
(2015) 02 GAU CK 0080

In the Gauhati High Court

Case No : Miscellaneous First Appeal Nos. 148, 149 and 151 of 2003

National Insurance Co. Ltd.

APPELLANT

Vs

Hanufa Khatoon and Others

RESPONDENT

Date of Decision : 27-02-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 297, 304(A), 337, 338, 427
Workmens Compensation Act, 1923 — Section 3

Citation : (2015) 2 GLT 857

Hon'ble Judges : Rumi Kumari Phukan, J

Bench : Single Bench

Advocate : A. Ahmed, for the Appellant; I.A. Talukdar, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Rumi Kumari Phukan, J—By this common judgment, I propose to dispose of the above mentioned three appeals being M.F.A. No. 148 of 2003, M.F.A. No. 149 of 2003 and M.F.A. No. 151 of 2003, which arise out of the common judgment and order dated 20.8.2003 passed by the Commissioner, Workmen's Compensation, Nagaon in W.C. Case No. 35 of 2001, W.C. Case No. 36 of 2001 and W.C. Case No. 37 of 2001. All the respondents claiming themselves to be the wives of the labourers engaged in the vehicle No. ASN-7151, a truck owned by one Shri Khokan Saha, Son of Shri Monoranjan Saha, Resident of Moirabari, P.O. Moirabari, District-Nagaon, preferred claim cases before the Commissioner, Workmen Compensation, Nagaon, on the ground that all of them were employed as labourers in the aforesaid vehicle and, on 21.03.2001, while they were proceeding with the aforesaid vehicle, loaded with bags of potatoes, tomatoes and other vegetables, on the way from Nagaon to Dhing P.W.D. Road, met with an accident at about 8.30 P.M. and the vehicle fell down into a deep pond nearby the road. As a result of the accident, the husbands of the claimants died on the spot along with some other labourers. On the basis of the same, the police registered a case vide Jajori Police Station Case No. 9 of 2001 under Sections

297/337/338/427/304(A) I.P.C. Following the case were filed by the claimants:-

(1) NWC Case No. 35 of 2001

(Mst. Basana Khatoon W/o Late Abdul Jalil, R/O Vill-Niz-Kathiatoli P.S. Kampur, Dist Nagaon, Assam

Vs.

1. Shri Khokan Saha S/o Sri Monoranjan Saha Moirabari, P.S. Moirabari Dist. Morigaon, Assam

2. The National Insurance Co. Ltd. Nagaon Branch, Nagaon, Assam)

(2) NWC Case No. 36 of 2001

(Mst. Hanufa Khatoon W/O Late Ajgar Ali, R/O Vill-Niz-Kathiatoli P.S. Kampur, Dist. Nagaon, Assam

Vs.

1. Shri Khokan Saha S/o Sri Monoranjan Saha Moirabari, P.S. Moirabari Dist. Morigaon, Assam

2. The National Insurance Co. Ltd. Nagaon Branch, Nagaon, Assam)

(3) NWC Case No. 37 of 2001

(Mst. Hanufa Khatoon W/O Late AkbarAli R/o, Vill-Niz-Kamiatoli P.S. Kampur :: Dist Nagaon :: Assam

Vs.

1. Shri Khokan Saha S/o Sri Monoranjan Saha Moirabari, P.S. Moirabari Dist. Morigaon, Assam

2. The National Insurance Co. Ltd. Nagaon Branch, Nagaon, Assam)

Accordingly, on receipt of the claim petitions, the Commissioner, Workmen's Compensation, notified the opposite parties and, both the parties mentioned above submitted their respective written statements denying the liability for payment of compensation.

2. In his written statement, thought the opposite party No. 1, the owner of the vehicle has admitted about the accident, but has contended that the vehicle is a goods carrier and on the date of accident, the vehicle was hired by some vegetable vendors who were in the vehicle as owners of the goods for carrying the vegetables from Moirabari bazaar to Kathiatoli. He had categorically denied the contention of the claimants that the deceased labourers were under his employment. It is also submitted that the vehicle was duly insured with the National Insurance Company at the time of accident and, hence, he is well protected under the coverage of insurance policy.

