(2008) 07 JH CK 0169

In the Jharkhand High Court

New India Assurance Co. Ltd. APPELLANT

Vs

Mohan Singh and Another RESPONDENT

Date of Decision : 18-07-2008

Acts Referred:

Citation : (2008) 119 FLR 38 : (2008) 4 JCR 43

Hon'ble Judges : Gyan Sudha Mishra, C.J;M.Y. Eqbal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This appeal has been preferred by the appellant- New India Assurance Company Ltd. challenging the award of compensation passed by the Presiding Officer, Labour Court, Bokaro Steel City in W.C. Case No. 13 of 2004, who had been pleased to award a compensation of Rs. 1,66,800/- to the claimant-respondent No. 1, who is the claimant and father the of the deceased Binod Kumar, who was discharging the duty as a khalashi on a truck owned by the respondent No. 2, Madhuri Devi and Ramapati Devi. The Presiding Officer of the Labour Court also ordered for payment of 12% interest on the amount awarded from the date of filing of the claim, till the date of payment, on the basis of a finding that the deceased Binod Kumar was an employee of the owner of the vehicle f.e., Madhuri Devi and Ramapati Devi.

2. The appellant-New India Assurance Company has preferred this appeal against the award passed by the Presiding Officer, Labour Court, Bokaro Steel City and it has been contended that the deceased employee was an employee of the driver of the vehicle and as the relationship of master and servant between the deceased khalashi and the employer is not established, the Insurance Company is not liable to indemnify the amount which was awarded to the claimant under the Workmen Compensation Act.

3. Admittedly, policy of insurance was issued by the appellant Insurance Company to cover the third party risk as also under the Workmen Compensation

Act but the Insurance Company is aggrieved of the fact that the relations of master and servant having not been established between the deceased and the employer, it is not liable to pay the amount of compensation. It was also contended that there was not even a casual connection between the incident which took place, as a result of which the employee died due to the accident caused by the vehicle which was insured with the appellant- Insurance Company.

4. Having heard learned Counsel for the Insurance Company as also the owner of the vehicle and the claimant, we find no substance in the submission recorded hereinbefore, as the relationship of employer and employee i.e., between the deceased Binod Kumar and the employer is clearly established, when it is an admitted position that the employer had been paying salary to the deceased Binod Kumar and merely because the driver had picked up the deceased to work as a khalashi, it cannot be held as if the existence of relationship of master and servant was not subsisting between the deceased employee and the employer and hence the contention to this effect is rejected.

5. Thereafter, we have considered whether the Insurance Company can be held liable to pay the amount of compensation to the claimant for the deceased, when the death of the deceased took place not on account of any accident by the vehicle but under the Workmen Compensation Act, since the deceased employee disappeared from the truck from which it was inferred that he was done away to death.

6. The question arose as to whether the Insurance Company could be saddled with the liability to pay the amount of compensation on behalf of the employer as the truck which was insured with the Insurance Company had absolutely no nexus with the incident, as a result of which the employee had died.

This difficulty, however, was instantly resolved as under the policy of Insurance, it was categorically mentioned that the risk under the Workmen Compensation Act also is covered. Therefore, the Insurance Company also had to indemnify on account of the death of the deceased employee as the deceased''s relationship with the employer is clearly established by virtue of the fact that the employer was admittedly paying salary to the deceased khalashi and the driver had merely engaged the khalashi on behalf of the principle employer i.e., the owner of the vehicle. Hence the liability to pay the compensation could not have been denied.

7. Lastly, the counsel for the appellant submitted that the interest at the rate of 12% from the date of filing of the claim to the date of the payment should not be sustained, as the amount, at the most, could be held payable from the date of the award to the date of payment and not from the date of filing of the claim upto the date of payment.

8. At least this part of the argument, in our view, is acceptable, for the reason that as the amount of compensation qould be held payable only when the Insurance Company comes to know of the amount with which it has to pay and hence the claimant although filed claim petition, the knowledge cannot be

attributed to the Insurance Company to make the payment instantly from the date of filing of the claim as it had to be adjudicated and determined and only when the order was finally passed by the Tribunal, the amount towards compensation became payable. It. is for this reason that we modify the award passed by the Labour Court to the extent that the amount of interest at the rate of 12% shall be held payable not from the date of the institution of the claim but from the date of the award passed in favour of the claimant upto the date of payment.

9. Subject to the above modification, the appeal is dismissed at the admission stage itself.

