(2014) 02 PAT CK 0050

In the Patna High Court

Case No : Miscellaneous Appeal No. 194 of 2003

Divisional Manager APPELLANT

Vs

Most. Ramkumari Devi RESPONDENT

Date of Decision : 18-02-2014

Acts Referred:

Workmens Compensation Act, 1923 — Section 10(1), 30(1)(a)

Citation : (2014) 2 ACC 782 : (2014) 142 FLR 329 : (2014) 2 LLJ 417

Hon'ble Judges : A.K. Lal, J

Bench : Single Bench

Advocate : Sanjay Singh and Bimlesh Kumar Jha, Advocate for the Appellant; Amarendra Kumar Pathak, Advocate for the Respondent

Judgement

Amaresh Kumar Lal, J.—This appeal u/s 30(1)(a) of the Workmen''s Compensation Act, 1923 (hereinafter referred to as the ''Act'') has been preferred against the judgment and order dated 25.3.2003 passed by the learned Deputy Labour Commissioner-cum-Commissioner, Labour Court, Patna in W.C. No. 10 of 2002 (C) filed by Ram Kumari Devi, the mother of the deceased Nagendra Sharma, by which the Insurer-appellant No. 1 has been directed to pay a sum of Rs. 4,07,700/- to the claimant. The claimant-respondent No. 1 filed a petition u/s 10(1) of the Act that Nagendra Sharma, the son of the claimant was working as a Khalasi on the truck bearing registration No. BR-1G 9848 owned and possessed by Binod Kumar Singh (respondent No. 2). On 22.3.2002 at about 12.30 p.m. during his employment he was crushed by the aforesaid vehicle and succumbed to his injuries on the spot for which Umesh Singh, the brother of the deceased gave his fardbeyan in Bihta Police Station. The deceased was getting Rs. 4000/- per month as salary from the owner of the offending vehicle (aforesaid truck). At the time of his death, Nagendra Sharma was aged about 32 years.

2. The owner of the vehicle-respondent No. 2 appeared and filed his written statement dated 29.10.2002 that the offending vehicle was insured by the New

India Assurance Company Ltd. (appellant) and produced the documents relating to the insurance of the offending vehicle. The appellants filed their written statement dated 28.1.2003 and raised objection that khalasi, cleaner does not come under the purview of the Act, as such the insurer is not liable to make payment of any amount of compensation. After hearing both the parties, the impugned order has been passed.

3. Learned counsel for the appellants has submitted that the insurer is not liable to pay the amount of compensation as the deceased-khalasi does not come under the purview of the insurance nor any amount for khalasi has been taken under the Insurance Policy. The owner has also not accepted him as his worker nor any evidence has been given regarding the age of the deceased. In support of his contention, he has referred two decisions; Oriental Insurance Company Ltd. Vs. Shanti Devi and Others and New India Assurance Co. Ltd. Vs. Sheo Pujan Singh and Others .

4. Learned counsel for respondent submits that from perusal of the written statement filed on behalf of owner-respondent No. 2 it does not appear that anywhere a statement has been made that the deceased was not his worker. Only it has been stated that since the vehicle was insured by the New India Assurance Company, the claimant is entitled to get compensation, if any, from the insurer of the vehicle.

5. It has also been submitted on behalf of owner of the vehicle that the vehicle was insured for the period 14.6.2001 to 13.6.2002, whereas, the occurrence has taken place on 22.3.2002, as such the offending vehicle was insured during the period of accident. He has also submitted that extra premium had been paid by the owner for coverage of the risk of the person employed in connection with operation and/or maintaining and/or unloading of motor vehicle. The word ''khalasi'' is used for the person who is employed for maintaining and/or unloading of the vehicle, as such the insurer has taken the premium covering the risk of the deceased who was working as khalasi on the offending vehicle.

6. He has further submitted that the above decisions cited by the appellants are not applicable in this case. It appears that in both the decisions the deceased was engaged as khalasi and the premium was not paid for him. Only the risk of the driver was under the coverage of the insurance policy.

7. Having heard learned counsel for the parties and on perusal of the record, it appears that the deceased was an employee of the owner of the offending vehicle who was working as a khalasi on the offending vehicle which met with an accident causing his death. The death has not been disputed by any party. There are materials available on the record i.e. a copy of the postmortem report and inquest report at page 17 and 27 of the lower court record respectively, to show that the deceased Nagendra Sharma was aged about 32 years. It is apparent from the copy of the insurance policy (page 36 of the record) that the offending vehicle was insured by the appellant company and premium was also paid for the

persons employed in connection with the operation and/or maintaining and/or unloading of motor vehicle. As such the deceased, khalasi of the offending vehicle was under the coverage of the insurance policy, as such the decisions cited above do not help the appellants. The quantum of amount of compensation has not been disputed by any of the parties.

8. It appears that since the vehicle as well as the workman-deceased was under the coverage of the insurance policy, insurance company was liable to pay the amount of compensation as directed by the impugned order. It also appears that the appellants have filed a vexatious appeal to deprive the claimant-respondent No. 1, a poor widow to get her entitlement.

9. In the facts and circumstances stated above, I do not find any ground to interfere with the impugned judgment. This appeal is dismissed with a cost of Rs. 10,000/- payable to the claimant-respondent No. 1. Let a copy of this judgment be sent to the Deputy Labour Commissioner-cum-Commissioner, Labour Court, Patna along with the record of W.C. No. 10 of 2002 (C), so that the amount deposited before the Labour Court can be paid to the claimant-respondent No. 1 at an early date.