
(2009) 10 AHC CK 0247
In the Allahabad High Court
Case No : F.A.F.O. No. 2977 of 2009

New India Assurance Co. Ltd.

APPELLANT

Vs

Smt. Sudha Gupta and Others

RESPONDENT

Date of Decision : 14-10-2009

Acts Referred:

Workmens Compensation Act, 1923 — Section 30

Citation : (2010) 6 AWC 6149

Hon'ble Judges : Satya Poot Mehrotra, J;Rajesh Chandra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Satya Poot Mehrotra and Rajesh Chandra, JJ.—Supplementary-affidavit filed today be taken on record.

2. The present appeal has been filed u/s 30 of the Workmen's Compensation Act, 1923 against the order dated 22.7.2009, passed by the Workmen's Compensation Commissioner, Ghaziabad whereby the compensation amounting to Rs. 3,94,120 has been awarded on account of death of Rajesh Kumar Gupta in an accident which took place on 16.12.2006.

3. It appears that the claimants-Respondents No. 1, 2 and 3 filed an application under the Workmen's Compensation Act, 1923, inter alia, claiming compensation amounting to Rs. 3,98,800 with interest at the rate of 12% per annum and a sum of Rs. 25,000 towards funeral expenses and loss of Consortium in addition to the penalty which is 50% of the said claim amount plus cost of the claim petition.

4. It was, inter alia, averred in the said claim application that the said Rajesh Kumar Gupta, husband of the claimant-Respondent No. 1 (Smt Sudha Gupta) was in the employment of Mahavir Sharma, son of Chhottan Lal Sharma, resident of S-11 Shalimar Garden, Ganesh Puri, Sahibabad, district Ghaziabad, i.e., the registered owner of the vehicle/Dumper No. HR-38 C-8269 (here-in-after

also referred as "the vehicle in question") as the driver on the wages of Rs. 4,500 per month.

5. It was, inter alia, further averred in the said claim application that during the course of employment on 16.12.2006, approximately at 5.30 a.m., while the said Rajesh Kumar Gupta was unloading material (Sand) from the vehicle in question (i.e., the aforesaid vehicle/Dumper) at plot No. 3, Block No. A. Shalimar Garden, Sahibabad, Ghaziabad (U.P.) under the control and direction of the Employer, Mahavir Sharma all of sudden high voltage current ran through the vehicle in question from nearby passing High Voltage Line, and the vehicle in question caught fire, and consequently, the said Rajesh Kumar Gupta received personal injuries by this accident which resulted in on the spot death of the said Rajesh Kumar Gupta. The said Rajesh Kumar Gupta was 34 years old at the time of the accident. The employer Mahavir Sharma, i.e., the registered owner of the vehicle in question was fully aware about the accident as first information report of the accident was lodged by him with the Police Station, Sahibabad, district Ghaziabad, U.P., on the same day. The said vehicle in question was insured with the Appellant-insurance company herein.

6. Copy of the said claim application has been filed as Annexure-1 to the affidavit accompanying the stay application filed with the present appeal.

7. Written statement was filed on behalf of the said Mahavir Sharma (Respondent No. 4 herein), i.e., the registered owner of the vehicle in question. Copy of the said written statement has been filed as Annexure-2 to the aforesaid affidavit.

The Appellant-insurance company also filed its written statement, copy whereof has been filed as Annexure-4 to the aforesaid affidavit.

In the written statement filed on behalf of the Respondent No. 4 (Mahavir Sharma), it was, inter alia. averred that the said Rajesh Kumar Gupta was in the employment of the said Mahavir Sharma (Respondent No. 4) on the daily wages of Rs. 100 per day. It was, inter alia, further averred that the vehicle in question was insured with the Appellant-insurance company, and all risks were covered by the Appellant-insurance company.

The Appellant-insurance company in its written statement admitted that the vehicle in question was insured with the Appellant-insurance company on 7.6.2006 for carrying Goods, and the Insurance was valid for the period from 7.6.2006 up to 6.6.2007. The Appellant-insurance company, however, denied its liability to pay compensation on various grounds.

Replication was filed on behalf of the claimants-Respondents No. 1, 2 and 3 in reply to the said written statements.

The evidence was led by both the parties in support of their respective cases.

8. On consideration of the material on record, the Workmen's Compensation Commissioner in its impugned order dated 22.7.2009 concluded that the

deceased Rajesh Kumar Gupta was employed as a driver of the vehicle in question owned by the said Mahavir Sharma (Respondent No. 4) at the time of the accident. The vehicle in question was insured with the Appellant-insurance company at the time of the accident. The income of the deceased Rajesh Kumar Gupta was held to be Rs. 4,000 per month. The age of the deceased Rajesh Kumar Gupta was held to be 35 years at the time of his death on the basis of the post-mortem report. Accordingly, the compensation of Rs. 3,94,120.00 was computed as payable to the claimants-Respondents No. 1, 2 and 3.

9. The Appellant-insurance company has filed the present appeal challenging the said order dated 22.7.2009, passed by the Workmen's Compensation Commissioner, Ghaziabad.

10. We have heard Sri P.K. Sinha, learned Counsel for the Appellant-insurance company at length,

11. It is submitted by Sri P.K. Sinha, learned Counsel for the Appellant-insurance company that the finding recorded by the Workmen's Compensation Commissioner, Ghaziabad on the question of income of the deceased Rajesh Kumar Gupta was not based on evidence, and the said finding is perverse. It is further submitted that as the said finding is perverse, the appeal involves substantial question of law. He places reliance on a decision of the Supreme Court in Shakuntala Chandrakant Shreshti Vs. Prabhakar Maruti Garvali and Another,

12. We have considered the submissions made by Sri P.K. Sinha, learned Counsel for the Appellant-insurance company, and we find ourselves unable to accept the same.

