the course of their employment. The instant case, however, is different from the cases cited by the learned counsel for the appellant-Insurance Company. The deceased in this case was only a Conductor and had not contributed, in any manner, to the happening of the accident which claimed his life.

12. For the foregoing reasons, I do not find any substantial question of law involved in this appeal. This appeal, thus, fails and is accordingly, dismissed.