
(2013) 04 AHC CK 0319

In the Allahabad High Court

Case No : First Appeal from Order No. 803 of 2013

I.C.I.C.I. Lombard General Insurance Co. Ltd.

APPELLANT

Vs

Sitaram and Others

RESPONDENT

Date of Decision : 01-04-2013

Acts Referred:

Citation : (2013) 4 ACC 101

Hon'ble Judges : Rakesh Tiwari, J; Anil Kumar Sharma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Om Prakash employed as driver of mini bus No. UP-53/BT-2571 was injured in an accident on 30th October, 2011 and succumbed to his injuries on 3rd November, 2011. His dependents claimant-respondents filed W.C.C. No. 2 of 2012 before the Employees' Compensation Commissioner, Gorakhpur claiming compensation of Rs. 5,19,950 for his death. The claim petition was contested by the appellant Insurance Company by filing its written statement denying the accident and the claim in totality, whereas the owner of the mini bus with which the alleged accident is said to have taken place admitted the factum of accident and death of Om Prakash as a result thereof. The Employees' Compensation Commissioner" allowed the claim application awarding a compensation of Rs. 5,12,849 along with 12% interest w.e.f. 30th November, 2011 i.e. from one month after the date of accident directing the Insurance Company to satisfy the award. Aggrieved this First Appeal From Order has been filed challenging the impugned award dated 28th January, 2013.

2. The contention of the learned Counsel for the appellant is mat there is no statutory liability on the Insurance Company to pay interest on the compensation awarded. In view of the law laid down by the Apex Court in New India Assurance Co. Ltd. Vs. Harshadbhai Amrutbhai Modhiya and Another, and in P.J. Narayan Vs. Union of India (UOI) and Others, , it is stated that the Employees' Compensation Commissioner has awarded 12% interest from one month after

the date of the accident which is fully illegal. It is lastly submitted that no issues had been framed on the basis of the pleadings of the parties by the Workmen's Compensation Commissioner which is in violation of Rules 28 and 32 of the Workmen's Compensation Rules, 1924, as such the Commissioner has erroneously relied upon the written statement of the owner of the vehicle in concluding that deceased was employed as driver, overlooking the fact that there was no evidence on the record to corroborate the pleadings made by the vehicle owner who also did not step in the witness box to prove the averments of the written statement. It is stated that issues were required to be framed as insured vehicle was not involved in the accident and the accident did not occur during the course of alleged employment.

3. After hearing the Counsel for the appellant and on perusal of the record we find that Rule 28 requires the Commissioner to frame issues upon which the disputed questions require a decision, whereas Rule 32 states that the Commissioner shall record his finding on each of the issues framed and the reasons for such finding. According to Counsel for the appellant when Act and Rules provide for a thing to be done in a particular manner but this aspect of the matter had been overlooked by him and the Commissioner has decided the petition without framing any issues. On query made by the Court the Counsel for the appellant has fairly submitted that he has not filed copy of the written statement whereby the appellant had contested the claim before the Workmen's Compensation Commissioner, therefore, it cannot be ascertained that there was any dispute of any point between the parties. Moreover, it is apparent from the judgment placed before us by Counsel for the appellant that there was only one point of contest by the Insurance Company that accident had not taken place at all with the vehicle in question and that Om Prakash had not died during the course of the employment in the alleged accident on 30th October, 2011. This bald contention denying the claim is rebutted by the claimant by saying that accident had taken place by the aforesaid mini bus on 30th October, 2011 in which Om Prakash died during the course of employment. There is an interesting over tone to this context to the effect that owner of the bus had admitted the factum that his bus was involved in the said accident in which Om Prakash died on 3rd November, 2011 due to injuries sustained by him on 30th October, 2011. The Insurance Company has insured the vehicle in question in the context of accident. The Insurance Company steps into shoes of the owner who had admitted the accident, therefore, there was no dispute before the Commissioner insofar as the accident by the said bus in the manner stated by the claimant was concerned. As regards the other question regarding amount of salary, etc. is concerned the Insurance Company did not file any documentary evidence or led any oral evidence to contest the claim, petition; that owner of the bus accepted the claim of the dependents of the deceased and the Insurance Company in a mere formalities denied the same. In the peculiar facts and circumstances the claim have not been admitted by the Insurance Company cannot defeat claim stating it to be a question in issue. The next contention of learned Counsel for

the appellant regarding Rules 28 and 32 is concerned that this question was not raised before the Employees' Compensation Commissioner. The appellant company also did not bring this fact to the notice of the Commissioner during the course of argument before him, therefore, it cannot be permitted for the first time to raise this question in appeal which was not raised by the appellant before the Commissioner and in any case since there was any material question addressed by the appellant regarding maintainability of the claim application on the ground that bus in question was not involved in the accident have not been admittedly the insurer the appellant.

For the reasons stated above, we do not find any merit in the appeal, which is accordingly dismissed.