

**(2008) 12 SHI CK 0014**  
**In the High Court Of Himachal Pradesh**

Brahmu Ram and Another

APPELLANT

Vs

United India Insurance Company and Another

RESPONDENT

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**Date of Decision :** 29-12-2008

**Acts Referred:**

**Citation :** (2009) 2 ShimLC 26

**Hon'ble Judges :** Deepak Gupta, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

Deepak Gupta, J.—This appeal by the claimants is directed against the order dated 28.1.2005 passed by the Commissioner under the Workmen's Compensation Act, whereby he has rejected the claim petition filed by the claimants.

2. The appeal was admitted on the following substantial questions of law:

1. "Whether the learned Tribunal below has wrongly held that there is no relationship of employer and employee between late Shri Karam Chand and Smt. Ram Dei?

2. Whether between husband and wife there can not be relationship of master and servant?

Since both these questions are inter-related, the same are being decided together.

3. The brief facts giving rise to the present appeal are that Brahmu Ram and Kamal Dev, two sons of the deceased Karam Chand filed a petition under the Workmen's Compensation Act claiming compensation for the death of their father deceased Karam Chand. According to them, the deceased was employed as a driver with the truck No. HIB-4175. Admittedly, this truck was owned by Smt. Ram Dei respondent No. 2, who is the mother of the claimants and wife of the deceased Karam Chand. The wife in her written statement admitted the

allegation of the claimants that the deceased was employed as a driver by her. The Commissioner, Workmen's Compensation, has rejected the petition mainly on the ground that there is no material on record to show that the deceased was an employee of his wife. Aggrieved by this order of the Commissioner, Workmen's Compensation, the present appeal has been filed.

4. Shri Romesh Verma learned Counsel for the claimants has contended that there can be no legal bar to a wife employing her husband and since this fact was alleged in the petition and was not denied by the owner of the vehicle, the same stands proved as such. The Insurance Company should have been liable to pay the compensation. He has placed reliance on the judgment delivered by me in Rohit Walia Vs. National Insurance Co. Ltd. and Another, . In that case, this Court held that a brother could have been employed by the other brother and also that it was for the Insurance Company to have given a notice to the owner of the vehicle to produce certain documents such as log book of the vehicle to show whether the deceased was an employee of his brother or not.

5. In my view this judgment is not applicable to the facts of the present case. Admittedly," the deceased had retired from the H.R.T.C. The truck in question was owned by his wife. Even as per averments made in the claim petition, one Shri Bachiter Singh was engaged as a driver on the truck on a monthly salary and the deceased Karam Chand used to drive the aforesaid truck as and when the other driver was on leave or on rest. These averments clearly indicate that the deceased was not employed by his wife. He may have been looking after the running of the truck of his wife but was not her employee.

6. Smt. Ram Devi in her reply to the petition submitted that she had engaged her husband as a driver at a monthly salary of Rs. 2000/- and also used to pay a sum of Rs. 50/- per day as daily allowance. Her version is that Bachiter Singh was a second driver of the truck. The claimants i.e. the children and the mother who is the owner of the truck have taken two totally divergent stands. The mother has not denied the fact that Bachiter Singh was employed as a driver on the truck. Ram Devi did not even care to appear in the witness box.

7. Legally there may not be any bar to the wife employing her husband. However, this is not a normal situation. When something which is not normal is alleged, the same must be proved by leading cogent evidence. The burden lies on the party setting up this extra ordinary stand to prove the same. There was nothing which prevented the owner i.e. the wife from producing her account books and other record like the log book etc. to prove that she in fact had engaged her husband as a driver on the truck. She has failed to lead any such evidence.

8. The provisions of the Workmen's Compensation Act come into operation only when it is proved that the relationship of master and servant exists between the parties. In the present case, the wife has miserably failed to lead any evidence to show that this relationship of master and servant existed between her and her

husband. There is no manner of doubt that the husband and wife were living together and the family was headed by the deceased. There is nothing on record to show that he was an employee. He may have driven the truck of his own volition as partner and husband of the owner but he did not drive the vehicle as an employee. There is no evidence whatsoever to show that he was ever engaged as driver by his wife.

9. While taking this view, I am supported by a judgment of the Apex Court reported in *Gottumukkala Appala Narasimha Raju and Ors. v. National Insurance Company Limited and Anr.* (2007) 13 SCC 446. In that case also the tractor in question was owned by the wife. It was being driven by the husband. The accident took place and the husband died. Compensation was claimed under the provisions of the Workmen's Compensation Act on the allegation that the deceased was an employee of his wife. The Apex Court while dealing with this condition held as follows:

22. In our considered opinion, it is wholly absurd to suggest that the husband would be a "workman" of his wife in absence of any specific contract. We have no doubt in our mind that for the purpose of proceeding under the 1923 Act, only the appellants have concocted the story of husband and wife living separately. If they have been living separately in view of certain disputes, the question of husband being a "workman" under her appears to be a far-fetched one.

23. Technically, it may be possible that the husband is employed under the wife, but, while arriving at a conclusion that when a dispute has been raised by other side, the overall situation should have been taken into consideration. The fact, which speaks for itself shows that the owner of the tractor joined hands with the claimant for laying a claim only against the insurer. The claim was not bona fide.

24. No documentary proof to establish the contract of employment was produced. No independent witness was examined.

10. The present case is squarely covered by the aforesaid law laid down by the Apex Court. In the present case, neither any contract of employment has been proved nor any other independent evidence led to prove the fact that her husband was an employee of his wife.

In view of the above discussion, I find no merit in this appeal which is accordingly dismissed. No costs.