
(2013) 08 MP CK 0162

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 3742 of 2010

National Insurance Co. Ltd.

APPELLANT

Vs

Lalaram and Two Others

RESPONDENT

Date of Decision : 13-08-2013

Acts Referred:

Evidence Act, 1872 — Section 65

Workmens Compensation Act, 1923 — Section 30, 30(1), 4

Citation : (2014) 1 AnWR 478 : (2014) 140 FLR 783 : (2013) ILR (MP) 1962

Hon'ble Judges : N.K. Gupta, J

Bench : Single Bench

Advocate : Anoop Nair, for the Appellant; Sameer Seth, Counsel, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Gupta, J.—The appellant Insurance Company has challenged the award dated 19.6.2010 passed by the Commissioner for Workmen's Compensation Act, Khandwa in W.C.N.F. Case No. 25 of 2009 whereby the compensation of Rs. 2,49,576/- is granted to the respondent no. 1 and the appellant Insurance Company was also held liable for its payment along with the interest. The respondent no. 1 Lalaram has lodged a claim application before the Commissioner for Workmen's Compensation Act, Khandwa that he was resident of Village Gadbasai, District Alwar, Rajasthan. A tractor bearing registration no. RJ-2-RR-8688 which was fitted in the thresher and the respondent no. 1 was working in that thresher for last 8-9 years at various places as per directions given by the respondent no. 2. The tractor was insured in the name of the respondent no. 3 and the respondent no. 2 was the vehicle representative on behalf of the respondent no. 3. On 7.10.2008 at about 8.00 a.m. in the morning, the applicant was working in the field of one Balu Darbar according to the directions given by his employer. Suddenly the left hand of the applicant was pulled in the thresher and on his shouting the respondent no. 2 switched off the thresher. The respondent no. 2 took the applicant to Jain Hospital, Sanawad and

ultimately the palm of the applicant was amputated. The applicant therefore, lodged an application for compensation before the learned Commissioner for Workmen's compensation at Khandwa.

2. The respondent no. 2 in his reply has submitted that the tractor which was fitted by a thresher was borrowed by the driver and no labour was required to work on thresher machine. A cultivator who requires the help of that machine was required to arrange his own labours. Therefore, it is prayed that the respondent no. 2 was not responsible for any claim. However, in alternate it was pleaded that the tractor was insured with the appellant for all agricultural purposes and therefore, Insurance Company was liable for that claim.

3. The appellant/Insurance Company in its reply has submitted that the applicant did not submit any document to show his employment and salary. No intimation of an accident was given by the vehicle owner and therefore, the Insurance Company was not liable for payment of any compensation. It was also pleaded that the Insurance Company would take the appropriate defence if it is found that the vehicle was insured with it. However, no specific defence in the written statement was taken thereafter by the Insurance Company.

4. The respondent no. 3 after getting the notice of the application did not appear before the learned Commissioner and therefore, the matter was proceeded ex-parte against the respondent no. 3.

5. After considering the evidence adduced by the learned counsel for the parties, the learned Commissioner passed an award granting a compensation of Rs. 2,49,576/- with an interest of 12% p.a. from the date of award till the realization. The appellant was held liable for payment of the compensation.

6. The learned counsel for the appellant has mainly raised three objections. Firstly no relationship of employer or employee was established before the Commissioner, Workmen's Compensation Act. Secondly the policy was issued under agricultural policy and there was no coverage under Workmen's Compensation Act. Thirdly, the salary was computed by the learned Commissioner without any basis.

7. On the other hand the learned counsel for the respondent no. 1 has submitted that according to the provisions of 3rd proviso of Section 30(1) of the Workmen's Compensation Act, it was for the appellant to deposit the entire claim amount with an interest before filing the appeal. The appellant has deposited the amount of compensation but no interest is deposited and therefore, the present appeal was not maintainable. In support of this contention reliance was placed on the order passed by the single Bench of this Court in the case of Tulsiram Vs. Daryaobai, therefore, it is submitted that the appeal may be dismissed.

