

(2017) 12 AHC CK 0010
In the Allahabad High Court
Case No : 2815 of 2003

Khairati Alias Badruddin

APPELLANT

Vs

Mohd Idrees & Others

RESPONDENT

Date of Decision : 07-12-2017

Acts Referred:

[Motor Vehicles Act, 1988](#), [Section 167](#),
[Section 167](#) - Option regarding claims for compensation in
certain cases

Citation : (2017) 12 AHC CK 0010

Hon'ble Judges : Amreshwar Pratap Sahi, Saral Srivastava

Bench : Division Bench

Advocate : Ram Singh

Final Decision : Dismissed

Judgement

1. Heard Sri Ram Singh, counsel for the appellant, and Sri Rajeev Ojha, counsel for the respondent no. 3, The New India Assurance Company.
2. The present appeal has been filed by one Khairati @ Badruddin, challenging the order dated 06.09.2003 passed by Motor Accident Claims Tribunal, Kaushambi, whereby the Tribunal has dismissed the claim petition of the appellant.
3. Brief facts of the case are that one Pappu was employed as Cleaner on the Truck No. U.P. 70 L/8229 owned by his brother Mohd. Idrees. The truck was going to Hyderabad. On 08.08.2002 at about 05:00 A.M., the truck, driven rashly and negligently, dashed with a tree near Gannaram P.S. Ditchpalli, District Nizamabad, Andhra Pradesh. Pappu suffered injuries in the accident and died. He was aged about 25 years at the time of the accident, and was getting a salary of Rs.3,000/- per month. The appellant/claimant prayed for a compensation of Rs.12,10,000/- along with 17% interest.
4. The owner and the driver of the truck filed written statement admitting the

averments contained in paragraph 1 to 20 of the claim petition. They, further, pleaded that the truck was insured with The New India Insurance Company Ltd.

5. The New India Insurance Company contested the claim petition by filing written statement denying the factum of the accident. The Insurance Company also denied the fact that the Truck was driven rashly and negligently. It was further pleaded that the compensation prayed for is highly excessive, and the claim petition was liable to be dismissed. On the basis of pleadings between the parties, the Tribunal framed issue no. 1 with regard to the occurrence and negligence of the driver of the truck; issue no. 2 with regard to insurance of the vehicle; issue no. 3 with regard to the quantification of the compensation.

6. On the issue of occurrence of accident and negligence, the tribunal returned a finding in favour of claimant with regard to the accident. The tribunal further held that the claimant did not produce any independent witness to prove that the accident had occurred due to rash and negligent driving of the driver of the truck. On the issue of insurance of vehicle, the Tribunal held that the vehicle was insured with The New India Insurance Company.

7. On the issue of driving license, the Tribunal recorded a finding that the vehicle was not driven by a person holding a valid driving license.

8. On the issue of quantification of the compensation, the Tribunal recorded a finding that the claimant could not prove that the deceased was labour, and consequently, refused to grant any compensation to the claimant.

9. The counsel for the appellant has submitted that the claimant has proved the factum of the accident as well as the negligence of the driver of the truck in the accident by producing PW-2 Mohd. Idrees, brother of the deceased, and therefore, the Tribunal has acted illegally in recording a finding that the accident did not occur due to rash and negligent driving of the driver of the truck. He submits that the finding of the Tribunal that the deceased was student, and was not doing any work of labour is illegal and not based on a proper appreciation of evidence on records.

10. The counsel for the appellant on the strength of the judgment of the Apex Court in the case of Saroj and others Vs. Het Lal and others 2011 (1) T.A.C. 271 (S.C.) submitted that there cannot be any presumption with regard to collusion unless the same was proved.

11. Refuting the submission of the counsel for the appellant, the counsel for the Insurance Company has submitted that the claim petition was collusive, inasmuch as the claimant is father of the deceased pappu and owner of Truck Mohd. Idrees. He further submits that owner of the Truck being son of the claimant and brother of the deceased had admitted the averments contained in paragraph 1 to 20 of the claim petition and had appeared as PW2 to prove the case of the claimants. He further submits that there was no evidence on record to prove that deceased was employed as a cleaner on the truck owned by his

brother. Thus, his submission is that the facts of the present case speak itself about the fact that the claim petition was collusive. Thus, the Tribunal has rightly dismissed the claim petition.

12. We heard the rival submissions of the parties, and perused the record.

13. One peculiar fact which needs to be noticed in the present case is that the claimant is the father of the deceased Pappu, and owner of the truck, Mohd. Idrees, and further Mohd. Idrees admitted the pleadings of the claim petition and had appeared as PW-2 to prove the case of the claimant.

14. From the record, it appears that the truck had met with an accident, but there was no evidence on record regarding the relationship of employer and employee between the owner and the deceased. The fact enumerated herein-above, speaks about itself that the claim petition was collusive petition.

15. The submission of the counsel for the appellant on the strength of the judgment of the Apex Court in the case of Saroj (Supra) that there cannot be any presumption of collusion unless the same was proved has no force for the reason that the facts in the case of Saroj (Supra) are different from the facts in the present case. In the case of Saroj (Supra), the claim was laid against the owner of the truck who had no relationship with the claimant and the deceased, and further the owner had admitted only factum of the accident, but had contested the claim on merits. In the instant case, the deceased and owner of the truck are sons of the claimant, and further, the owner of the truck had admitted the contents of the claim petition and had appeared as PW-2 to prove the case of the claimant/appellant, thus, the judgment of Saroj (Supra) does not come in aid to the appellant.

