(2017) 05 SHI CK 0077

In the High Court Of Himachal Pradesh

Case No : 136 of 2017

National Insurance Company Ltd. — APPELLANT

Vs

Smt. Rukmani & others — RESPONDENT

Date of Decision : 16-05-2017

Acts Referred:

Workmens Compensation Act, 1923, Section 3 - Employers liability for compensation

Citation : (2017) 05 SHI CK 0077

Hon'ble Judges : Sureshwar Thakur

Bench : Single Bench

Advocate : Deepak Bhasin

Final Decision : Disposed

Judgement

1. The instant appeal is directed against the order of 29.7.2016, rendered by the learned Commissioner, for Employee''s Compensation, Solan, District Solan, H.P., while his exercising jurisdiction under the Employee''s Compensation Act, whereby, he assessed compensation in a sum of Rs. 7,13,475/- upon the claimants/successors-in-interest of the deceased employee. The learned counsel for the insurer does not contest the fact of the claimants being dependents of deceased Nand Lal. Deceased Nand Lal suffered his demise, in an accident involving motor vehicle bearing No. HP14D-0115, whereon at the relevant time he was aboard its driver seat. However, the learned counsel for the insurer contends that with deceased Nand Lal standing evidently related to the owner of the vehicle concerned, his being his brother, hence perse at the relevant time, there existing no subsisting valid contract of employment interse deceased with the owner of the vehicle, rather, he at the relevant time was driving the offending vehicle concerned, merely in a gratuitous capacity. For appreciating the worth of the aforesaid submission, it is befitting to make an interpretation of the relevant provisions of Section 3 of the Workmen''s Compensation Act, provisions whereof stand extracted here-in-after:-

"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 :

2. The learned counsel for the insurer contends that perse with the deceased being related to the owner, with the latter evidently being his brother, hence in the deceased performing his avocations under his brother, it is to be concluded that he was not receiving any salary/wages in respect thereto. He also proceeds to contend that hence there exists no contract of employment interse the deceased and the owner. Consequently, he submits that the findings rendered on the relevant issue warranting interference. The aforesaid submissions addressed before this Court by the learned counsel for the insurer are to obtain strength from the evidence, which exists on record. The claimants'' testify that their predecessor-in-interest was engaged by his brother as a driver upon the relevant vehicle. Also the claimants testify that in respect of the deceaseds'' relevant employment under the owner of the vehicle, the latter was defraying to him wages/salary quantified in a sum of Rs. 7000/- per mensem. The aforesaid testifications of the claimants are corroborated by RW-1, the owner of the offending vehicle. Since a catena of verdicts pronounced by the Hon''ble Apex Court propagate the view that the mere existence of a close relation inter-se the deceased and the owner of the offending vehicle per-se not constraining a conclusion that no relationship of employer and employee existing amongst them. Consequently, the depositions of the claimants'' that the deceased was employed as a driver upon the relevant vehicle by the owner of the vehicle concerned, also when they depose that in sequel to his employment, he was receiving wages in a sum of Rs. 7000/- per mensem, besides when the testifications of the claimants are corroborated by RW-1, the owner of the concerned vehicle, corollary thereof is qua the aforesaid testifications acquiring truth, also hence the relevant factum probandum acquiring sanctity. However, before proceeding to impute implicit sanctity to the aforesaid testifications, it is imperative "to detect" whether during the course of the counsel for the insurer holding RW-1 to crossexamination, his putting to him apposite suggestions, in display of his sharing with the deceased employee, the profits earned by him, by his operating a goods vehicle. Also forthright evidence in respect thereto comprised in the apposite income tax returns, filed by the owner, revealing that the latter was sharing with the deceased, the profits earned by his operating the relevant vehicle, as a transport vehicle, warranted adduction. However, the counsel for the insurer while holding of RW-1 cross-examination, has merely put suggestions to him, with a disclosure therein qua his not maintaining records with respect to his defraying wages to his deceased brother. However, the mere fact of RW-1, not maintaining records with respect to his defraying wages, to his deceased brother, would not constrain a conclusion that he was not defraying wages to his deceased brother. The reason for forming the aforesaid conclusion arises from the factum of the counsel for the insurer "not" from the Income Tax

Department seeking adduction of the apposite returns filed before it, by the owner, with a display therein qua his defraying wages to his deceased brother. Consequently, a conclusion is earned that RW- 1 was defraying wages to his deceased brother, in respect of his engaging him as a driver upon the relevant vehicle. Moreover, the further effect of the erection of the aforesaid conclusion, is, of its also dispelling the weight, if any, of non adduction by the owner of the relevant vehicle, of, the relevant records in respect of his defraying wages to his deceased brother. Concomitantly, the inevitable conclusion is that a subsisting contract of employment coming into being inter-se both. In addition, with the insurer also not concerting to adduce evidence, with respect to land owned by the deceased nor also leading evidence qua therefrom the deceased and his family members were earning an income. Whereas, adduction of the aforesaid evidence may have given strength, to an inference, that with the deceased and his family members rearing an income from the relevant joint land holding also with a large part thereof, being, with consent of RW-1, hence reserved for the upkeep of the deceased and his family members, thereupon the deceased was gratuitously performing duties upon the offending vehicle. Non adduction of the aforesaid evidence also constrains this Court to conclude that the relevant contract of employment coming into being at the relevant time inter-se both. In aftermath, the appeal is dismissed in limini and the impugned order is maintained and affirmed. Pending application(s), if any, also stands disposed of.