

(2003) 03 OHC CK 0078

In the Orissa High Court

Case No : Miscellaneous Appeal No. 582 of 1995

New India Assurance Co. Ltd.

APPELLANT

Vs

Sambari Munda and Others

RESPONDENT

Date of Decision : 06-03-2003

Acts Referred:

Workmens Compensation Act, 1923 — Section 30

Citation : (2003) 03 OHC CK 0078

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Advocate : K. Parija and D.K. Biswal, for the Appellant; R.N. Mohanty, B.N. Ratha, M.K. Panda and B. Beura, Jameswar Das, S.K. Mohanty, S.K. Biswal, A.K. Sahoo and H.B. Mangaraj, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Naidu, J.—This Miscellaneous Appeal is filed u/s 30 of the Workmen's Compensation Act, 1923 by the Insurance Company challenging the judgment dated 6.9.1995 passed by the Commissioner for Workmen's Compensation-cum-Asst. Labour Commissioner, Cuttack in W.C. Case No. 197/J/1994.

2. W.C. Case No. 197/J of 1994 was filed by the legal heirs of deceased Kanhu Munda who was working as a Coolie in a Truck bearing Registration Number ORY 696. Admittedly, Respondent No. 5 (Opp. Party No. 2 in Court below) is the owner of the said truck. Kanhu Munda expired in an accident while he was travelling in the truck in question on 8.3.1994. According to the claimants the death occurred out of and in course of employment of Kanhu Munda as a Coolie in the Truck. The further case of the claimants is that the deceased was earning Rs. 900/- towards his wages per month and he was about 22 years old at the time of his death.

The owner and the insurer of the truck who were impleaded as Opp. Parties 1 and 2 respectively appeared before the Commissioner and filed their written

statements separately. The owner in his written statement admitted the accident, consequential death and wages of the deceased, but disputed his age. He also produced the Insurance Policy covering the risk of the vehicle and employees indicated therein and prayed that the claim amount should be indemnified by the Insurance Company-Opp. Party No. 2.

Opp. Party No. 2 in his written statement badly denied all the allegations made by the claimants and called upon them to prove the accusations by adducing cogent evidence.

3. The learned Commissioner framed as many as four issues. In order to substantiate the claim, the claimants examined one of the claimants as P.W.1, a co-worker of the deceased of the same Truck as P.W.2 and exhibited police papers, such as F.I.R., charge sheet, seizure list, medical reports including post mortem report. None of the Opp. Parties adduced any oral or documentary evidence.

4. The learned Commissioner after vivid discussion of the evidence, came to a categorical conclusion that the deceased was working as a Coolie in the Truck bearing registration number ORY 696 ; that Opp. Party No. 1, Purna Ch. Das was the owner of the said Truck ; that the deceased was receiving a sum of Rs. 900/- per month towards wages; he was 22 years old when the accident took place; the death occurred out of and in course of his employment; and that the vehicle was insured with the New India Assurance Company Ltd.. On the basis of the aforesaid findings, the Commissioner awarded a sum of Rs. 79,693/- towards compensation and directed that the said amount shall be paid by the Insurance Company.

5. The Insurance Company, as stated earlier, has challenged the award mainly on the ground that the offending vehicle could accommodate four persons including the driver in the Cabin. Thus, there was no reason for the deceased to travel in the box of the Truck. According to the Appellant, the deceased was negligent and the claimants are not entitled to any compensation u/s 2 of the W.C. Act. It is also contended that the Court below failed to ascertain the age of the deceased. Thus, the compensation awarded cannot be sustained.

6. At the other hand, learned Counsel for the Respondent-claimants forcefully submitted that having failed to adduce any evidence, the Insurance Company-Appellant is estopped from challenging the findings. It is further submitted that the Commissioner has examined the evidence, both oral and documentary in its proper perspective and has rightly awarded the compensation. The death having occurred due to the accident in course of employment, according to the learned Counsel for the Respondents-claimants, the amount awarded is just and proper and is rather on lower side, and there is absolutely no reason to interfere with the same.

7. After hearing learned Counsel for the parties, being a final Court of facts, I once again scrutinised the evidence. P.W.1 in his deposition has clearly stated

that deceased Kanhu Munda was working as a Coolie in the Truck bearing registration Number ORY 696 and was getting monthly wages of Rs. 900/-. He has also stated on solemn affirmation that on 8.3.1994 while the deceased was travelling in the Truck in course of his employment, the Truck met with an accident near Numatikiri under Korei police station in which the deceased was severely injured and succumbed to the injuries. According to P.W.1 the age of the deceased at the time of accident was 22 years.

8. P.W.2, a co-worker of the deceased, who was also travelling in the same Truck, in his deposition has corroborated the statement made by P.W.1. According to him, he was also travelling in the said Truck which met with an accident on 8.3.1994. The Truck which was running being loaded with Chips, suddenly fell into a ditch on the road and due to impact, the deceased was thrown out of the truck and fell down on the pitch road, as a result of which he sustained severe head injuries and died at the spot. The police papers like, F.I.R., charge sheet, Post mortem report and seizure list which were exhibited, clearly reveal that the deceased was working as a Coolie and he died during the course of his employment. The Post mortem report also indicates that the deceased was 22 years old at the time of accident. The Advocate for opp.party No. 2 Insurance Company cross-examined the witnesses in extenso, but failed to extract any contrary evidence so as to disbelieve the statements made by the witnesses. No document was exhibited by the Insurance Company to negative the documentary evidence adduced by the claimants. The age of the deceased was also evident from the observations of the doctor made in the post mortem report. The Insurance Policy which was produced before the Commissioner bearing No. 3155070105224 was valid on the date of accident covering that period.

9. It is a common fact that in order to facilitate the driving of a Truck, coolies travel on Dalla or Box. They not only instruct the drivers at the time when the vehicles reverse, but also when the vehicles proceed in other directions or try to overtake. The arguments advanced by the learned Counsel for the Appellant that the vehicle being registered as a "Box Carriage", it is not expected that the persons travelling in the Box would fall down cannot also be occupied. No evidence has been adduced by the Insurance Company as to whether the Dalla of the Truck was covered on all sides or was an open one. The fact remains, one of the coolies who was travelling along with the deceased in the same vehicle has categorically deposed that when the vehicle fell down in ditch due to the impact, the deceased who was travelling on Dalla was thrown out of the Truck thereby sustaining head injuries and thereafter succumbed to the injuries. The said statement could not be shaken in cross-examination. The Appellant-Insurance Company has neither adduced oral nor documentary evidence to show that the claimants have not come with clean hands. There is also no iota of evidence to disbelieve the age of the deceased. At the cost of repetition, it is reiterated that the doctor who conducted the post mortem examination, certified the age of the deceased to be 22 years which gets corroboration from the oral evidence adduced by P.W.1.

10. On the basis of the averments made in the appeal memo and after going through the impugned judgment and perusing other relevant documents, I do not find any infirmity or error apparent on the face of the judgment calling for any interference. The Commissioner has discussed the evidence in its proper perspective and has arrived at the right conclusion. Therefore, I am not inclined to interfere with the impugned judgment.

The Misc. Appeal is accordingly dismissed. The parties to bear their own costs.