
(2019) 10 SHI CK 0090

In the High Court Of Himachal Pradesh

Case No : First Appeal From Order No. 419 Of 2010

Jyoti Devi & Others

APPELLANT

Vs

Himachal Road Transport Corporation Shimla & Another

RESPONDENT

Date of Decision : 16-10-2019

Acts Referred:

Workmen's Compensation Act, 1923 — Section 4, 30

Citation : (2019) 10 SHI CK 0090

Hon'ble Judges : Ajay Mohal Goel, J

Bench : Single Bench

Advocate : Ajay Sharma, Peeyush Verma, G.S. Rathore

Final Decision : Disposed Of

Judgement

Ajay Mohal Goel, J

1. By way of this appeal, filed under Section 30 of the workmen's Compensation Act, the appellants/claimants have assailed the order passed by learned Sub-Divisional Magistrate-cum-Commissioner under Workmen's Compensation Act, 1923 (hereinafter to be referred as '1923 Act'), in case No.13 of 2009/WCC, titled as Smt. Jyoti Devi versus Himachal Road Transport Corporation & another, dated 19.07.2010, vide which learned Commissioner dismissed the Claim Petition filed by present appellants.

2. Brief facts necessary for the adjudication of the present appeal are as under:-

Appellants are the widow, mother and minor son, respectively, of deceased Avinash Singh, who was an employee of the respondent-corporation. Shri Avinash Singh was employed as a driver at Rohru, District Shimla with the respondent-corporation and was drawing a salary of Rs. 5,960/- per month as per his Last Pay Certificate issued by the respondent-corporation. In the month of January, 2009, Avinash Singh was deputed by the office of the respondent-corporation on the basis of route from Tuni to Haroli. On 27.01.2009, Shri Avinash Singh lost his life in an accident involving scooter bearing registration

No.HP-20-3808 in between 8/8.15 p.m. near village Lalari, Tehsil Haroli, District Una, H.P.

3. An application for grant of compensation under the provisions of Workmen's Compensation Act was filed by the present appellants inter alia, on the ground that as the accident had arisen out of and in the course of his employment while deceased Avinash Singh was returning to his home on his scooter from his work place after discharging his duty, the claimants were entitled to the compensation amounting to Rs. 5,91,180/-alongwith interest. This amount was arrived at by the claimants as is evident from the averments made in para 13 of the Claim Petition in the following terms:-

"13. That the applicants are dependents and legal heirs of deceased Avinash Singh, who was employed with respondents No.1 and 2. The total compensation amount comes to Rs. 5,91,180/- with interest and cost in the following manner:

50% of wages comes to Rs. 2980/- per month as the salary of Avinash Singh was Rs. 5060/- per month, as per his last pay certificate issued by respondent No.2. But as per Explanation II to Section 4 of W.C. Act, 1923 "Where the monthly wages of a workman exceeds Rs. 4,000/- rupees, his monthly wages for the purpose of compensation shall be deemed to be Rs. 4,000/ -". Hence, 50% of monthly wages of Avinash Singh comes to Rs. 2,000/-per month.

Age of deceased Avinash Singh was 35 years of age at the time of accident. Hence factor as per schedule IV is 197.06, which comes to Rs. 2000 X 197.06= Rs. 3, 94,120/- . Penalty @ 50% of the award amount comes to Rs. 1, 97, 060/- .

Hence, total amount comes to Rs. 3,94,120/-+ Rs. 1,97, 060/-= Rs. 5,91,180/-".

