
(2002) 02 JH CK 0036
In the Jharkhand High Court
Case No : M.A. No. 215 of 2001

Divisional Manager, Oriental Insurance Company Ltd.	APPELLANT
Vs	
Mahendra Kaur and Another	RESPONDENT

Date of Decision : 21-02-2002

Acts Referred:

Workmens Compensation Act, 1923 — Section 4

Citation : (2003) 2 LLJ 62

Hon'ble Judges : Hari Shankar Prasad, J; Gurusharan Sharma, J

Bench : Division Bench

Advocate : Alok Lal, for the Appellant; Ganesh Prasad Agarwal, for the Respondent

Final Decision : Allowed

Judgement

1. Heard learned counsel for the parties. The present appeal has been filed by insurance company challenging judgment and award, dated September 10, 2001, passed by Deputy Labour Commissioner-cum-Commissioner, Workmen's Compensation, Ranchi, in W.C. Case No. 77 of 2000. According to stamp report, dated January 10, 2002, limitation for filing appeal expired on November 17, 2001, whereas appeal was filed on November 29, 2001. I.A. No. 329 of 2002 at Flag "A" has been filed to condone the said delay. We are of the view that delay of about twelve days in filing appeal has properly been explained. Accordingly, we condone the delay in filing the appeal. Thereafter we have heard the appeal on merit.

2. Admittedly, Balbir Singh was employed as driver of the truck (B.R.-14G-7912), belonging to Satyadeo Singh. It was insured with Oriental Insurance Company Ltd. On September 20, 1998, while driving the said truck from Khelari to Bachra Colliery, on the way, he along with cleaner, Mukesh Sao and truck was kidnapped and since then is traceless. The owner of truck lodged first information report vide Sukhdeonagar P.S. Case No, 505 of 1998, wherein after investigation police submitted final Form stating the occurrence u/s 364-A, of the Indian Penal Code

was true, but there was no chance of getting any clue thereof in future, which was accepted by Court. Driver's wife filed claim under the provisions of Workmen's Compensation Act, 1923 (hereinafter referred to as the Act), wherein impugned award directing insurer to pay a sum of Rs. 1,94,640 to the claimant was passed. On the basis of final Form aforesaid, learned Commissioner, Workmen's Compensation, Ranchi, presumed and accepted the driver to have been killed by the miscreants. Section 3 of the Act provides that in case of personal injury caused to a workman by accident arising out of and in the course of his employment, his employer is liable to pay compensation in accordance with the provisions of Section 4 of the Act. Section 4 provides computation of compensation where injuries sustained by workman concerned resulted into his death. In the present case compensation was claimed on the basis that driver met with his death at the hands of: miscreants after having been kidnapped along with truck. It cannot be disputed that causal connection was established between kidnapping of the vehicle along with its driver and employment of the said driver and it occurred on account of the risk which was an incident of the employment. Words "arising out of employment" are wide enough so as to cover the cases where there may not necessarily be a direct connection between the injuries caused as a result of accident in the employment of the workmen. But we find that no real evidence was brought on record, which might have been considered as affecting the balance of probability one way or other and the whole subject was matter of guess work. Police also on detailed investigation could not find it is a case of murder and only occurrence of kidnapping of the driver along with the vehicle was found to be true. No clue of the incident in question could be traced out. It is true that when it was established that the truck was traceless, the insurer paid compensation for the theft of the said vehicle to the owner, but on that basis the claimant cannot ask for compensation under the Act on the ground of alleged killing of her husband after kidnapping him, unless such killing was proved.

3. Question of payment of compensation under the Act on the death of a workman amounts to determination of a civil liability under the Act and for attracting such provision, necessary ingredients including factum of death must be proved. Even if kidnapping of driver was proved, he could not have been declared to have been killed on the basis of presumption that he was traceless after kidnapping. Only on completion of a period of seven years from the date he was traceless and his whereabouts were not known, it can be said that he met with his civil death.

4. In the aforesaid circumstances, we are of the opinion that claim application under the Act was not maintainable, treating the husband of the respondent No. 1 to be dead. Impugned judgment and award, dated September 10, 2001, passed by Deputy Labour Commissioner-cum-Commissioner, Workmen's Compensation, Ranchi, in W.C. Case No. 77 of 2000 is, therefore, set aside. Consequently, claim application stands rejected.

5. In the result, this appeal is allowed, but without costs.