(2005) 04 J&K CK 0009

In the Jammu And Kashmir High Court

National Insurance Company Ltd. APPELLANT

Vs

Abdul Ahat and Others RESPONDENT

Date of Decision : 27-04-2005

Acts Referred:

Citation : (2005) 3 ACC 809

Hon'ble Judges : Sudesh Kumar Gupta, J

Bench : Single Bench

Judgement

S.K. Gupta, J.—The appellant-National Insurance Company has challenged the award passed by the Assistant Labour Commissioner,

Doda, in his capacity as Commissioner under the Workmen's Compensation Act on 29.5.2000 awarding Rs. 80,180/- as compensation to the

respondents, heirs of the deceased Allah Rakha Sheikh.

2. It appears that the deceased Allah Rakha Sheikh, son of applicant/respondent No. 1, was employed as cleaner with Truck No. JK02B/0312. It

was during the course of his employment that on 8.4.1994 the truck while carrying labourers of Power Development Department from Dhalwas to

Batote construction site, met with an accident as a result of which Allah Rakha Sheikh-cleanei died on spot whereas others were fortunate enough

to have survived with injuries alone. It is further asserted in the application filed by the claimants that the deceased-Allah Rakha Sheikh was 20

years old at the time of accident and his monthly wages were Rs. 1,500/-. In sustenance of their claim, claimant No. 1 father of the deceased

appeared as witness and stated that the truck with which the deceased was employed as cleaner met with an accident and died on spot. It was

further found in his evidence that the death of the deceased Allah Rakha Sheikh had taken place during the course of his employment, with the

owner of the truck Mohd. Shokat Mughal, as conductor. The deceased was unmarried and was contributing Rs. 1,000/- per month towards the

family. The non-applicants after the receipt of the notice appeared. The owner of the truck admitted in his reply that the deceased was in his

employment as conductor of vehicle No. JK02B-0312 at the time of occurrence and died in accident. It was also stated that the vehicle was

insured with the National Insurance Company for four labourers and employees. The National Insurance Company though was represented by

Mr. MR. Rathore, Advocate, but did not choose to file reply to the application. The owner of the vehicle further indicated in his reply that the

deceased was being paid Rs. 300/- per month as wages.

3. Neither any reply has been filed by the National Insurance Company nor any evidence in rebuttal was adduced by the opposite side.

4. After considering the reply and the evidence produced by the claimants, the Commissioner held that the deceased Allah Rakha Sheikh was in

the employment of the owner of the truck when accident took place and died on spot. The death of the deceased and the accident is further

proved from the post mortem report. The Commissioner has assessed the compensation as per minimum rates fixed by the Jammu and Kashmir

Government vide notification No. 46 dated 13.3.1995 (SRO No. 46) under the Minimum Wages Act, 1948 and determined at Rs. 900/- per

month i.e., at the rate of Rs. 30/- per day, and passed the award for an amount of Rs. 80,180/- payable by the National Insurance Company

including cost of Rs. 1,000/- payable by the non-applicant No. 2, the employer of the deceased, vide judgment impugned in appeal.

5. Mr. C.S. Gupta, learned Counsel appearing for appellant, however, did not dispute that the vehicle involved in the accident in which the

deceased Allah Rakha Sheikh died was insured with the Company at the time of accident. He has challenged the validity of the award solely on the

ground that the accident having been taken place due to the negligence of the deceased conductor in driving the vehicle unauthorizedly and without

valid driving licence. His further submission is that the Insurance Company is not liable to indemnify the insured as the vehicle, was driven by the

deceased in violation of the terms and conditions of the policy.

6. It is pertinent to point out that the Insurance Company though was represented by its Advocate before the Assistant Labour Commissioner but

did not file any reply. The appellant cannot shirk its responsibility to satisfy the award passed by the Assistant Labour Commissioner as third party

liability based on the insurance policy which covered the offending vehicle at the time of accident. The insurer and insured are bound by the

conditions enumerated in the policy.

7. Mr. C.S. Gupta, however, at this stage submitted that Insurance Company be given liberty to recover this amount from the insured as the

vehicle was driven in violation of the terms and conditions of the insurance policy.

8. It is apt to point out that the insurer who is made statutorily liable to pay compensation to third parties on account of the certificate of insurance

issued shall be entitled to recover from the insured the amount paid to the third parties, if there was any breach of policy conditions on account of

the vehicle being driven without a valid driving licence by resorting to appropriate remedy available under law. This point has not been gone into

the absence of any plea taken by the Insurance Company before the Assistant Labour Commissioner. On that contention it is, however, open to

the insurer to raise it before the proper Forum and secure appropriate orders in case it succeeds in establishing that there was a breach of policy

condition.

9. It is further spelt out that from the awarded amount, part payment of compensation has already been disbursed to the claimant after its receipt

from the appellant/Insurance Company and now the balance amount of awarded compensation is to be paid by the appellant in terms of the award

passed by the Assistant Labour Commissioner.

10. I do not find any infirmity, legal or factual, in the award passed by the Assistant Labour Commissioner under Workmen's Compensation Act

necessitating interference in appeal.

11. For what has been stated and discussed above, the appeal possessing no merit is hereby dismissed. The appellant, however, is at liberty to

approach the appropriate Forum to seek recovery of the amount paid to the third party on establishing the plea of breach of policy condition from

the insured.

Appeal is disposed of, accordingly.

