
(2014) 01 RAJ CK 0044
In the Rajasthan High Court
Case No : Civil Misc. Appeal No. 2400/2013

New India Assurance Co. Ltd.

APPELLANT

Vs

Diyali Mukhiya and Others

RESPONDENT

Date of Decision : 22-01-2014

Acts Referred:

Workmens Compensation Act, 1923 — Section 4(a)

Citation : (2014) 01 RAJ CK 0044

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : Rishipal Agarwal, Advocates for the Appellant

Judgement

Alok Sharma, J.—This misc. appeal has been filed against the order dated 19.6.2013 passed by Employees/Workmen Compensation Commissioner, Jaipur (hereinafter "the Commissioner") under the provisions of the Employees Compensation Act, 1923 (hereinafter "the Act of 1923") whereby an award for Rs. 8,63,343/- along-with interest @ 12% p.a has been passed in favour of the claimants respondents No. 1 and 2 and against the appellant (insurance company).

2. Heard the counsel for the appellant and perused the impugned order dated 19.6.2013 passed by the Commissioner.

3. By the impugned order the Commissioner has found that Ganesh Mukhiya aged about 22 years was employed with M/s. Wig Brothers Construction Pvt. Ltd. as a Mistri (Mason). On 12.4.2012 while construction was being carried out on the 11th floor in the Vatika Infotech City Village Thikriya, Jaipur he fell off the scaffolding. The resultant injuries led to his death on the same day. In view of the employer being covered under the Employer Liability Policy of the New India Insurance Company Limited, the Commissioner found that taking into consideration the age of the deceased at 22 years and the salary of deceased as Rs. 7,800/- per month the claimants as the legal heirs of the deceased were

entitled to a compensation of Rs. 8,63,343/- along-with interest @ 12% per annum effective 11.5.2012 till the date of payment in terms of sub-section 3 of section 4(a) of the Act of 1923.

4. Mr. Rishipal Agarwal, counsel appearing for the appellant insurance company has submitted that the employee- employer relationship between the insured M/s. Wig Brothers Construction Pvt. Ltd. was not proved. He further submitted that as per the report of the investigator appointed by the Insurance Company the salary paid to the deceased Ganesh Mukhiya was @ Rs. 300/- per day for 20 days a month. On the aforesaid submissions it is prayed that the impugned order dated 19.6.2013 be quashed and set aside.

5. Mr. Abhishek Sharma, counsel appearing for respondent No. 2 M/s. Wig Brothers Construction Pvt. Limited submitted that the relationship of employee and employer between the insured and the deceased Ganesh Mukhiya was established from the reply to the claim petition itself. He further submitted that in the course of his cross examination NAW1-Udai Kumar, Purchase Manager of the insured had established from the records with him that the deceased Ganesh Mukhiya was employed with the respondent No. 3 Company as Mistri (Mason) effective 7.3.2012. He submitted that the record of the deceased Ganesh Mukhiya as on the date of accident i.e. 12.4.2012 or for that matter the proof of wages paid to him on the said date was not produced before the Commissioner in as much as they were not in issue before the trial court as the substantive contention of the insurance company in its reply to the claim petition and the issue framed thereon was that the claimant had not disclosed the date of commencement of employment of deceased Ganesh Mukhiya by the insured. He however, has in the course of hearing of the appeal produced copies of the muster roll for the Month of April 2012 as also a copy of the register of wages paid to muster roll employees for the said Month wherein the deceased Ganesh Mukhiya has been shown to have worked in the Month of April 2012 till the fateful day of 12.4.2012 and earning Rs. 3000/- each working day- equivalent to Rs. 7,800/- per month. A copy of the muster roll and register of wages was also perused by the counsel for the appellant Insurance Company without any objection to their content.

6. In my considered opinion the findings of the learned Commissioner with regard to employment of the deceased Ganesh Mukhiya and the wages being earned by him on the date of accident i.e. on 12.4.2012 are pure findings of fact. There is no perversity or manifest error in the aforesaid finding. No substantial question of law is made out in the present appeal. Absent any substantial question of law, the appeal is not maintainable and stands dismissed. Additionally in the context of the fact that the proceedings before the learned Commissioner under the Act of 1923 are in the course of beneficial socio economic legislation, I am not inclined to interfere in this appeal on the facts obtaining.