8. After considering the submissions made by the learned counsel for the parties and looking to the evidence adduced before the trial Court, the questions raised by both the parties should be considered one by one in the present order. It is

apparent that the appellant has deposited the amount of compensation within one month of the award. According to the condition of the award the interest was awarded at the rate of 12% p.a. from the date of award to the date of realization. It is also true that no interest amount was deposited by the appellant along with the compensation. As per law laid by the single Bench of this Court in the case of Tulsiram (supra) the amount of the compensation was required to deposit along with the interest. In the present case since the amount was deposited within one month from the date of the award and therefore, period of one month was not completed after passing of the award, hence calculation of the interest on the award amount would be a hyper technical claim. If interest was granted on the compensation from the date of award till the realization then technically the interest was accrued for the period in which the compensation amount could not be deposited. However, it would be hyper technical to say that such small amount was not deposited by the appellant and therefore, its appeal is required to be thrown. Practically one month was not completed after passing of the award when the appellant deposited the award amount and therefore, no interest could be computed as such for depositing of the compensation amount as per the provisions of Section 30 of the Workmen's Compensation Act. Under such circumstances, if interest is not deposited along with the compensation amount then by such fault the appeal cannot be rejected.

9. The learned counsel for the appellant has raised an objection that no employment was proved between the respondent no. 1 and the insured person i.e. respondent no. 3. In this connection the appellant Lalaram (PW1) has stated before the trial Court that he accompanied Ishwarlal to operate the thresher which was affixed on the aforesaid tractor and he was doing such a work for the last 8-9 years. It is also submitted that the insured owner of the tractor was Sheobaksh and Ishwarlal was representative of Sheobaksh. To rebut the evidence given by the applicant Lalaram neither Ishwarlal nor Sheobaksh appeared in the witness box and therefore, statements given by Lalaram was not at all contradicted. It is apparent that soon after the incident Ishwarlal took the victim Lalaram to the hospital. It is also apparent that the tractor was owned by a person residing at District Alwar, Rajasthan and the tractor along with thresher was working at the time of incident in the District Khandwa, Madhya Pradesh. Under such circumstances, the evidence given by Lalaram appears to be acceptable that such tractor fitted with a thresher was being brought in Madhya Pradesh from time to time for last 8-9 years for the purpose of threshing of the crop by Ishwarlal and the respondent no. 1 Lalaram. Under such circumstances, the employment of the respondent no. 1 Lalaram is duly established by conduct of Ishwarlal as well as the insured owner Sheobaksh. The objection raised by the learned counsel for the appellant about the employment cannot be accepted.

10. So far as the salary is concerned the respondent no. 1 Lalaram has stated that he was receiving a sum of Rs. 150/- per day for working on thresher and therefore, the learned Commissioner has computed his salary to be Rs. 4500/- per month. The respondent nos. 2 and 3 did not appear in the witness box and

therefore, the statement given by the respondent no. 1 Lalaram should have been accepted as it is. If it is presumed that he was not getting the work of threshing on each and every day then the wages of the respondent no. 1 may be computed for at least 25 days in a month because if a tractor affixed with thresher machine was brought from Rajasthan to Madhya Pradesh then the various agriculturists who have their crop in the field were required to get their work done from that machine one by one and there must be a queue of agriculturists to get their crop threshed by the respondents. The computation of compensation as provided in Section 4 of the Workmen's Compensation Act is considered then up to a certain extent wages of a particular employee does not make any difference in the computation and if the monthly wages of the respondent no. 1 is calculated but salary is less than Rs. 4500/- per month then it makes no difference in the computation of compensation. The learned Commissioner did not discuss as to how the compensation was computed but looking to the provisions of Section 4 and concerned schedule of the Workmen's Compensation Act there is no effect on the compensation computed by the learned Commissioner due to reduction of the wages of the respondent no. 1 and therefore, the respondent no. 1 proved his wages up to the extent which could be sufficient to compute his compensation as given by the learned Commissioner, Khandwa. Under such circumstances, the objection relating to the wages of the respondent no. 1 raised by the appellant does not affect the present case.

11. The main contention of the appellant is that the vehicle was not insured for the purpose of thresher. A policy was issued for use of the vehicle for agricultural purposes and affixing of thresher and its use was not mentioned in the policy and therefore, the appellant/Insurance Company was not responsible for payment of compensation under the Workmen's Compensation Act. It is apparent that the respondent no. 2 and respondent no. 3 were using their vehicle for thresher purposes by affixing a thresher in the tractor since long and therefore, they must have told the purpose of their use to the agent who insured the tractor. Hence it shall be presumed that the tractor was insured for not only the agricultural purposes but, also for that purpose for which it was specifically used and therefore, it was for the Insurance Company to plead and prove the policy condition as to whether the policy was issued to cover such a work of tractor or not. It is a settled rule of law that the objection raised by the applicant should have been pleaded before the trial Court. If the objection raised by the appellant is considered then it is apparent that it was nowhere pleaded in its written statement. The plea is raised for the first time in the appeal. In this context the order passed by the single Bench of Punjab and Haryana High Court in the case of Harnam Singh and Another Vs. Aar Pee Auto Aid and Others, may be perused in which it is alleged that a plea raised before the appellate Court for the first time that the Insurance Company was not responsible for the payment of compensation because a particular risk was not covered then such a plea cannot be raised without pleadings. Under such circumstances, the plea raised by the appellant cannot be considered in the appeal in the absence of his pleadings.

