

(2002) 05 AHC CK 0034
In the Allahabad High Court
Case No : F.A.F.O. No. 627 of 2002

Branch Manager, Oriental Insurance Co. Ltd.

APPELLANT

Vs

Kalawati Yadav and Others

RESPONDENT

Date of Decision : 22-05-2002

Acts Referred:

Workmens Compensation Act, 1923 — Section 3, 4

Citation : (2003) 97 FLR 380 : (2003) 2 LLJ 704 : (2002) 3 UPLBEC 2650

Hon'ble Judges : Vineet Saran, J;G.P. Mathur, J

Bench : Division Bench

Advocate : Manish Goyal, for the Appellant;

Final Decision : Dismissed

Judgement

G.P. Mathur and Vineet Saran, JJ.—This appeal has been filed against the award dated March 7, 2002 passed by the Workmen's Compensation Commissioner, Allahabad in W.C. No. 3 of 2000 awarding compensation of Rs. 2,24,000 in favour of the claimants.

2. The brief facts of this case are that one Chhotey Lal, who was working as a cleaner-loader on truck No. U.P.-78/B-5869 came in contact with a live electric wire when he was trying to unload the goods from the truck. Due to such accident, the said Chhotey Lal fell down from the truck and died on the spot. The claimants, who are the widow and parents of the deceased Chhotey Lal filed W, C. No. 3 of 2000 claiming compensation of Rs. 2,24,370 along with 18 per cent interest from the owner and appellant-insurer of the truck. It was alleged by them that the deceased was aged about 22 years at the time of accident and was earning a salary of Rs. 3,000 per month.

3. The owner of the truck admitted the accident but stated that the deceased Chhotey Lal was paid Rs. 1500 per month as salary and Rs. 35 per day as diet allowance. One eye-witness of the accident was also examined who corroborated that the deceased had received fatal injuries in the said accident.

4. After considering the evidence adduced by the parties the Workmen's Compensation Commissioner held that as the vehicle was validly insured at the time of the accident by the appellant Insurance Company and the accident was caused during the course of employment, as such the Insurance Company was liable for payment of the compensation. Considering the statement of the owner as well as the provisions of Minimum Wages Act, the Workmen's Compensation Commissioner assessed the income of the deceased at Rs. 2000/- per month instead of Rs. 3,000/- as claimed by the claimants. On the basis of the said income and the age of the deceased, a sum of Rs. 2,24,000/- was awarded by the Workmen's Compensation Commissioner as per the schedule of the Workmen's Compensation Act.

5. We have heard Sri Manish Goyal on behalf of the appellant Insurance Company at length.

6. The main grounds of challenge are firstly that the Insurance Company was not liable for payment of compensation as the accident had not arisen out of the use of Motor Vehicle in a public place and as such the deceased was not covered under the terms of the policy; and secondly that the quantum of compensation was excessive as the income of the deceased was not proved.

7. With regard to the first ground of challenge, a perusal of the policy of the Insurance filed as Annexure-1 to the affidavit filed in support of the stay application would make it clear that upto three driver/workmen were covered under the policy for which extra payment had been paid. The deceased, who was working as a cleaner/loader would be covered as a workman. It is not disputed that the deceased came in contact with the live electric wire when he was on the top of the truck while unloading the goods. As such the accident had occurred during the course of his employment. In such circumstances, we do not find force in this argument of the learned counsel for the appellant. With regard to the other grounds relating to the quantum of compensation, Sri Goyal has argued that the provisions of Minimum Wages Act would not be applicable in the present case, as such the monthly income of Rs. 2,000/- as assessed by the Workmen's Compensation Commissioner was highly excessive. Considering the fact that the owner has stated that the deceased was getting a salary of Rs. 1500/- per month plus diet allowance of Rs. 35/- per day, in our opinion, the income of the deceased as assessed at Rs. 2000/- per month cannot be said to be excessive. Accordingly, the compensation having been calculated in terms of the schedule of the Act, is fully justified.

8. Thus, we are of the view that the award of the Workmen's Compensation Commissioner is wholly justified and does not call for any interference by this Court in appeal. As such this appeal is dismissed under Order 41, Rule 11, C.P.C.