
(2013) 04 MP CK 0006
In the Madhya Pradesh High Court
Case No : M.A. No. 1050 of 2006

Kamrunnisa and Others

APPELLANT

Vs

Manoj and Others

RESPONDENT

Date of Decision : 09-04-2013

Acts Referred:

Citation : (2014) 1 ACC 128 : (2013) ACJ 2459 : (2014) 1 AnWR 34

Hon'ble Judges : M.C. Garg, J

Bench : Single Bench

Advocate : J.M. Poonegar, for the Appellant; Preeti Saxena and Ms. Nidhi Saxena, for the Respondent

Final Decision : Dismissed

Judgement

M.C. Garg, J.—This appeal has been filed on behalf of the appellants-claimants with a prayer that in this case the insurance company, i.e., respondent No. 3, be directed to make the payment of compensation, who may be authorised to recover the money from respondent Nos. 1 and 2, who have been burdened with liability. According to the appellants, the claim petition was filed by the legal heirs of the deceased Jafar, who was working as a driver in autorickshaw bearing No. MP 09-KA 1728 on monthly salary of Rs. 4,000. On 19.3.2005, when the deceased was driving the autorickshaw and had come back after leaving the passengers and reached near Central Kotwali Police Station, there was some discussion between the deceased and the police who wanted to challan him. Because of that, he became serious and was taken to MY Hospital, Indore. The appellant expired while being in hospital. No F.I.R. of the case was registered yet the legal heirs of the deceased Jafar claimed compensation from his employer and consequently from the insurance company also. The Workmen's Compensation Commissioner awarded a sum of Rs. 3,38,880 to be paid by the respondent No. 1 but it is the submission of the appellants that this liability should have been fastened on the insurance company inasmuch as the deceased was not disqualified for driving the autorickshaw.

2. The appellants submit the following questions of law which arise in this case:

(1) Whether the Commissioner was justified in exonerating the insurance company despite the deceased being in possession of the driving licence?

(2) Merely because the licence was under renewal or was not renewed, can the insurance company be exonerated from the responsibility?

3. The Commissioner while deciding issue No. 2 has made the following observations:

(Omitted as in Hindi)

4. A perusal of the averments made in para 6 established that despite there being no evidence as required u/s 3 of the Workmen's Compensation Act, 1923 the Commissioner has awarded a sum of Rs. 3,38,880.

5. In this appeal, the appellants want fixation of the liability on the insurance company.

6. This prayer has been opposed by the insurance company.

7. Learned counsel appearing for the insurance company submits that in this case, besides issue of driving licence which was certainly not produced by the driver, the appellants have also failed to establish that the deceased was entitled to any compensation under the Workmen's Compensation Act inasmuch as the death of the deceased had not occurred on account of suffering personal injury caused to him by accident arising out of and in the course of his employment.

8. It is submitted that admittedly, the deceased expired due to heart attack and the heart attack has not been caused by any accident or by suffering any injury during the course of his employment. As such, it is submitted that the appellants, who are claiming to be the legal heirs of the deceased, are not entitled to any compensation. It is also submitted that the entire case is concocted story and based upon collusion between the owner of the vehicle and the legal heirs of the deceased.

9. In this regard, it was pointed out that except the statement of the owner, who has stated that the deceased was an employee with the owner as driver in the autorickshaw, no other evidence has come to support the case of the appellant; even from the statement of the owner, it is not coming out that the death of the deceased occurred due to an accident arising out of or during the course of his employment because of the involvement of the vehicle. It is, therefore, submitted that no cause of action of filing the appeal was available to the legal heirs of the deceased u/s 3 of the Workmen's Compensation Act.

10. Learned counsel for the insurance company relied upon the various judgments. The first judgment cited is the judgment of the Hon'ble Apex Court delivered in the case of Mamtaj Bi Bapusab Nadaf and Others Vs. United India Insurance CO. and Others, . In this case, the issue was as to whether the death

of the workman was arising out of an accident which arose out of or in the course of his employment. Two labourers were engaged for unloading maize from a tractor-trailer to an underground storage; they climbed grocery pit in order to clean the same for storing maize and while cleaning they fell into pit and died of asphyxia. Their dependants filed claim for compensation. Insurance company disputed its liability on the ground that vehicle was not in operation, it was not involved in accident and there was no proximity or direct connection between death of workmen and the vehicle. Commissioner allowed compensation against insurance company. High Court found that the vehicle was not involved in accident and death of workmen has no proximate or direct connection with the vehicle and exonerated the insurance company. Use of vehicle has not even been claimed as a ground for fastening liability on the insurance company. The appeal filed before the Hon''ble Supreme Court has also been dismissed and it was held that the insurance company was not liable.

11. In the present case also, the heart attack of the deceased has nothing to do with the use of vehicle. It is not the case where the death of the deceased occurred due to an accident arising out of and in the course of employment and thus, this judgment applies with full force.

12. The second judgment relied upon by the respondents is the judgment delivered in the case of Rashida Haroon Kupurade Vs. Div. Manager, Oriental Ins. Co. Ltd. and Others, . In this case, the death of the deceased workman occurred due to heart attack and that there was no nexus between the death and the accident, which had occurred six months prior to death. The same is the position in this case also. The Hon''ble Supreme Court made the following observations:

(7) Having considered the submissions made on behalf of the respective parties, we are inclined to agree with the submissions made on behalf of the appellant that the High Court has committed an error in holding that notwithstanding the fact that there was no connection with the accident and the death of the workman, the owner of the vehicle in question was still liable to pay compensation under the provisions of the Act.

13. The learned counsel appearing on behalf of the appellants submits that the aforesaid judgments are not applicable in this case because the reason given by the Tribunal for exonerating the insurance company was that the deceased was not having a valid driving licence on the date of the accident, whereas he was competent to drive the vehicle. Relying upon the judgment of the Division Bench in the case of Oriental Insurance Co. Ltd. Vs. Nathuni Prasad and Another, , it was contended that once it was found that the injured was competent to drive the autorickshaw, merely because he was not having a valid licence at the relevant time would not support the plea taken by the Commissioner that the liability on the insurance company could not have been fastened.

14. There seems to be an error in perception. In this case, the appellant had filed the petition under Workmen''s Compensation Act. The only requirement in this

case was that the death must have occurred in an accident arising out of and in the course of employment, which is not the situation in hand. It has not been proved that the deceased suffered any injury by way of accident or death has occurred because of the employment. Thus the question of the validity of the licence or there being no licence was not the issue.

15. Considering the judgments of the Hon''ble Supreme Court as quoted above, I am in agreement with the learned counsel for the respondents that in this case, even cause of action for filing the compensation claim under the Workmen's Compensation Act by the appellants as the legal heirs of the deceased had not been established. Hence, the legal heirs of the deceased were not entitled to file any claim petition under the Workmen's Compensation Act.

16. Accordingly, while dismissing the appeal, I hold that compensation awarded to the appellants by the Commissioner is not sustainable. If they have received any amount, they will return the said amount to the Commissioner. With these observations, the appeal is dismissed.