

(2007) 05 DEL CK 0281

In the Delhi High Court

Case No : F.A.O. No. 184 of 2005 and C.M. No. 7145 of 2006

National Insurance Co. Ltd.

APPELLANT

Vs

Param Pal Singh

RESPONDENT

Date of Decision : 23-05-2007

Acts Referred:

Hindu Adoptions and Maintenance Act, 1956 — Section 11(6)

Motor Vehicles Act, 1988 — Section 163A

Workmens Compensation Act, 1923 — Section 2

Citation : (2009) ACJ 630 : (2007) 2 ILR Delhi 886

Hon'ble Judges : J.M. Malik, J

Bench : Single Bench

Advocate : Sonia Sharma, for the Appellant; Pratima N. Chauhan, for the Respondent

Final Decision : Allowed

Judgement

J.M. Malik, J.—National Insurance Co. Ltd., the appellant in this case, has filed this appeal against the compensation granted by the Commissioner, Workmen's Compensation (hereinafter to be referred to as "the Commissioner") vide order dated 29.12.2004. Jeet Singh alias Ajit Singh, the deceased, was employed as a driver on a truck owned by Jagdish Prasad Sharma, who was arrayed as the respondent No. 1 before the trial court. The deceased was on his professional visit on the truck bearing No. DL 1-G 8255 for the trade and business of Jagdish Prasad Sharma and after a journey from Delhi to Nimiaghat, the deceased had a long driving which involved a lot of stress and strain. On 17.7.2002 when the vehicle reached near Nimiaghat, District Giridih, the deceased's position deteriorated and he parked his vehicle on a roadside hotel. All of a sudden he fainted. He was taken to a local hospital, where the doctor declared him brought dead. F.I.R. was lodged with the police. His autopsy was conducted at the Civil Hospital, Distt. Giridih. It is averred that the deceased died during the course of his employment as his position deteriorated due to stress and strain of continuous driving which resulted into failure of his body organ causing his

death. Truck was insured with the appellant. Thereafter, the compensation petition was filed by Param Pal Singh, his adopted son. At the time of his death, the deceased was drawing wages at the rate of Rs. 3,091 per month as per Minimum Wages Act plus Rs. 50 per day as allowances, which came to Rs. 4,591 per month. The deceased was aged about 45 years at the time of his death. The respondent also claimed interest at the rate of 12 per cent from the date of accident till realization and penalty.

2. The main defence put forward by the insurance company is that the respondent has no locus standi to file the present compensation petition because he is not the adopted son of the deceased. The deceased was unmarried and had no dependant legal representatives. Again, on the day of the occurrence, Bhure Singh, son of Dharam Pal Singh, was plying the truck in question. The deceased was not employed with the insured Jagdish Prasad Sharma. No accident took place, as alleged. The jurisdiction of the Commissioner was also called into question. The driver was not holding valid and effective driving licence at the time of the alleged accident. The deceased was under the influence of liquor or drug at the time of alleged accident. Consequently, the respondent is not entitled for the claim.

3. After hearing the counsel for the parties and after going through the latest authority of the Apex Court in Shakuntala Chandrakant Shreshti Vs. Prabhakar Maruti Garvali and Another, . I formulated the following substantial questions of law vide order dated 7.3.2007:

(i) Whether an accident happening to a person in or about any premises at which he is for the time being employed for the purpose of his trade or business shall be deemed to be arising out of or in the course of his employment as per the latest law laid down in the above said authority?

(ii) Whether the adoption of the respondent stands legally proved?

4. After having subjected the evidence to a close scrutiny and having heard the counsel for the parties at a considerable length my findings are as under:

Question No. 1:

The post-mortem report shows that the cause of death could not be ascertained and, therefore, viscera was preserved. The post-mortem report mentions that the deceased was aged about 62 years. The relevant portion of the post-mortem report is reproduced as follows:

On Dissection-Skull-bone was intact. Brain in state of decomposition, thorax thoracic intact. Lungs-congested. Heart-empty.

Abdomen-Stomach empty, mucous membrane congested, liver in process of decomposition, spleen decomposed, kidney decomposed, urinary bladder- empty, intestine in process of decomposition, genital organ were intact, but swollen.