13. In the present case, the claimants-Respondents No. 1, 2 and 3 in their claim application made categorical averments that the deceased Rajesh Kumar Gupta was employed as a driver of the vehicle in question with the said -Mahavir Sharma (Respondent No. 4) on the wages of Rs. 4,500 per month.

14. Smt. Sudha Gupta, claimant-Respondent No. 1 in her statement (Annexure-SAI to the supplementary-affidavit) recorded before the Workmen's Compensation Commissioner, Ghaziabad, inter alia, stated that the owner of the vehicle in question used to pay Rs. 4,500 per month to her husband, i.e., the said Rajesh Kumar Gupta.

In the cross-examination of the said Smt. Sudha Gupta made on behalf of the Appellant-insurance company, no suggestion was put to her that the income of the deceased Rajesh Kumar Gupta was not Rs. 4,500 but was lesser amount.

15. In the written statement filed on behalf of the said Mahavir Sharma (Respondent No. 4), it was, inter alia, averred that the deceased Rajesh Kumar Gupta was employed on the daily wages of Rs. 100 per day.

In his statement before the Workmen's Compensation Commissioner. Ghaziabad,

the said Mahavir Sharma (Respondent No. 4) stated that the deceased Rajesh Kumar Gupta was being paid Rs. 3,000 per month. The said Mahavir Sharma (Respondent No. 4) was cross-examined on the said aspect, and he reiterated that the deceased Rajesh Kumar Gupta was being paid Rs. 3,000 per month.

16. The Workmen's Compensation Commissioner, Ghaziabad in the impugned order dated 22.7.2009 has referred to both the versions, namely, the version of the claimants-Respondents No. 1, 2 and 3 that the deceased Rajesh Kumar Gupta was getting Rs. 4,500 per month as wages, and the version of the said Mahavir Sharma (Respondent No. 4) that the deceased Rajesh Kumar Gupta was being paid Rs. 3,000 per month as wages.

17. After noticing both the versions and the evidence led in support of the respective versions, the Workmen's Compensation Commissioner, Ghaziabad held that the wages of the deceased Rajesh Kumar Gupta would be treated to be 4,000 per month.

18. Thus, the Workmen's Compensation Commissioner, after considering both the versions in the light of the evidence led in support of the respective versions, has reached its conclusion regarding the question of wages of the deceased Rajesh Kumar Gupta. The said conclusion cannot be said to be perverse, as it was not a case where there was no evidence regarding the income of the deceased Rajesh Kumar Gupta but it was a case where there was evidence regarding the income of the deceased Rajesh Kumar Gupta, and the Workmen's Compensation Commissioner, after considering such evidence led in support of the respective versions, has reached its conclusion.

19. The submission made by Sri P.K. Sinha, learned Counsel for the Appellant-insurance company that it was a case of no evidence regarding the wages of the deceased Rajesh Kumar Gupta and the finding recorded by the Workmen's Compensation Commissioner, Ghaziabad on the question of wages of the deceased Rajesh Kumar Gupta, is perverse, in our view, cannot be accepted.

20. In Shakuntala Chandrakant Shreshti case (supra), relied upon by Sri P.K. Sinha, learned Counsel for the Appellant-insurance company, their Lordships of the Supreme Court have laid down as under (Paragraph No. 34 of the said FLR):

34. Section 30 of the said Act postulates an appeal directly to High Court if a substantial question of law is involved in the appeal.

A jurisdictional question will involve a substantial question of law. A finding of fact arrived at without there being any evidence would also give rise to a substantial question of law. From the order passed by the Commissioner, it appears, he has not arrived at a finding that the Job involved any stress or strain. It was merely stated that he was working as a khalasi in a truck which was going to Tavarewadi village from Kolhapur to get the milk. The autopsy was conducted at Chandgad District Hospital. The driver Prashant Chandrakant Shreshti admittedly brought him to hospital. "He was his brother. The post-

mortem examination commenced from 6: 30 a.m. on 28.9.2002 and ended at 7:30 a.m. on the same day. From the post-mortem report, it appears that in the accompanying report, it is stated that the death was due to sudden heart attack. When exactly the death took place is not known. It will bear repetition to state that under what circumstances the death took place is also not known. There was also no pleading in this behalf. The Commissioner came to the conclusion that the death took place during the course of the employment but then no evidence has been brought on record to show that it had a causal connection between accident and serious injury so as to fulfil the requirements of the terms "out of employment". Indisputably, there has to be an proximate nexus between cause of death and employment. A stray statement made by Appellant that the deceased had died while working in the vehicle and stress or strain of the work did not appear to have any foundation. Admittedly, she was not present at the spot. She had also no personal knowledge. All these facts she had admitted in cross-examination.

(Emphasis supplied)

21. This decision, thus lays down that a finding of fact arrived at without there being any evidence would give rise to a substantial question of law.

22. The present case, as noted above, is not a case where there was no evidence regarding the income of the said Rajesh Kumar Gupta, as both the sides had led evidence on the question of income of the said Rajesh Kumar Gupta. The present case is a case of assessment of evidence led by the parties, and not a case of there being no evidence.

23. The decision of the Supreme Court in *Shakuntala Chandrakant Shreshti* case (supra) is, therefore, not applicable to the present case.

24. In view of the above discussion, we are of the opinion that no substantial question of law is involved in the present appeal. The appeal is liable to be dismissed, and the same is accordingly dismissed.

However, on the facts and in the circumstances of the case, there will be no order as to costs.