
(2021) 11 SHI CK 0007

In the High Court Of Himachal Pradesh

Case No : First Appeal From Order No. 4085 Of 2013

National Insurance Co. Ltd., Mandi Distt. Mandi

APPELLANT

Vs

Reeta Thakur And Others

RESPONDENT

Date of Decision : 08-11-2021

Acts Referred:

Workman Compensation Act, 1928 — Section 3, 3(1), 3(1)(1), 3(1)(2), 3(1)(b)(iii), 30

Citation : (2021) 11 SHI CK 0007

Hon'ble Judges : Jyotsna Rewal Dua, J

Bench : Single Bench

Advocate : Deepak Bhasin, G.R. Palsra, H.S. Rangra

Final Decision : Dismissed

Judgement

Jyotsna Rewal Dua, J

1. The Insurance Company is in appeal against the judgment dated 26.11.2012 passed by learned Court below whereby the claim petition preferred by respondents No. 1 to 3 under the Workmen's Compensation Act was allowed and the appellant/insurer was directed to deposit the awarded compensation amount alongwith interest.

2. The bare minimum factual position may be noticed first:-

2(i) Respondents No. 1 to 3 filed a claim petition on 23.1.2006 under the provisions of the Workmen's Compensation Act. It was submitted that Shri Desh Raj (husband of respondent No. 1 and father of respondents No. 2 and 3) was employed as a driver by respondent No. 4 on latter's truck bearing No. HP-65-0301. On 4.10.2005, the said vehicle driven by Desh Raj met with an accident causing his death. The claimants asserted that Shri Desh Raj died during the course of his employment. He was 23 years old at the time of accident and getting Rs. 5000/- per month as salary. Additionally, Rs. 100/- per day was being paid to him by respondent No. 4 as diet money. Compensation amount of Rs. 6,00,000/- in all was claimed on account of death of Shri Desh Raj.

2(ii) The owner of the vehicle i.e. respondent No. 4 admitted in his reply that Desh Raj was employed by him as a driver of the vehicle in question. He also admitted that the said vehicle met with an accident on 4.10.2005 and Shri Desh Raj who was driving the truck died in the accident during the course of his employment. Respondent No. 4 pleaded that Shri Desh Raj was being paid Rs. 3500/- per month as salary and Rs. 50/-per day as diet money.

2(iii) The appellant-Insurance Company in its original reply filed on 15.1.2007 to the claim petition took up the defence that Desh Raj did not have a valid and effective driving licence at the time of accident.

2(iv) On the basis of the pleadings of parties, the issues were framed on 18.3.2008. Subsequently an amended reply was filed by the appellant/Insurance Company on 4.7.2008 taking up an additional ground that Desh Raj was under the influence of liquor at the time of accident and therefore, the insurer cannot be saddled with liability to pay compensation to the claimants.

2(v) On consideration of pleadings, the evidence adduced and the contentions raised by the parties, learned court below allowed the claim petition vide judgment dated 26.11.2012. A compensation amount of Rs. 3,87,398/- alongwith interest @ 12% per annum from 4.11.2005 till its realization was awarded in favour of the claimants (respondents No. 1 to 3). Liability to satisfy the award was fastened upon the Insurance Company. This judgment has been challenged by the Insurance Company in the instant appeal preferred under Section 30 of the Workman Compensation Act, 1928.

3. This appeal was admitted on 26.8.2013 on following substantial question of law:-

"Whether the learned Court below has misconstrued and misinterpreted the cover note Ex.RW-1/B, insurance policy Ex.RW-3/G and FSL report Ex.RW-1/A in allowing the petition and awarding the amount in favour of respondents No. 1 to 3."

4. Contentions

Learned counsel for the appellant/Insurance Company submitted that the report of FSL, Junga Ex.RW1/A revealed consumption of alcohol by the deceased Sh. Desh Raj at the time of accident. The level of alcohol was 1.293 mg. The fact that deceased Desh Raj was driving under the influence of liquor at the time of accident would absolve the Insurance Company from its liability to indemnify the insured employer. In support of such submission, learned counsel also pressed into service the cross examination of the insured employer Shri Chaman Prakash (RW-1).

Opposing the contentions, learned counsel for the respondents argued that under the provisions of the Workmen's Compensation Act, the Insurance Company cannot escape its liability to pay the compensation amount merely because the alcohol was found to be consumed by deceased Desh Raj at the time of accident,

more so, when the accident resulted in his death. Learned counsel invited reference to the provisions of the Workmen's Compensation Act in that regard.

I have heard learned counsel and with their assistance gone through the record.

5. Observations

The point that falls for consideration is whether under the provisions of the Workmen's Compensation Act, the insurer can avoid the liability to compensate the claimants merely on account of the fact that the workman who died during the course of his employment, while driving the vehicle which met with an accident, was found to have consumed liquor.