4. To illustrate a little more, it was mentioned in the Claim Petition filed by the appellants/ claimants (hereinafter to be referred as 'appellants') that on the fateful day i.e. on 27.01.2009, as per the Duty Roster, deceased Avinash Singh reached Haroli from Tuni alongwith the bus. He parked the bus at Haroli. Thereafter, he was on his way to his place of residence on scooter bearing registration No.HP-20-3808, when at around 8/8.15 p.m., said scooter met with an accident near village Lalri, Tehsil Haroli, District Una, H.P., as a wild cow dashed against the scooter. Deceased Avinash Singh sustained head injury on account of the said accident. Though he was rushed to P.G.I. Chandigarh, however, he died on his way to the hospital. As per the claimants, the employers were informed about the accident and death of deceased Avinash Singh on 28.01.2009. Thereafter, a legal notice was also sent to the respondents on 25.05.2009, which stood received by respondent No.1 on 26.05.2009 and respondent No.2 on 27.05.2009. At the time of his death, deceased was 35 years old and as accident took place in the course of his employment, the claimants were entitled for compensation in terms of the Workmen's Compensation Act. It was further the case of the claimants that as respondents were having the knowledge of accident and death of driver Avinash Singh, they were legally bound to deposit the amount of compensation alongwith the Commissioner of

Workmen's Compensation within one month from the date of accident. As respondents No.1 and 2 have failed to do so, therefore, respondents were also liable to pay penalty with interest @ 12% per annum to the claimants.

5. The claim was resisted by the respondents before the learned Commissioner inter alia, on the ground that deceased Avinash stood appointed on a consolidated remuneration of Rs. 5,000/- per month w.e.f. 31.12.2004 and his contract was for a limited period. The head quarter of the deceased was fixed at Parwanoo. On 27.01.2009, deceased was deputed to Tuni-Una-Haroli route from Parwanoo to Haroli. The accident had not occurred out of or in the course of employment of the deceased. According to the respondents, deceased Avinash Singh after parking the bus at Haroli, left the said place/duty station without obtaining station leave from the Competent Authority and he, thus, violated the terms and conditions of the contract as well as duty rules. On the said ground, respondents denied that the claimants were entitled for any compensation.

6. On the basis of the pleadings of the parties, learned Commissioner framed the following issues:-

" 1. Whether the deceased Shri Avinash Singh was a Workman within the purview of WCA? OPD.

2. Whether the death of Shri Avinash Singh has arisen out of an in the course of his employment? OPP.

3. If issue supra are correct/ affirmative, whether the petitioners are entitled to compensation? What is the amount of compensation?

4. Final Order".

7. On the basis of evidence led by respective parties, the issues so framed, were decided by the learned Commissioner in the following manner:-

"Issue No.1: Yes.

Issue No.2: No.

Issue No.3: Not determined.

Relief: Petition is disallowed as per operative part of the orders".

8. Though learned Commissioner held that Avinash Singh was a workman within the purview of Workmen's Compensation Act, yet it dismissed the Claim Petition by holding that the act of deceased to leave his bus unattended at the termination point and leaving for his native place on a private vehicle without any express permission of his employer could not be termed as incidental to the employment. Learned Commissioner held that deceased was supposed to terminate the bus route at Haroli stay there only overnight before assuming the back journey next day. It held that the act of driving a scooter to his village could not be termed as an incidental act to his employment and there was no casual connection between his employment and the route traversed on scooter which in

fact was traversed in violation of the service conditions. On these basis, learned Commissioner dismissed the Claim Petition.

9. Feeling aggrieved, the claimants have filed the present appeal.

10. I have heard learned counsel for the parties and have also gone through the impugned order as well as record of the case.

11. A perusal of the order passed by the learned Commissioner demonstrates that there is a finding returned by the learned Commissioner that deceased was a workman within the purview of the Workmen's Compensation Act. This finding so returned by the learned Commissioner has attained finality as the same has not been assailed by the employer.

12. Now, the only thing which has to be examined by this Court is as to whether the reasons which weighed with the learned Commissioner while rejecting the Claim Petition are sustainable in law or not.