Viscera preserved for chemical analysis. Cause of death could not be ascertained,

so viscera preserved.

Time elapsed since death-more than 72 hours.

5. There is no evidence on the record to show that long driving involving lot of tiresome job resulted into stress and strain due to which the deceased's position deteriorated and he fainted and died.

In a latest authority reported in Shakuntala Chandrakant Shreshti Vs. Prabhakar Maruti Garvali and Another, , the question was thoroughly considered. The relevant paras are produced hereunder:

(25) An accident may lead to death but that an accident had taken place must be proved. Only because a death has taken place in the course of employment will not amount to accident. In other words, death must arise out of accident. There is no presumption that an accident had occurred.

(26) In a case of this nature to prove that accident has taken place, factors which would have to be established, inter alia, are:

(1) stress and strain arising during the course of employment;

(2) nature of employment; and

(3) injury aggravated due to stress and strain.

(27) The deceased was travelling in a vehicle. The same by itself cannot give rise to an inference that the job was strenuous.

(28) Only because a person dies of a heart attack, the same does not give rise to automatic presumption that the same was by way of accident. A person may be suffering from a heart disease although he may not be aware of the same. Medical opinion will be of relevance providing guidance to court in this behalf.

(29) Circumstances must exist to establish that death was caused by reason of failure of heart was because of stress and strain of work. Stress and strain resulting in a sudden heart failure in a case of the present nature would not be presumed. No legal fiction therefore can be raised. As a person suffering from a heart disease may not be aware thereof, medical opinion, therefore would be of relevance. Each case, therefore, has to be considered on its own fact and no hard and fast rule can be laid down therefore .

6. There is no inkling in the above said post-mortem report that the deceased had died due to stress and strain. This does not appear to be a case of accident. This appears to be a case of natural death. This view further stands fortified by the facts and decision of the case reported in Plant Engineer, Nellore Thermal Station v. Jyothi Ademma II (2004) ACC 191 (AP).

7. Moreover, the evidence on record reveal that the deceased was a drug addict. The F.I.R., Exh. PW1/A, was lodged by one Bhure Singh, who was the co-driver of the deceased. He explained that the deceased used to take poppy/opium and

he had also taken poppy/opium on 17.7.2002 itself along with tea. In his statement recorded on 24.7.2003, Santokh Singh stated that his elder brother, deceased Jeet Singh, used to take poppy/opium for the last five/six years prior to his death.

In view of the above discussion, I answer the question No. 1 in favour of the appellant and against the respondent.

Question No. 2:

8. As per Act, the person invoking the jurisdiction of the Commissioner can only be a dependant of the deceased and none else. As per Section 2 Clause (1)(d) of the Workmen's Compensation Act, 1923, even an adopted son comes within the purview of "dependant". It is, however, clear that real brother and/or son of the real brother do not come within the definition of "dependant" .

9. The respondent, Param Pal Singh, has filed on record the adoption deed dated 15.12.1999, which is Exh. AW1/R. The said adoption deed purports to have been attested by Gurbux Singh, Sarpanch of village Dhariwal Kala, wherein it is mentioned that Santokh Singh had given his son, Param Pal Singh, in adoption to the deceased, Jeet Singh. Santokh Singh has filed an affidavit in support of his case which is Exh. AW1/7. In his cross-examination, Santokh Singh admitted that the adoption deed was prepared in the village and that the same is on a plain paper. He admitted that adoption deed was not registered with the Tehsildar. He was not able to say who had signed the adoption deed as witnesses. His statement to this extent was recorded on 24.7.2003 and he was re-examined on 29.8.2003. On this day, only the adoption deed was produced before the Commissioner and Santokh Singh deposed that when the above said adoption deed was executed, 15 to 20 persons were present. He explained that the adoption deed was scribed by Gurbux Singh, the Sarpanch of village Dhariwal Kala. The most significant factor is that in his cross-examination, he clearly, specifically and unequivocally admitted that no adoption ceremony, whatsoever, was ever performed. He further admitted that deceased, Jeet Singh was not present at the time when the adoption deed was executed. Therefore, a doubt creeps in as to whether the adoption deed was executed after the death of the deceased? Santokh Singh admitted that the adoption deed bears the signatures of the Sarpanch Gurbux Singh besides his own signatures and signatures of other witnesses, whose names were never disclosed. It is difficult to fathom as to why the adoption deed was not signed by the adoptive father who has to play the main role in his adoption story. Statement of Santokh Singh was further recorded on 6.10.2003. It is, thus, crystal clear that the only essential ingredient for proving the adoption does not stand proved. According to the Hindu Adoptions and Maintenance Act, 1956, giving and taking ceremony is essential. The respondent has not produced even an iota of evidence in this regard. Section 11(6) of the Hindu Adoptions and Maintenance Act, 1956, runs as follows:

