(2015) 09 RAJ CK 0074

In the Rajasthan High Court

Case No : SB Civil Misc. Appeal No. 388 of 2015

National Insurance Company APPELLANT

Vs

Bal Jyoti and Others RESPONDENT

Date of Decision : 23-09-2015

Acts Referred:
Workmens Compensation Act, 1923 — Section 22, 30

Citation : (2016) 148 FLR 183 : (2015) 4 LLJ 289 : (2016) 1 RLW 493

Hon'ble Judges : Prakash Gupta, J

Bench : Single Bench

Advocate : Rahul Joshi, for the Appellant; Vinay Mathur, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Prakash Gupta, J—With the consent of learned counsel for the appellant and learned counsel for the respondents, this appeal is being decided finally at the admission stage.

2. Defendant appellant, National Insurance Co. Ltd. has filed the present Civil Misc. Appeal under Section 30 of the Workmen''s Compensation Act being aggrieved of the judgment and award dated 11.12.2014 passed by the Commissioner for Workmen''s Compensation, Jaipur District First, Jaipur in Case No. E.C.C.F.35/2012 whereby the claim petition of the claimant respondents has been allowed and an award for Rs. 6,57,280/-along with Rs. 44,501/- towards medical expenses has been passed along with interest at the rate of 12% per annum.

3. The facts in narrow compass giving rise to the present appeal are that the claimant respondent Nos. 1 to 7 on 5.6.2012 filed a claim petition before the Workmen''s Compensation Commissioner, Jaipur District First, Jaipur under Section 22 of the Workmen''s Compensation Act, 1923 stating therein that while under the employment of defendant Prem Singh, deceased Radhey Shyam was

driving tanker No. HR-55-A-0959. While returning from Tonk to New Delhi on 23.3.2012 due to rash and negligent driving of truck driver of another truck No. RJ-14GA-6786 deceased Radhey Shyam succumbed to injuries. Regarding the accident FIR No. 141/2012 was lodged at Police Station Chaksu. It was averred in the claim petition that at the time of death deceased was aged 40 years and was getting Rs. 8,000/-per month as salary along with daily allowance @ Rs. 100/- per day. The deceased was working under the employment of defendant No. 1 and the said tanker was insured with defendant-appellant. Hence, both the defendants are jointly and severally liable for compensation of Rs. 8,50,000/- to be paid to the claimants under the various heads along with interest @ 12% per annum from the date of accident.

4. Defendant No. 1, who is the owner of the tanker, filed written statement and admitted the fact that deceased was employed as driver and was being paid Rs. 8,000/- per month as salary. It was stated that the accident took place due to rash and negligent driving of the driver of truck No. RJ-14GA-6786. However, in view of the fact that the vehicle was insured with defendant No. 2, he prayed for dismissal of the claim against him.

5. Appellant, defendant No. 2 in its written statement stated that on the date of the accident the deceased was not having a valid driving license as at the time of accident the deceased was driving the tanker of crude oil but there was no endorsement in the driving license that he was authorised to drive the vehicle with dangerous and hazardous substances. It was stated that though the accident occurred on 23.3.2012 but the FIR was lodged on 14.4.2012 after a delay of 21 days with no explanation regarding the same. Lastly, it was mentioned that the accident had occurred due to contributory negligence of the deceased. Hence, it was prayed that the claim petition be dismissed.

6. On the basis of pleadings of the parties, the court below framed the following issues:-

"(1) Whether, on 23.3.2012 the deceased was employed with respondent No. 1 as a driver on his tanker No. HR-55A-0959?

(2) Whether, the death of deceased took place during the course of his employment under respondent No. 1?

(3) What would be the effect of written statement of the Insurance Company on grant of compensation to the claimants?

(4) Whether, the claimants are entitled to get compensation from the respondents? If yes, how much and from whom?

(5) Relief."

7. In support of their claim, the claimant respondent Smt. Bal Jyoti filed her affidavit and exhibited as many as 79 documents. Non-claimant, Prem Singh, also filed his affidavit and from the side of the Insurance Company, appellant

Devendra Singh Bainsla filed his affidavit.

8. The learned Commissioner, Workmen''s Compensation decided all the issues in favour of claimant respondents against the respondent appellant and respondent No. 8 vide impugned judgment dated 11.12.2014 and awarded total compensation of Rs. 7,01,781/- (Rs. 6,57,280/+ Rs. 44501/- medical expenses) along with interest @ 12% per annum from 14.4.2012.

