(2008) 03 JH CK 0058

In the Jharkhand High Court

National Insurance Co. Ltd. APPELLANT

Vs

Toldi Prasad @ Todi Sao and Others RESPONDENT

Date of Decision : 10-03-2008

Acts Referred:

Citation : (2008) 2 JCR 639

Hon'ble Judges : M.Y. Eqbal, J;Dilip kumar sinha, J

Bench : Division Bench

Judgement

1. The appellant-National Insurance Company Limited has filed this appeal challenging the order dated 29.3.2004 passed by Commissioner, Workmen''s Compensation, Hazaribagh in W.C. case No. 32 of 2003 whereby a sum of Rs. 3,22,297/- has been awarded for the death of one Ramesh Sao Gupta while himself driving the truck.

2. Mr. Alok Lal, learned Counsel appearing on behalf of the appellant-Insurance Company, very seriously and forcefully assailed the impugned order mainly on the ground that the truck was not insured with the appellant-Insurance Company and on the basis of fake and fabricated copy of insurance policy the Commissioner, Workmen''s Compensation awarded compensation.

3. Mr. Rajiv Anand, learned Counsel appearing on behalf of the respondents, on the other hand, supported the impugned order by submitting that the vehicle was duly insured with the appellant and the copy of insurance policy was filed before the Commissioner, Workmen''s Compensation.

4. On this conflicting submissions made by the counsels for the parties, we passed order on 16.1.2007 directing the respondent-owner of the vehicle to produce before us the insurance policy by which the vehicle was insured. For better reference the order dated 16.1.2007 is quoted herein-below :

16.1.2007 : Learned Counsel appearing for the respondent-owner of the vehicle is directed to produce before this Court the Insurance policy by which the vehicle was insured, since the owner of the vehicle is none-else, but the daughter-in-law of the claimant. She is directed to file affidavit disclosing the mode of payment of premium. If by cheque, then the cheque no and if by cash, then the receipt issued by the Insurance Company regarding payment of premium.

We have noticed that in several cases, on the basis of fake policy, illegal claims are made against the Insurance Company. We, therefore, think it proper to get the matter inquired by the State CID department.

5. Instead of producing the copy of the insurance policy respondent No. 5-owner of the vehicle filed affidavit stating, inter alia, that she has filed photo copy of the insurance policy as the original papers were being kept by her husband and photo copy of the policy is a genuine paper. This Court, thereafter, passed order on 25.6.2007 directing the D.G.P. to get the matter inquired by CID and to submit a report to that effect.

6. Pursuant to the order dated 25.7.2007 the Central Investigation Department submitted report stating that the copy of the insurance policy is a fake document and the claimant who is the father of the deceased, in connivance with respondent No. 5, the wife of the deceased, after fabricating the insurance policy, filed the said document before the Commissioner, Workmen''s Compensation and got the award in their favour. It was stated that both are equally liable for punishment.

7. In the meantime, the original records of the compensation case was received from the office of the Commissioner Workmen''s Compensation, Hazaribagh. From perusal of the claim application it transpires that truck in question bearing No. BR 12B-7422 was purchased in the name of respondent No. 5, Jiwani Devi by her husband who is the deceased. The deceased, being the husband of the owner of the vehicle, was himself driving the vehicle and he parked the vehicle at a place where some miscreants alleged to have assaulted him which resulted in his death.

8. After the death of the deceased claim application was filed by the father of the deceased along with the minor children against the wife of the deceased (the daughter-in-law) and the Insurance Company. In para 2 of the claim application it was stated that the claimants are the father and minor children of the deceased who were fully dependant upon the earning of the deceased-workman. In para 3 it was stated that the monthly wages of the deceased-workman was Rs. 4,000/- including over time, food allowance and commission. In para 4 it was stated that the claimants approached the Insurance Company but the Insurance Company did not pay them the compensation.

9. Curiously enough in para 6 it was stated that the wife of the deceased (respondent No. 5) is alive but she was not dependant upon the earning of the deceased. Only the old father and children were fully dependant on the earning of the deceased. By manufacturing these facts the claim application was filed.

