
(2015) 01 PAT CK 0031

In the Patna High Court

Case No : Miscellaneous Appeal No. 240 of 2012

Branch Manager New India Assurance Co. Ltd.

APPELLANT

Vs

Phoolmati Devi

RESPONDENT

Date of Decision : 08-01-2015

Acts Referred:

Citation : (2015) 2 ACC 345 : (2015) 145 FLR 54 : (2015) 2 LLJ 623

Hon'ble Judges : Akhilesh Chandra, J.

Bench : Single Bench

Advocate : Raj Kumar Singh Vikram, for the Appellant; Rabi Bhushan Prasad, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Akhilesh Chandra, J.—Heard learned counsel for the appellant and learned counsel appearing on behalf of respondent nos. 1 to 3. None turned up on behalf of respondent no. 4, the owner.

2. This is an appeal preferred against the Order/Award dated 29th December, 2011 passed in W.C. Case No. 12 of 1998/W.C. Case No. 06 of 1998(C) by Presiding Officer, Labour Court of Commissioner under the Workman's Compensation Act, 1923 Patna.

3. Undisputedly, the deceased, namely, Ramashray Chauhan @ Ramashish Chauhan, was employee of Bhushan Prasad Gupta @ Bharat Bhushan, the owner of tank lorry, bearing no.-BRB-1753, as well as the owner of the petrol pump where the deceased in fateful night arrived with the tank lorry loaded with petrol which was being emptied and during such process Dacoity in the said petrol pump took place. During such occurrence, the driver was killed.

4. Since the identity of the claimants (respondent nos. 1 to 3) and validity of insurance of the vehicle etc. are undisputed, there appears no need to go into further reference.

5. The Claim Tribunal Below on evaluating and considering the evidence and materials available on the record awarded a sum of Rs. 2,54,148/- with interest @ 10%. per annum.

6. It is contended by learned counsel for the appellant (Insurance Company) that in fact the deceased after discharging his duty had been sleeping at the roof of the petrol pump when the occurrence taken place. In that view of the matter it cannot be said that at the relevant time he was discharging his duty during the employment, hence, the appellant (Insurer) is not at all liable to compensate rather it is the duty of the owner, respondent no. 4 (not in appearance) to do all the needful.

7. The above contention made by learned counsel for the appellant (Insurance Company) is not at all acceptable in face of the evident of A.W. 5, namely, Subodh Kumar, who is none else than co employee on the lorry in question as Khalasi. As according to him on the relevant date, i.e., 2nd June, 1996, while the lorry in question was being emptied, the Munshi of the petrol pump called the driver at the roof of the pump where he and the deceased, both, went and suddenly the incident started taking place, wherein, the deceased lost his life in spite of treatment being provided at the hospital. In two lines cross-examination offered by the contesting opposite party, i.e., appellant here, there is nothing to disbelieve the contention of this witness A.W. 5.

8. In that view of the matter couple with undisputed fact on other points, there appears no merit in this appeal. Accordingly, it is hereby dismissed. The appellant (Insurance Company) is directed to make the payments in terms of the Award, as awarded by Claim Tribunal Below, within a period of two (2) months from today to the claimants (respondent nos. 1 to 3).

9. Further, as prayed for, in the event the appellant (Insurance Company) decides to initiate proceeding for recovery of the amounts, so paid to the claimants (respondent nos. 1 to 3), the employer shall have every right to dispute such proceeding initiated by the appellant (Insurance Company), but it cannot affect the right of the claimants (respondent nos. 1 to 3), i.e., heirs of the deceased.