9. Feeling aggrieved by the impugned judgment, the appellant Insurance Company has filed the present appeal.

10. It is submitted by the learned counsel for the appellant that deceased was driving the tanker in which crude oil was being transported which is a hazardous and dangerous substance. The deceased was not having valid and effective driving license to drive a vehicle in which a hazardous and dangerous substance was being carried. He submitted that in this regard the Insurance Company produced the report of the concerning Transport Officer Ex.-NA2/3 on record showing no endorsement for carrying hazardous material. The Insurance Company also adduced evidence in this regard which has not been considered by the learned Commissioner that the deceased was not having the proper driving license and therefore, committed breach of terms and conditions of the insurance policy. Learned counsel for the appellant relied on S. Iyyapan Vs. United India Insurance Company Ltd. and Another, (2013) 5 ABR 385 : (2013) 3 ACC 19 : (2013) ACJ 1944 : (2013) 7 AD 202 : AIR 2013 SC 2262 : (2013) 10 JT 85 : (2013) 172 PLR 409 : (2013) 3 RCR(Civil) 654 : (2013) 7 SCALE 637 : (2013) 7 SCC 62 National Insurance Company Ltd. Vs. Annappa Irappa Nesaria and Others, (2008) ACJ 721 : AIR 2008 SC 1418 : (2008) 1 JT 617 : (2008) 149 PLR 251 : (2008) 1 SCALE 642 : (2008) 3 SCC 464 : (2008) AIRSCW 906 : (2008) 1 Supreme 378 National Insurance Co. Ltd. V. Annappa Irappa Nesaria and others.

11. Per contra, learned counsel for the respondents has submitted that there is no evidence available on record which suggests that at the time of the accident, deceased Radheshyam was driving a vehicle which contained hazardous and dangerous substance. No objection has been taken in the reply filed by the appellant. At the time of the accident, the tanker was empty. It is submitted that for the same accident the appellant has paid the O.D. Claim (owner''s damages) to the owner of the vehicle for its damage. Therefore, the appellant is estopped to raise any objection with regard to driving license. There is no evidence available on record which shows any breach of terms and conditions of the insurance policy. There is no substantial question of law involved in this appeal, hence, the appeal is liable to the dismissed.

12. I have considered rival submissions made by learned counsel for the parties.

13. It is revealed from the reply to the claim petition filed by the appellant that no such objection has been taken that the deceased was driving the tanker in which hazardous & dangerous substance was being transported. No cross examination has been made from Prem Singh (AW-2) owner of the tanker in this

regard. For the first time in the affidavit of Devendra Singh Baisla who was examined as NAW1, it is mentioned that at the time of the accident, the vehicle-tanker No. HR-55-A-0959 was carrying hazardous and dangerous substance i.e. crude oil. It is mentioned in the affidavit that an enquiry was done by the transport officer Gonda U.P., which shows that the deceased had driving license to drive the transport vehicle and he had no driving license to ply a vehicle which was carrying hazardous and dangerous substance but in his cross examination, he has admitted that there is no provision which requires endorsement in this regard. He admits in his cross examination that From his statement it is clear that he is not an eye witness of the accident. He has deposed that crude oil was being transported in the tanker and this statement is based on his common knowledge.

14. In view of the above, there is no evidence on record which suggests that at the time of the accident the deceased was driving a tanker in which crude oil was being transported. In the affidavit, it is also mentioned that an enquiry was made with regard to the driving license which is Ex.-NA-2/3. It is revealed from the Ex.-NA-2/3 that it is nowhere mentioned in Ex.-NA-2/3 that at the time of the accident the vehicle in question was transporting hazardous and dangerous substance. It is pertinent to mention here that for the same accident the appellant has paid O.D. Claim to the respondent No. 8. In view of this fact, the appellant is estopped from raising any objection with regard to the breach of the terms and conditions of insurance policy viz a viz driving license.

15. Admittedly, the deceased was having license to drive commercial vehicle. In both the cases cited by learned counsel for the appellant, the drivers having license to drive L.M.V, but they were found driving commercial vehicle. In view of this, no reliance can be placed on the judgments cited at bar on behalf of the appellant.

16. No substantial question of law is involved in this appeal.

From the above discussion, this appeal is devoid of any merits and is accordingly dismissed.

