

(2001) 08 OHC CK 0027

In the Orissa High Court

National Insurance Co. Ltd.

APPELLANT

Vs

S.K. Allauddin and Others

RESPONDENT

Date of Decision : 17-08-2001

Acts Referred:

Employees Compensation Act, 1923 — Section 21

Citation : (2002) 1 ACC 432

Hon'ble Judges : B. Panigrahi, J

Bench : Single Bench

Judgement

B. Panigrahi, J.—This appeal is directed against the award passed by the Commissioner for Workmen's Compensation-cum-Assistant Labour Commissioner (in short, the "Commissioner") dated 10th February, 1999, in W.C. Case No. 71/ 1997).

2. The claimant-respondents 1 to 7 filed an application claiming compensation to the tune of Rs. 2,00,000/- for the death of Sk. Shamim, son of claimant respondent No. 1 on account of a road accident. The skeletal picture of the claimants' case is as follows: On 3.10.1996 at about 1.00 a.m. when the truck bearing registration number OR-11-8188 reached near village Palora on N.H. 6 all of a sudden it fell into a ditch and caused a serious accident as a reason whereof, the first claimant's son Sk. Shamim died instantaneously. After the accident, the deceased was taken to Ulberia Hospital for post-mortem examination by the O.I.C., Ulberia P.S. and P.S. Case No. 152/1996 was registered and subsequently charge-sheet was submitted in G.R. Case No. 554 of 1996. It was claimed that the deceased was working as a Helper in the truck at the time of accident.

3. The Insurance Company as well as the owner were noticed and they filed separate written statements raising objection to the claim application. The owner had, however, admitted about the employment, wages and the death of the deceased having occurred in course of and out of employment on account of the accident. The Insurance Company, however, generally denied the allegations in

the claim application.

4. The Commissioner after carefully considering the evidence adduced before him by the parties directed the Insurance Company to pay Rs. 1,69,785/-. Therefore, being aggrieved by and affected with the award of the Commissioner, the Insurance Company has filed this appeal.

5. The learned Counsel appearing for the appellant has raised serious contention with regard to lack of jurisdiction of the Commissioner at Balasore. It is submitted that since the accident had occurred at Ulberia which comes within jurisdiction of West Bengal, in all fairness, the application for compensation ought to have been filed before the Commissioner having jurisdiction over the place where the accident occurred. It has been further contended that there has been no evidence worthwhile adduced by the claimants that they were dependents of the deceased.

6. Learned Counsel appearing for the claimants has submitted that the question of jurisdiction cannot be raised as such issue has been settled at rest by virtue of the Division Bench judgment of this Court reported in S.K. Saukata Ali alias Sekha S.K. Vs. Commissioner for Workmen's Compensation cum Dy. Labour Commissioner and Others, The facts of the above case are similar to the present case. In the above case, the accident had taken place within the jurisdiction of West Bengal and the case was filed at Cuttack. This Court taking into consideration the provision of Section 21 of the Workmen's Compensation Act, 1923, held that the case can be filed in West Bengal and also where the party was last residing as well. Stretching the similar principle to this case, it can safely be concluded that the Commissioner at Balasore, was competent to seize jurisdiction and decide the case.

7. It has been further contended that since the claimants were not residing within the jurisdiction of Balasore, so that the case could have been filed there and they were residing within Mayurbhanj District, the Commissioner could not have passed such an award. Learned Counsel appearing for the claimant-respondents while repelling the said contention has relied upon the Notification issued by the Government dated 11th February, 1994, whereby the entire Mayurbhanj District comes within the jurisdiction of the Assistant Labour Commissioner-cum-Workmen's Compensation Commissioner, Balasore. As such, the contention raised by the appellant cannot be accepted.

8. It has been next contended that nowhere the Commissioner decided that claimants were dependants upon the deceased. I find that in the claim application it is stated that the claimants were the dependants and also from the cause-title of the appeal memo, it is found that the claimants are described as parents, brothers and sisters of the deceased. Therefore, for the purpose of this Act, they can be regarded as the dependants of the deceased.

9. It has been further urged that the award does not indicate that the deceased was employed in the truck. I find that this point was also considered by the

Commissioner and he was of the view that the deceased met his death on account of the accident in course of employment. To arrive at such conclusion, the statement of the employer in his written statement can be safely relied on. The employer very cleverly avoided to be examined in the case. Therefore, in this situation, the Commissioner was justified in holding that the deceased died in course of his employment at Ulberia on account of the accident. Accordingly, this contention raised by the appellant also stands rejected.

10. There has been no dispute with regard to the quantum of compensation awarded by the Commissioner. Accordingly, I do not find that the Commissioner has committed either factual or legal error to arrive at the conclusion in awarding the compensation to the claimants. The entire amount has been kept in fixed deposit pursuant to order dated 23.2.2000 passed by this Court. Let an amount of Rs. 1,30,000/- be kept as unredeemable fixed deposit in any nationalised Bank in the names of the claimants for a period of five years. The balance amount along with accrued interest be disbursed to claimant-respondents by way of cheque/pay order to be handed over to claimant-respondent No. 1 on proper identification. This exercise shall be done within a period of one month.

The Misc. Appeal being devoid of merit is accordingly dismissed. There, will, however, be no order as to costs.