5(i) Section 3 of the Workmen's Compensation Act provides for employer's liability for compensation. Sub Section (1) of Section 3 being relevant is extracted hereinafter:

"3. Employer's liability for compensation.- (1) If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter: Provided that the employer shall not be so liable -

(a) in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding three days;

(b) in respect of any injury, not resulting in death or permanent total disablement caused by an accident which is directly attributable to-

(i) the workman having been at the time thereof under the influence of drink or drugs, or

(ii) the wilful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen, or

(iii) the wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workman."

A bare reading of section 3(1) makes it clear that if personal injury is caused to a workman by an accident arising out of and in course of his employment then his employer shall be liable to pay compensation in accordance with the provisions of the Act. However, the employer shall not be held liable in respect of any injury not resulting in death or permanent total disablement caused by an accident which is directly attributable to the workman having been at the time thereof under the influence of drink or drugs or attributable to the wilful removal or disregard by the workman of any safeguard or other device which he knew to have been provided for the purpose of securing the safety of workmen.

5(ii) Instant was a case of an accident which resulted in death of the workman. Therefore, even if that workman-Desh Raj was under the influence of liquor at the time of accident that fact will not absolve the employer from his liability to

compensate the claimants in terms of the provisions of the Act. Reference in this regard can be made to 2005 (2) Shim. LC 442, titled United India Insurance Company versus Seema Devi and others, wherein it was held that the exemption available to the employer as per proviso to Section 3(1) of the Act is not applicable in the case of death or permanent total disablement of workman but only in cases of injury. It is only in cases of injury if the employer proves that the workman was under the influence of drink or drugs or he had wilfully disobeyed any express order or specific rule with regard to securing the safety of the workman that the employer can avoid his liability. The employer however is liable to pay compensation in case death or permanent disablement of workman results from the accident. The relevant part of the judgment is as under:

"This is the entire law on this point which has been placed before me. There can be no manner of doubt that the W.C. Act is a legislation meant to ameliorate the suffering of the workman and the heirs of a deceased workman. If two interpretations of a provision are possible, then the interpretation which benefits the workman or his heirs should be preferred. Section 3 which has been quoted above makes the employer absolutely liable to pay compensation in case an employee dies in an accident arising out of in the course of employment. The Act does not provide any exception except those in the proviso. The negligence of a workman is no defence.

However, the legislature in the proviso to Section 3(1) has exempted the employer in certain cases. The most important factor to be noted is that this exemption is not applicable in the case of death or permanent total disablement, but only in cases of injury. In cases of injury, if the employer proves that workman was under the influence of drink or drugs or that he had wilfully disobeyed any express order or specific rule with regard to securing the safety of the workman or the workman has wilfully removed or disregarded any safety guard or other devices which he knew were provided for the purpose of securing the safety of a workman, then the employer can avoid his liability. However, even in such cases the employer is liable to pay compensation in case death or permanent disablement results from the injury. The intention of the legislature is thus very clear. In cases of death or of permanent total disablement even if the employee has wilfully disregarded the safety aspects then also the employer would be liable."

5(iii) This Court in FAO No. 333/2012, titled Parkash Chand & another versus Sh. Sanjeev Kumar & others, decided on 3.9.2021 considered following substantial question of law:-

"Whether under the provisions of Section 3(1) proviso (b)(iii) of the Employee's Compensation Act, the compensation is not payable in case of death of an employee as a result of an accident arising out of or in the course of his employment but due to his own willful disregard to the safety precautions or because of his own negligence?"

On considering provisions of Section 3 of the Act, the question of law was decided as under:

"From a plain reading of the above extracted portion of the Section, it becomes clear that the employer will not be liable to pay compensation in cases of injuries other than those resulting in death of an employee though arising out of and in the course of his employment where the accident is directly attributable to the willful removal or disregard by the employee of any safeguard or other device which he knew to have been provided for the purpose of securing the safety of employees. It is thus evident that compensation is not admissible in case of injuries to the employees who had themselves been negligent or because of whose negligence the accident occurs even if such an accident arises out of and in the course of his employment. Section 3(1) proviso (b)(iii) however is not applicable to situations where accident involving negligence of the employee results in his death. In this regard, it will be apt to refer to a judgment rendered in AIR 1970 Rajasthan 111, titled R.B. Moondra and Co. v. Mst. Bhanwari and another. Paragraph-8 whereof runs as under:

"(8.) It would appear from the above provision that if personal injury is caused to a workman by accident arising out of and in the course of his employment, the employer shall be liable to pay compensation except where the injury does not result in the total or partial disablement of the workman for a period exceeding three days and except in the case where injury results in death, the accident is directly attributable to the causes mentioned in Sub-clauses (i), (ii) and (iii) of proviso (b) . In order to claim compensation the employee has to show not only that at the time of the accident he was in fact employed on duties of his employment, but further that the immediate act which led to the accident was within the sphere of his duties and not foreign to them. In case of death of an employee due to accident if it has arisen out of and in the course of his employment it is no defence to plead that there was wilful disobedience of any order or rule expressly given or framed for the purpose of securing the safety of the workman. Clause (b) of the proviso to Sub-section 1 (1) of Section 3 is limited to those cases where injury has not resulted in death. This is quite evident from the language of the section itself and if any authority is needed I may refer to *thomas v. Ocean Coal Co. Ltd.* 1932 All ER 458 where on the following facts that the workman was a hitcher in a coal mine, his duties being, inter alia, to help in getting full trams into and empty trams out of the cages. His proper place of work was on the loading, or full tram side of the pit bottom, but he was expected to help, in cases of emergency, in dealing with empty trams on the other side of the pit. On April 17, 1931, he crossed the pit bottom to see to the working of empty trams and then ran back across the shaft bottom towards his proper working side to be ready to receive a cage when it landed. So to cross the shaft bottom, was expressly prohibited by a regulation made under the Coal Mines Act, 1911. Before the workman could get fully across the shaft bottom the descending cage struck and killed him. On a claim for compensation by his widow, it was held on the construction of English Workmen's Compensation Act

of 1925 that:

"in considering whether the case came within Section 1 (2) of the workmen's Compensation Act, 1925, it must first be ascertained, disregarding the prohibition contained in the regulation whether the workman's death was due to an accident arising out of and in the course of his employment; if it did, the effect of the prohibition in removing the accident from that category could be annulled if the later conditions in the subsection as to the act being done by the workman for the purposes of and in connection with his employer's trade or business' were fulfilled; in the present case the accident certainly arose out of the workman's employment and it also arose in the course of that employment since he had been engaged to work on both sides of the pit and desired to expedite that work; his contravention of the regulation did not put him outside the sphere of the employment, and so his act was done for the purposes of and in connection with the employers' business; and, therefore, his widow was entitled to compensation. "

In case of death of an employee due to an accident arising out of and in the course of his employment, his negligence will not come in the way of grant of compensation to the claimants. The restrictions placed in Section 3 of the Act will not be applicable in case of death of employee.

Learned Commissioner has held the employer not liable to compensate for the death of his employee Naresh Kumar due to the finding returned by him in the award about accident's taking place on account of employee's willful disregard to safety precautions/his negligence. The conclusion drawn by the learned Commissioner is not in consonance with the Scheme of Section 3(1) proviso (b) (iii) of the Act. Hence, this appeal is allowed. The impugned judgment dated 28.3.2012 passed in Petition No. 03/2006, RBT No. 7/2011 is set aside. The matter is remanded for fresh decision to the learned Employee's Compensation, Barsar, District Hamirpur."

5(iv) In the instant case, the report of Forensic Science Laboratory (FSL), Junga Ex. RW1/A proved on record by RW4 Dr. P.K. Soni though shows that deceased Desh Raj had consumed alcohol and the level of alcohol in his body was 129.3 mg, but it being a case of death of the workman, the exemption available to the employer under the proviso to Section 3(1) of the Act will not be applicable. Therefore, employer shall be liable to compensate the claimants on account of death of Desh Raj. It is not in dispute that Desh Raj had died during the course of his employment with respondent No. 4.

5(v) Learned counsel for the appellant next contended that the vehicle was driven by Desh Raj under the influence of liquor, therefore, there was willful breach of Insurance policy by the employer. Under the circumstances, the insurer is not liable to indemnify the employer. This contention also does not hold any merit in the given facts. The initial defence put forward by the appellant/insurer was that driver-Desh Raj was not holding a valid licence at the time of accident.

However, the evidence on record proved that the deceased was holding a valid and effective driving licence at the time of accident. No evidence was produced by the insurer to prove that respondent No. 4 had wilfully allowed the deceased to drive the vehicle under the influence of liquor. It was for the Insurance Company not only to plead but also to prove the violation or breach of the terms and conditions of the Insurance Policy. The employer-respondent No. 4 has categorically stated that he had taken all precautions and care while deputing Desh Raj to drive the vehicle in question and that workman had not consumed liquor when he was sent on duty to drive the vehicle. Mere evidence of drunken driving will not prove breach of wilful conditions of Insurance Policy by the employer/respondent No. 4.

For all the aforesaid reasons, I find no merit in the instant appeal and the same is accordingly dismissed, so also the pending application(s), if any.