10. On being noticed the wife of the deceased (respondent No. 5) who was

opposite party No. 1, appeared and filed show-cause. In para 3 she stated that monthly wages of her husband (deceased workman) was Rs. 3,500/- including over time, food allowance and commission. It was further stated that the vehicle was insured with the National Insurance Company Ltd (the appellant). A certificate of insurance was also filed along with the show-cause.

11. On the contrary the appellant-Insurance Company filed show-cause totally denying and disputing the entire facts and also the insurance of the vehicle. It was categorically stated that there was no relationship of employer and employee in between the deceased (husband) and the opposite party (wife). It was alleged that the deceased was himself the owner of the vehicle and his wife was the name lender. It was further stated that the Insurance Company is not at all liable for payment of compensation since the vehicle in question was not insured with this opposite party within the period while the accident alleged to have taken place.

12. The Commissioner Workmen''s Compensation, in his two pages'' order only, awarded compensation. The Commissioner noticed the show-cause whereby the Insurance Company vehemently denied and disputed the insurance of the vehicle. In spite of that without recording any finding and without application of mind, the Commissioner simply directed that the amount shall be paid by the Insurance Company.

13. This is how the Insurance Company is being cheated by persons who, on the basis of forged and fabricated documents, claim compensation. There are several instances like that but the instant case is the burning example.

14. As stated above, when we directed the inquiry by CID and also when direction was issued to the owner of the vehicle {the wife of the deceased) to produce the insurance policy, an affidavit has been filed today by her wherein she, after admitting that a fake and fabricated insurance policy was filed before the Commissioner Workmen''s Compensation, has tendered apology. Even in this affidavit she has falsely stated that the Insurance Company never challenged the genuineness of the insurance policy before the Commissioner Workmen''s Compensation when, as stated hereinabove, it was the specific case of the Insurance Company that the vehicle was not insured with it. It was stated in the affidavit filed today that she had no intention to cheat the Insurance Company by filing manufactured document, rather, simply it was a bona fide, mistake.

15. From the averments made in the affidavit filed today it is clear that it was admitted by respondent No. 5, the owner of the vehicle, that forged and fabricated insurance policy was filed before the Commissioner Workmen''s Compensation. Hence, no further inquiry is necessary to be made in this regard in view of the admission of respondent No. 5 that the copy of the insurance policy filed before the Commissioner Workmen''s Compensation was not a genuine policy.

16. It is indeed interesting to see how the father of the deceased, in connivance

with his daughter-in-law, (wife of the deceased) fraudulently made out a case for compensation and, in fact, be succeeded in getting that. It is only before us, when she was directed to file original insurance policy, the truth came to light.

17. In the backdrops of the aforesaid facts we allow this appeal and set aside the award passed by the Commissioner Workmen''s Compensation, Hazaribagh in W.C. case No. 32/2003. We also deprecate the way in which the Commissioner, Workmen''s Compensation has decided the compensation case. Either he has no elementary knowledge of law or he passes orders without application of judicial mind.

18. So far the conduct of both the claimants i.e. the father of the deceased and the respondent-wife (owner of the vehicle) is concerned, the same evidently constitute a criminal offence and they are liable to be prosecuted not only for committing forgery and fabricating the document but also for misleading the Court by making false statement by filing affidavits. But, taking into consideration the fact that the claimant-father of the deceased is an old man and the respondent-owner of the vehicle is a lady, we propose to impose heavy cost only which is quantified at Rs. 50,000/- which shall be deposited in the account of State Legal Services Authority within a period of two weeks from today.

19. In the event the claimants and the respondent-owner of the vehicle, fail to deposit the same within two weeks, the Insurance Company is directed to recover the said amount from them by initiating certificate proceeding. For recovery of the amount the Insurance Company can get the vehicle in question sold in auction. In the event the Insurance Company also fails to take action for the recovery of the amount within six weeks from today, then appropriate direction shall be issued to the Insurance Company for deposit of the said amount.

20. Put up this case after six weeks so that the counsels appearing on behalf of both the parties may inform this Court about the compliance of this order. The appellant-Insurance Company shall immediately withdraw the amount deposited by it before the Commissioner Workmen''s Compensation.