12. In this connection if the evidence adduced by the appellant is perused then it would be apparent that one Vimalchand Soni (D2W1) appeared in the witness box and has stated that policy in this context was Ex. D/1 and copy of the driving license was Ex. D/2. The witness was the officer of the appellant/Insurance Company at Khandwa who neither issued the concerned Insurance policy nor he produced the entire policy. If the document Ex. D/1 is perused then it is a single paged document in which no term and condition is mentioned specifically. It is apparent that document Ex. D/1 is nothing but a cover note, not the entire policy. Now a days it is observed that the officers of the Insurance Company after issuance of a cover note do not care to issue the complete policy to a consumer. After taking the premium, it is for the Insurance Company to show to its consumers that up to what extent the responsibility was to be borne by the Insurance Company. If the consumer is not given any intimation about the limitations of the Insurance Company then it cannot be said that such limitations were agreed between the parties. In this connection the order passed by the single Bench of this Court in the case of New India Assurance Co. Ltd. Vs. Ram Kumar Tamarakar and Others, may be perused in which it is laid that in cases where Insurance Company disputes the allegation of the insured about the extent of its liability governed by the policy then a true copy of the policy should be produced. In the present case the appellant/Insurance Company did not produce the copy of the policy. On the contrary a copy of cover note was produced which did not indicate the terms and conditions of the policy, It appears that the officers of the Insurance Company were in habit to hide the terms and conditions of the policy from the consumers and now they think that the terms and conditions of the policy are so confidential that those should not be produced even before the Court. Now a days when a computer print of each document is available and in a computer print of policy so many annexures can be added today but by adding such annexures now a days it cannot be said that such terms and conditions were shown to the consumers at the time of issuance of the policy and therefore, in the light of the order passed by the single Bench of this Court in the case of Ram Kumar Tamrakar (supra), it was for the Insurance Company to have issued a complete policy having the terms and conditions to the insured and one hard copy of that policy should have been kept in the office of the Insurance Company and a true copy of the hard copy of that policy should have been placed before the trial Court to prove the terms and conditions of the policy.

13. The appellant did not file or prove the policy issued in favour of the insured respondent no. 3 Sheobaksh. In this connection the order passed by the single Bench of Punjab and Haryana High Court in the cae of Malwa Bus Service (P.) Ltd. and Another Vs. Amrit Kaur and Others, may be referred in which it was laid that the copy of the insurance policy was placed on record, but if it is neither proved by primary evidence nor was according to the condition mentioned in Section 65 of the Evidence Act then the document is not admissible. Under such circumstances, the computer copy of cover note which was not primary evidence

in the eye of law was inadmissible in the evidence because it was not the original copy of the cover note issued to the concerned insured. The learned counsel for the appellant has tried to file some annexures before this Court to show the terms and conditions of the policy but, filing of such terms and conditions in the appellate Court has no meaning. It was to be established by the Officer who issued the insurance policy that the original policy along with all terms and conditions was filed before the trial Court. Filing of the annexures at present general relating to the terms and conditions which were kept by the Insurance Company does not make any difference in the present case because it was not shown by the Insurance Company that such terms and conditions were settled between the appellant/Insurance Company and insured in the present particular case.

14. On the basis of the aforesaid discussion, the Insurance Company did not prove the specific terms and conditions of the Insurance policy relating to the tractor and thresher in the present case. The cover note which was produced as Ex. D/1 was not a primary document, It was a computer copy created after a long time of the creation of the original document and therefore, the objection raised by the Insurance company cannot be accepted that the Insurance Company did not cover the working of a thresher along with the tractor. Under such circumstances, the Insurance Company does not absolve from its liability.

15. On the basis of the aforesaid discussion the miscellaneous appeal filed by the appellant/insurance company appears to be not acceptable. No ground against the award passed by the learned Commissioner, Workmen's Compensation Act, Khandwa could be established. Under such circumstances, the miscellaneous appeal filed by the Insurance Company is hereby dismissed with costs. The appellant/insurance company shall bear the costs of its own and the costs of the respondent no. 1. Memo of cost be prepared according. Advocate's fee may be computed at the rate of Rs. 5000/- if certified. Copy of the order be sent to the trial Court along with its record for information and compliance.