3. Contesting the cases of the claimants, the Insurance Company has also submitted in his written statement denying all the contentions raised by the claimants and also denied the responsibility to pay the compensation in all respect.

4. After conclusion of the trial, the Commissioner, Workmen's Compensation has awarded compensation to the claimants in-

(i) NWC No. 35 of 2001 - a sum of Rs. 2,76,255/- along with 12 per cent interest with effect from the date of accident till realization along with funeral cost of Rs. 2,500/-. It was also directed that as the vehicle of the opposite party No. 1 was insured with the National Insurance Company/Opposite Party No. 2, so they are liable to pay the amount of compensation.

(ii) In NWC No. 36 of 2001 - a sum of Rs. 2,95,590/- along with 12 per cent interest with effect from the date of accident till realization along with funeral cost of Rs. 2,500/-. It was also directed that as the vehicle of the opposite party No. 1 was insured with the National Insurance Company/Opposite Party No. 2, so they are liable to pay the amount of compensation.

(iii) In NWC No. 37 of 2001 - a sum of Rs. 3,11,970/- along with 12 per cent interest with effect from the date of accident till realization along with funeral cost of Rs. 2,500/-. It was also directed that as the vehicle of the opposite party No. 1 was insured with the National Insurance Company/Opposite Party No. 2, so they are liable to pay the amount of compensation.

5. Being highly aggrieved with the award passed by the Commissioner, Workmen's Compensation, Nagaon, the Opposite Party No. 2 in the aforementioned cases has preferred these appeals against the common judgment mentioned above on the ground that the Learned Commissioner has failed to appreciate the matter on record and has arrived at an erroneous finding. It is contended that when the owner of the vehicle has contested the case by filing written statement and also by adducing evidence specifically denying the employment of the deceased persons, passing of impugned judgment and award by the Commissioner is absolutely contrary to the provisions of law. For passing an award under the provisions of the Workmen's Compensation Act, the accident must have occurred and injuries must have been sustained during the course of employment. In the given case, when the deceased was not the workman under employment of the owner of the vehicle, the Commissioner has no power to grant compensation. The Commissioner has also discarded the positive evidence of the owner of the vehicle without assigning any reason and has relied upon the evidence of the claimant. The Commissioner has also failed to understand the payment of premium to the labourers, if engaged which is a permit condition and compulsory for the owner of the vehicle. Challenging the finding of the Commissioner as regard assessment of income, status of deceased persons, it is submitted that the award passed by the Commissioner is not maintainable in law and, hence, liable to be set aside.

6. The learned counsel for the appellant has vehemently argued that as the O.P/ owner of the vehicle has denied the liability as employer of the deceased labourer then how the Commissioner can make the opposite party/owner liable for the compensation and consequently the liability of the insurance company also does not arise. It has also been contended that the learned Commissioner has wrongly relied upon the evidence of the PW 2 without having any legal discussion as regard Section 3 of the Workmen's Compensation Act. The court has not arrived on any conclusion whether the employee (labour) was in continuous service for 6 months to describe him as a workman and has depending upon the evidence of PW 2 and ignoring the plea of the owner of the vehicle has awarded the compensation which is not at all maintainable. The learned Commissioner has failed to appreciate that as per the police report there are 12 persons in the vehicle so the deceased may be a gratitude passenger and there being no positive evidence as regard the engagement of casual labour, the findings of impugned order is bad in law. However the deceased may approach to the Motor Accident Claims Tribunal as the deceased died due to the bad condition of the road in the accident.

7. The respondent has pointed to the aspect that there being no substantial questions of law framed by this court whether matter can be decided by the Court of appeal. Further contentions the learned counsel for the respondent is that the evidence of PW 2 the wife of the deceased, is insufficient to hold that deceased was the labour/employee under the owner of the vehicle as employer. Further the aspect that the owner of the vehicle himself went to the house of the deceased after the death of the person itself indicating of the fact that he is the employer of the deceased person. Accordingly, it has been urged that there is nothing wrong in the award so passed by the Commissioner.

