
(1976) 10 RAJ CK 0018

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 44 of 1972

Hans Raj

APPELLANT

Vs

Superintending Engineer, PWD

RESPONDENT

Date of Decision : 19-10-1976

Acts Referred:

Employees Compensation Act, 1923 — Section 30, 32

Citation : (1976) WLN 463

Hon'ble Judges : S.N. Modi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.N. Modi, J.—This Is an appeal u/s 30(1)(a) of the Workmen's Compensation Act against the judgment of the Workmen's Compensation Commissioner, Bikaner, dated December 31, 1971, whereby he disallowed claim of the appellant.

2. Ramesh Kumar was working as an overseer P.W.D. (B & R), Sub-division No. V, Sri Dungargarh. His monthly wages, during the relevant period, were Rs. 404/-. He met with an accident on May 13, 1969 when he was traveling in a Government truck bearing registration No. RJK 4376.

Ramesh Kumar was transporting a Government generator in the truck. The generator was loaded in truck at Dungargarh and it was to be deposited at Bikaner P.W.D. Office. This truck met with an accident in the course of journey resulting in death of Ramesh Kumar in the Government hospital, Bikaner on May 19, 1969. The appellant, who is the father of Ramesh Kumar, moved in application (sic) compensation to the tune of Rs. 10,000/- on the ground that Ramesh Kumar at the time of accident was a workman within the meaning of the Workmen Compensation Act and his death occurred by accident arising out of and in the course of his employment.

3. The application was contested by the Superintending Engineer, PWD (B & R), Project, Bikaner. He admitted that the truck No. RJK 4979 was a Government

truck and it met with accident on May 13, 1969 which resulted in the death of Ramesh Kumar. He denied that at the time of accident Ramesh Kumar was on duty and he lost his life by accident arising out of and in the course of his employment. He also denied that Ramesh Kumar on the relevant date was a workman within the meaning of Workmen's Compensation Act.

4. On the pleadings of the parties, the following issues were framed,-

1. Whether the applicant's son was a workman within the meaning of the Act?
2. Whether the accident arose out of or in the course of employment?
3. Whether the amount of compensation claimed by the applicant is payable?
4. Whether the opposite party is liable to pay the said compensation?
5. Relief?

5. The Commissioner decided issue No. 1 in favour of the appellant, but all other issues were decided against the appellant. The Commissioner accordingly disallowed the claim. It is against this order that the application-appellant has preferred this appeal.

6. The main question that arises for determination in this appeal is whether the accident arose out of and in the course of Ram Kumar's employment. On behalf of the applicant, Ram Narain, Asha Ram, Satya Prakash Gupta besides the applicant himself have appeared in the witness-box. The learned Commissioner discarded the testimony of Asha Ram and Satya Prakash on the ground that their testimony was hearsay and was therefore inadmissible in evidence. So far as witness Ram Narain is concerned, the learned Commissioner did not consider his evidence at all.

7. Asha Ram was a fellow traveller in the truck which met accident on the fateful day. He has deposed that Ramesh Kumar told him that the generator which was being carried in the truck, was to be delivered at Bikaner in the P.W.D. store. Similar is the statement of Satya Prakash. He too was a fellow traveller in the truck. He has deposed that Ramesh Kumar was travelling in the truck along with the generator which belonged to the Government. The learned Commissioner has discarded the testimony of Asha Ram and Satya Prakash Gupta on the ground of its being hearsay. In my opinion, the statement of Asha Ram that Ramesh Kumar told him that the generator was to be deposited at the P.W.D. store of Bikaner is admissible in evidence under Clause (2) of Section 32 as it was made by deceased Ram Kumar in the ordinary course of business.

8. The most important witness in the case was Ram Narain. He was the driver of the truck. He has deposed that Ramesh Kumar was travelling in the truck with a generator which was loaded at Dungargarh. He has further deposed that in the way the truck met with an accident and the generator fell upon Ramesh Kumar which caused his death. He has also stated that at the time of accident Ram Kumar was on duty and the generator was in his charge. He has also deposed

that Ramesh Kumar told him that the generator was to be carried in the truck as it was to be deposited at Bikaner. I see no good ground nor any ground has been pointed out on behalf of Deputy Government Advocate why the testimony of Ram Narain and Asha Ram be disbelieved. From their testimony it is proved that on the fateful day Ramesh Kumar was on duty and the accident arose out of and in the course of his employment as he was in charge of the generator which belonged to the Government and which was being carried in a truck belonging to the Government for the purpose of depositing the same in the P.W.D office at Bikaner.

9. Learned Deputy Government Advocate has laid considerable stress on the testimony of B.C. Agarwal who was during the relevant period Assistant Engineer with head quarters at Dungargarh. Ramesh Kumar was working under him. On May 13, 1969, he was not at Dungargarh and had gone to Bikaner on Government duty. He has deposed that he has not given any order in writing to Ramesh Kumar to carry the generators from Dungargarh to Bikaner. He has admitted that the generator which was being carried to Bikaner in the truck belonged to the Government. He has also admitted that the generator was brought to Dungargarh for carrying out some public work. It is contended on the basis of the statement of B.C. Agarwal that Ramesh Kumar was carrying the generator without any specific order from his superior officer and as such he cannot be treated on Government duty, I find no force in the above contention. It is common ground between the parties that the generator which was being carried in the truck belonged to the Government. It is further common ground between the parties that truck in which the generator was being carried also belonged to the Government. It further appears that this generator was brought from Bikaner to Dungargarh for some public purpose. There is nothing to suggest that by May 13, 1969 the purpose for which the generator was brought had not been completed. Having regard to all the circumstances of the case I am of the opinion that Ramesh Kumar on the (sic) day was on duty and the accident arose out of and in the course of his employment.

10. Coming to the quantum of compensation to be awarded to the appellant-applicant it is admitted that Ramesh Kumar was drawing Rs.404/- as his monthly wages on the date of accident. As per Schedule II, he is entitled to Rs. 10,000/- as compensation.

11. I accordingly allow this appeal, set aside the judgment of the Commissioner, and award a sum of Rs. 10,000/- as compensation to the appellant Hans Raj. The appellant shall also get costs of both the courts.