

(2007) 09 JH CK 0002
In the Jharkhand High Court

National Insurance Company Ltd.

APPELLANT

Vs

Most. Budhani Kisku and Another

RESPONDENT

Date of Decision : 04-09-2007

Acts Referred:

Citation : (2009) ACJ 181 : (2008) 1 JCR 366

Hon'ble Judges : M.Y. Eqbal, J;Dabbiru Ganeshrao Patnaik, J

Bench : Division Bench

Judgement

M.Y. Eqbal, J.—This appeal by the appellant-Insurance Company is directed against the judgment and award dated 16.9.2003 passed by Presiding Officer, Labour Court, Hazaribagh in W.C. Case No. 6 of 2002 whereby a sum of rupees three lacs has been awarded by way of compensation on account of death of the deceased.

2. The facts of the case lie in a narrow compass:

The claimants filed an application for grant of compensation stating inter alia, that her son, Karu Kisku was employed as khalasi under the respondent, Jai Kumar Singh, owner of the Bus bearing registration No. BR-20P-0096 and he was getting Rs. 3000/- as monthly wages and Rs. 25/-for fooding per day. On 2.2.2002 as usual, her son, Karu Kisku was attending his duty as khalasi on the instruction of the employer he was guarding the valuable luggage of the passengers on the roof of the Bus and when the Bus reached in the village, Budhiadih, due to rash negligence driving of the Bus by the driver, the deceased fell down form the roof of the Bus and received serious injury. Claimants" further case was that one Pandu Kisku, the brother of the deceased was also making journey from the same Bus as passenger. He brought the inured, Karu Kisku to the hospital where he died.

3. The respondent-owner of the vehicle as also the appellant-Insurance Company contested the claim by filing written statement. The respondent-owner of the vehicle denied that the deceased was under his employment and he was

employed as khalasi in the Bus. His further case was that the vehicle was insured with the Insurance Company and, therefore, any amount of compensation if awarded, shall be paid by the Insurance Company. The appellant-Insurance Company also denied the relationship of employer and employee and further stated that the deceased was travelling on the roof of the Bus which was in gross violation of the provisions of the Act and the terms of the Insurance Policy. The Court below, after considering the evidence, both oral and documentary, recorded a conclusive finding to the effect that the deceased was employed under the respondent-owner of the vehicle as khalasi and in course of employment he sustained injury and died.

4. Mr. Alok Lal, learned Counsel appearing for the appellant assailed the impugned judgment and award mainly on the ground that the deceased was not covered under the policy of insurance as khalasi and, therefore, the appellant-Insurance Company will have no liability to pay any amount of compensation. Learned Counsel submitted that in absence of any special contract between the insurer and insured to cover the liability of a khalasi, the Insurance Company cannot be held liable for payment of compensation.

5. So far finding of the fact recorded by the tribunal on the issue of relationship of employer and employee is concerned, we do not find any reason to interfere as because finding has been recorded by the tribunal after appreciating the entire evidence on record. The only question, therefore, that falls for consideration is as to whether the appellant-Insurance Company has been able to prove that no liability in respect of death or bodily injury to a cleaner or khalasi was covered.

6. At the very outset it would be proper to look into the defence taken by the Insurance Company in the written statement filed in the Court below. In paragraph 4 it was stated that driver of the alleged Bus was not holding proper and effective driving licence and, therefore, the Insurance Company has no liability for payment of compensation. In para 6 it was stated that the deceased was not a khalasi in the offending Bus, rather, he was an unauthorized passenger travelling on the roof of the Bus. In paragraphs 7 and 8 it was stated that since the deceased was not a khalasi in the alleged Bus, question of payment of wages and fooding to him does not arise. In paragraph 13 it was stated that since the deceased was travelling on the roof of the Bus, the Insurance Company has no liability. Nowhere in the written statement a defence was taken by the appellant that the policy of the insurance did not cover the risk of the khalasi or the cleaner. No evidence was led either oral or documentary by the appellant in support of its case that the khalasi/cleaner was not covered under the policy.

7. From perusal of the lower Court records it transpires that one photo copy of the certificate of insurance was filed by the claimant and was marked Ext, 2. In the said certificate of insurance there is nothing mentioned as to what amount of premium was paid covering the risk of passengers and other persons.

8. As noticed above, no such defence was taken in the written statement that the khalasi was not covered under the Policy, no evidence was led by the Insurance Company to that effect. In absence of such defence and in absence of any evidence, it can safely be held that khalasi/cleaner was covered under the policy.

9. The next question that falls for consideration is as to whether the claimants are entitled to compensation so awarded by the Court below. It was the specific case of the claimants that the deceased, at the time of accident, was guarding the luggage of the passengers on the roof of the Bus. In our opinion, even if the deceased was a khalasi, he was not supposed to sit on the roof of the Bus in order to guard the luggage of the passengers. The evidence of the claimants that the deceased was on the top roof of the Bus is order to guard the luggage of the passengers, cannot be believed for the reason that he was also sitting on the roof of the Bus when the accident took place.

10. It is, therefore, a case of contributory negligence. The claimants-respondents are, therefore not entitled to the amount of compensation so awarded by the Court below. The amount of compensation is to be reduced from Rs. 3 lacs to Rs. 2 lacs.

11. As noticed above, admittedly the deceased was sitting on the roof of the Bus, which was not only in violation of the statutory provisions of the Act but also in violation of the policy conditions. In that view of the matter, the Insurance Company cannot be held liable for payment of entire compensation amount. We, therefore, hold that the owner of the vehicle is liable to pay compensation amount to the claimants. However, in the facts and circumstances of the case we direct the appellant-Insurance Company to pay compensation amount which is reduced from Rs. 3 lacs to Rs. 2 lacs and recover the same from the owner of the vehicle.

12. With the aforesaid direction and observation this appeal is allowed in part.