8. It is evident that first and foremost point to be ascertained by the Commissioner prior to passing of an award that whether the deceased person was an employee in terms of the Workmen's Compensation Act and whether the opposite party/owner of the vehicle was an employer to fix his liability to pay compensation in terms of the Section 3 of the Workmen's Compensation Act. In order to succeed for getting compensation under section 3 of the Act the workman has to prove that while doing a part of his duty or incidental thereto it has resulted into an accident. It must be caused in course of and out of employment. The expression "arising out of employment" means there must be causal relationship between the accident and the employment. The word "out of employment" is not limited to mere nature of employment but it applies to its nature which conditions and obligations and its incident.

9. Now in the given case there is no any positive evidence that the deceased was a employee under the opposite party/the owner of the vehicle, that how long he used to work under the opposite party; no any register/document etc produced to show that the O.P was the employer. The O.P the owner of the vehicle in his pleadings and by adducing evidence has asserted that at the time of incident the

vehicle was given to other person namely, Munshi for hire to carry goods and he deployed no any labour in his vehicle. Obviously when the vehicle was taken by other person on hire, there can be no reason for employing labour at that period. There is likelihood that the deceased may have been engaged by that person who has taken the vehicle on hire. The simple assertion by the claimant without elaborating any time and period from when the deceased used to work as an employee under the O.P No. 2. As it is very easy to point the owner of the vehicle to be the employer of the deceased but unless the same is substantially proved the same cannot be accepted. Further, the fact that the O.P. No. 2 went to the house of the deceased to express concern upon the death of the deceased labour it does not indicate that he is the employer of the deceased. In his evidence the O.P No. 2 has clarified that out of sympathy he went to their house as deceased died while going on his vehicle. It appears that the opinion has been formed only on inference by the learned Commissioner instead of insisting for positive evidence.

10. On the next the O.P No. 2, cannot be made liable for the payment of premium under the insurance policy for 6 labourers as payment of premium covering the risk of employee is compulsory requirement of law as per permit condition, whether there is any person employed in the vehicle or not. The learned Commissioner has concluded as the O.P No. 2 has paid the premium for the labourer also he cannot deny himself to be the employer of the deceased which is also not maintainable.

11. In *Malikarjuna G. Hiremath Vs. The Branch Manager, The Oriental Insurance Co. Ltd. and Another*, (2009) ACJ 721 : AIR 2009 SC 2019 : (2009) 121 FLR 216 : (2009) 2 JT 396 : (2009) 2 LLJ 305 : (2009) 3 SCALE 210 : (2009) 13 SCC 405 : (2009) 2 SCR 320 : (2009) 3 SLJ 122 : (2009) 2 UJ 708 : (2009) AIRSCW 1688 : (2009) 2 Supreme 169 ., it has been held that in order to make the employer liable to pay compensation it has to be established that was some causal connection between the death of the workmen and his employment and the death arose out of employment. Now in the instant case there is no any satisfactory evidence adduced by the claimant that the deceased died in course of his employment while he was an employee under the O.P No. 2. The best evidence was the driver of the said vehicle to drove the vehicle and the person who took the vehicle on hire to prove that the deceased was as employed as a labourer under the O.P No. 2, was not adduced and the vague evidence of the claimant is totally insufficient to hold that deceased was a workman under the employer/O.P No. 2 and he made the accident in course of his employment. So this appellate court has already formulated the substantial questions of law on the point of above and can adjudicate the matter and this is the answer to the query raised by the learned counsel for the respondent. Due to the above reasons the award made by the learned Commissioner cannot sustain and hence set aside. The claimant petitioner however can approach to the proper forum for getting compensation. Amount if any paid to the claimant is to be returned to the appellant in due course.

12. The appeal stands disposed of. Return the LCRs.