13. It is an admitted case of the employer itself that as on the fateful day, deceased stood deputed to Tuni-Una-Haroli route from Parwanoo to Haroli. It is also not in dispute that it is after the bus reached Haroli that deceased Avinash Singh left for his place of residence. This Court has been informed that the approximate distance between Haroli and village Lalri i.e. the place where the accident took place is between 4 to 6 kilometer. Though, it was the case of the respondents that by leaving for his place of residence, deceased Avinash Singh violated the terms and conditions of the contract as well as Duty Rules, however, a perusal of the record demonstrates that neither any Duty Rules have been placed on record nor any terms and conditions of contract have been placed on record by the respondents to substantiate its contention that the act of deceased leaving for his place of residence after parking the bus at Haroli amounted to violation of the terms and conditions of contract or Duty Rules. Respondents have also not produced any material on record from which it can be inferred that there was a place of residence provided to deceased Avinash Singh at Haroli itself and therefore, after parking his bus at Haroli, he could not have left for other place of residence.

14. It is further not the case of the respondents that at the time when the unfortunate accident took place, deceased Avinash Singh was supposed to be plying the bus in issue on some route because it is the admitted case of the parties that it is on the next day that deceased Avinash Singh was to ply the bus from Haroli to Parwanoo, after overnight stay. In this background, the findings returned by the learned Commissioner that the act of deceased Avinash Singh of leaving to his place of residence on scooter could not be termed to be an incidental act of employment or there was no casual connection between the employment and the route traverse on scooter or the said act was in-violation of the service conditions, are perverse findings.

15. As I have already mentioned hereinabove, there is no evidence on record to

demonstrate that after parking the bus at Haroli, deceased Avinash Singh could not have left for his place of residence before assuming the back journey next day. The place of accident was also at a close proximity to where the bus was parked and it is not the case of the employer that Avinash Singh was not on his way to the place of his residence on scooter for the purpose of overnight stay only. Therefore, the findings returned by the learned Commissioner that there was no casual connection between the employment of the deceased and he route traversed on scooter by him are also perverse findings as already mentioned hereinabove, because Avinash Singh had to rest somewhere during the night, before resuming return journey the next day.

16. The findings returned by the Commissioner that the said act of the deceased are in violation of the service conditions are also perverse because there is nothing on record to substantiate said findings returned by the learned Commissioner. This demonstrates that these findings are not based on record, but on whims and conjectures.

17. In view of the reasons mentioned hereinabove, this appeal is allowed and the order passed by learned Commissioner in case No.13 of 2009/WCC, titled as Smt. Jyoti Devi versus Himachal Road Transport Corporation & another, dated 19.07.2010, is quashed and set aside.

18. The compensation to which appellants are entitled to is calculated as under:-

A perusal of the record of the learned Commissioner demonstrates that there is on record Ext.PW1/G, which is a copy of Last Pay Drawn Certificate, drawn by the deceased, as per which the last pay being drawn by the deceased was Rs. 5,885/- and out of this, his basic pay was Rs. 5,360/-. The matriculation certificate of the deceased is also on record, exhibited as Ext.PW1/F, as per which the date of birth of the deceased was 05.05.1972, meaning thereby that as on the date of his death, deceased was approximately thirty six and half years old. Admittedly, as the last pay drawn of the deceased was in excess of Rs. 4000/-, the compensation to which the appellants are entitled to, comes to as under:-

- a) Deemed monthly wages of deceased is Rs. 4,000/- per month.
- b) 50% of the deemed monthly wages is Rs. 2,000/- per month.
- c) Rs. 2000 X Factor 194.64 in terms of schedule-IV of the 1923 Act, which comes to Rs. 3, 89, 280/-.

The penalty at the rate of 50% of the award amount comes to Rs. 1,94,640/-.

Hence, total amount comes to Rs. 3, 89, 280/- + Rs. 1,94,640/- = Rs. 5,83,920/-.

19. In addition, the claimants shall also be entitled for interest upon the said compensation in terms of the provisions of 1923 Act.

20. Petition is disposed of in above terms. Pending miscellaneous application(s), if any, stand disposed of. Interim order, if any, also stands vacated.