(vi) The child to be adopted must be actually given and taken in adoption by the

parents or guardian concerned or under their authority with intent to transfer the child from the family of its birth [or in the case of an abandoned child or child whose parentage is not known, from the place of family where it has been brought up] to the family of its adoption:

Provided that the performance of datta homam shall not be essential to the validity of adoption.

10. Further, Santokh Singh has also filed on record a copy of ration card, Exh. PW1/6, which only shows that Param Pal Singh is his natural son. Had he produced the photocopy showing that the deceased Jeet Singh was the adoptive father of Param Pal Singh, it would have gone a long way to establish the case of the respondent to the full.

11. However, counsel for the respondent argued with vehemence that the principles of Evidence Act are not applicable in the proceedings before the Commissioner and it is not incumbent on the part of the applicant to get his case proved beyond doubt. Learned Counsel for the respondent has drawn the attention of the court towards a judgment quoted by the trial court, of Apex Court in State of Mysore v. S.S. Makapur 1993 (2) SCR 943, wherein the Apex Court was pleased to hold,

...that the Tribunals exercising quasi-judicial functions are not courts and that therefore they are not bound to follow the procedure prescribed for the trial of actions in courts nor are they bound by strict rules of evidence. They can unlike courts, obtain all information material for the points under the inquiry from all sources, and through all channels, without being fettered by rules and procedure, which govern proceedings in court. The only obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against whom it is to be used and give him a fair opportunity to explain it. What is a fair opportunity depends on the facts and circumstances of each case but where such an opportunity has been given, the proceedings are not open to attack on the ground that inquiry was not conducted in accordance with the procedure followed in courts.

12. The impugned judgment also referred to another case in Chiman Surakhia Vasava Vs. Ahmed Musa Ustad and Others,

13. On the other hand, counsel for the respondent also drew my attention towards an authority by the Apex Court in Lakshman Singh Kothari Vs. Smt. Rup Kanwar, , wherein it was held:

No particular form is prescribed for the ceremony, but the law requires that the natural parent shall handover the adoptive boy and the adoptive parent shall receive him.

14. The adoption deed filed by the respondent is an innocuous document which does not create propitious conditions for the respondent. The statement made by Santokh Singh is not of much help. He clearly admitted that no adoption

ceremony was performed at the time of the alleged adoption. He also admitted that at the time of adoption, the adoptive father was not present. It is not proved that the natural parent had handed over the adoptive boy and the adoptive parent had received the adoptive boy. No such evidence was led before the Commissioner. It is the respondent and nobody else who has to carry the ball in proving that respondent is the adoptive son of the deceased. The record reveals that Santokh Singh has rather produced negative evidence and clearly stated that no ceremony was ever held. The above said authority reported in *Lakshman Singh Kothari Vs. Smt. Rup Kanwar*, , rather supports the case of the appellant. Some evidence must come before the Tribunal that the boy was an adopted one. Although, the Tribunals are not bound to follow the procedure prescribed for trial of actions, yet, due to lack of evidence, no order can be passed in favour of the respondent. In a case reported in *M. Gurudas v. Rasaranjan* (2006) 6 SLT 603, it was held that to prove a valid adoption, it would be necessary to bring on record that there had been an actual giving and taking ceremony. It appears that the respondent is trying to make bricks without straw.

15. The authorities cited in the impugned judgment do not come to the rescue of the respondent. Therefore, I answer question No. 2 in favour of the appellant.

16. In view of the discussion above, I set aside the orders passed by the Commissioner.

F.A.O. No. 184 of 2005 is accordingly allowed. CM. No. 7145 of 2006 also stands disposed of. Trial court record be sent back forthwith with a copy of this judgment.