16. The Apex Court in the case of Gottumukkala Appala Narasimha Raju and others Vs. National Insurance Company Limited and others (2007) 13 SCC 446, has dismissed the claim petition, wherein the deceased was said to be employee of wife. Paragraphs no. 22 to 25 of Gottumukkala Appala Narasimha Raju (Supra) are extracted herein under: "22. In our considered opinion, it is wholly absurd to suggest that the husband would be a "workman" of his wife in absence of any specific contract. We have no doubt in our mind that for the purpose of proceeding under the 1923 Act, only the appellants have concocted the story of husband and wife living separately. If they have been living separately in view of certain disputes, the question of husband being a "workman"

under her appears to be a far-fetched one. 23. Technically, it may be possible that the husband is employed under the wife, but, while arriving at a conclusion that when a dispute has been raised by other side, the overall situation should have been taken into consideration. The fact, which speaks for itself shows that the owner of the tractor joined hands with the claimant for laying a claim only against the insurer. The claim was not bona fide.

24.No documentary proof to establish the contract of employment was produced.

No independent witness was examined. Even as to for what purpose the tractor was being used had not been disclosed. How the accident had taken place is also known borne out from the records of the case. If the deceased, with all intent and purport, was the owner of the tractor, the claim petition under the 1988 Act might not have been maintainable. A petition under 1923 Act certainly would not lie. Only because Section 143 and 167 of the 1988 Act refer to the provisions of the 1923 Act, the same by itself would not mean that the provisions of the 1988 Act, *proprio vigore* would apply in regard to a proceeding for payment under the 1923 Act. The limited applicability of the provisions of the 1988 Act, in relation to the proceedings under the 1923 Act has been discussed by this Court in the aforementioned judgments. It is, thus, not possible to extend the scope and ambit of the provisions of 1988 Act to the provisions of 1923 Act save and except to the extent noticed hereinbefore.

25. The ingredients for maintaining a proceeding under 1988 Act and 1923 Act are different. The purpose for which a contract of insurance is entered into may be different, whereas 1988 Act, it will bear repetition to state, a contract of insurance would be mandatory; for the purpose of applicability of the 1923 Act, it will be optional and as indicated hereinbefore, in *Harshadbhai Amrutbhai Modhiya* (supra), even contracting out is permissible, as under the 1923 Act, the liability of the insurer is limited to the claim of the workman. The liability under Section 147(2)(b) of the 1988 Act, on the other hand, extends to third party."

17. It is relevant to notice here that claim has been set up by the claimant on the ground that the deceased was employed as Cleaner, and thus, there was relationship of employer and employee. It is also relevant to notice that Section 167 of the Motor Vehicles Act, 1988 (hereinafter referred as "Act of 1988") which is extracted herein-below: "167. Option regarding claims for compensation in certain cases.-

Notwithstanding anything contained in the Workmen's Compensation Act, 1923 (8 of 1923) where the death of, or bodily injury to, any person gives rise to a claim for compensation under this Act and also under the Workmen's Compensation Act, 1923, the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of those Acts but not under both."

18. Section 167 of the Act of 1988 provides that where the death or bodily injury to any person gives rise to a claim for compensation under the Act of 1988, and also under the Workmen's Compensation Act, 1923, the person entitled to compensation may without prejudice to the provisions of Chapter X of the Motor Vehicles Act, 1988 claim such compensation under either of those Acts, but not under both.

19. In the instant case, the deceased was travelling in goods carriage vehicle as a gratuitous passenger. The insurance policy does not cover the risk of the gratuitous passenger of the goods carriage vehicle unless the owner has paid an

extra premium covering the risk of gratuitous passenger. It appears that the claimant, knowing full well that he would not succeed in a claim laid on the ground that the deceased was travelling as a gratuitous passenger in the truck, has set up a case that the deceased was employed as a Cleaner on the truck in order to avail the benefit of Section 167 of the Motor Vehicles Act, 1988.

20. The apex Court in the case of Gottumukkala Appala Narasimha Raju (Supra) has held the proceedings bad where the claim has been laid on the ground that the deceased was employed as driver on tractor owned by the wife. The present case is also very similar to the case of Gottumukkala Appala Narasimha Raju (Supra), inasmuch as, the claimant is father of the deceased and owner of truck, and there was nothing on record to indicate that the deceased was employed as Cleaner on the truck. The fact that the owner of the truck, arrayed as respondent no. 1 in the claim petition, appeared as PW-2 to prove the case of the claimant, further speaks about the collusion between the claimant and the owner. Thus, the finding of the Tribunal that the claimant could not prove that the accident was caused due to negligent driving of the truck and deceased was cleaner is correct.

21. Thus, for the reasons indicated above, we hold that the claim petition was collusive, and consequently, we find no good reason to upset the order dated 06.09.2003. Thus, the appeal lacks merit, and deserves to be dismissed.

22. There shall be no orders as to costs.