
(2014) 06 J&K CK 0024
In the Jammu And Kashmir High Court
Case No : C.M.A. No. 51 Of 2006

New India Assurance Company Limited	APPELLANT
Vs	
Pancho Devi and Others	RESPONDENT

Date of Decision : 06-06-2014

Acts Referred:

Citation : (2014) 4 JKJ 560

Hon'ble Judges : Janak Raj Kotwal, J

Bench : Single Bench

Advocate : R.K. Gupta, Sr. Advocate and Prem Sadotra, Advocates for the Appellant; K.D.S. Kotwal, Advocates for the Respondent

Judgement

Janak Raj Kotwal, J.—This appeal under Section 30 of the Workmen's Compensation Act, 1923 (for short the Act), is directed against the

award dated 03-10-2005 passed by the learned Commissioner Workmen's Compensation (Assistant Labour Commissioner), Doda (for short the

Commissioner), whereby compensation of Rs. 6,11,400/- (six lac eleven thousand four hundred) with 12% per annum interest from the date of

accident has been awarded in favour of respondents-1 to 4 (hereinafter the claimants). Heard. I have perused the record.

2. Briefly, facts leading to this appeal are that the deceased, Rajesh Kumar, in the year 2000 was a workman in the employment of respondents-5

and 6, engaged at the Baglihar Hydro Electric Project. He died of ""Tuberculosis"" on 26-03-2002. His legal representatives (herein respondents-1

to 4), lodged an application for compensation against respondents-5 and 6 before the learned Commissioner. They alleged that the deceased

developed the decease of ""Tuberculosis"" in the course of his employment due to heavy mineral dust and other gases. They contended that the

deceased was 25 as at the time of his death and he used to earn Rs. 4,000/- per month inclusive of overtime wages.

2.1. Respondents-5 and 6, while admitting the factum of the employment of the deceased, denied their liability to pay compensation and pleaded

further that they had insured all their workers under a "Group Insurance Scheme" with the New India Insurance Company (herein appellant). The

appellant-Insurance Company, thus, came to be impleaded as party respondent No. 3 before the learned Commissioner. Appellant filed

objections before the learned Commissioner. Appellant denied its liability contending mainly that the application does not disclose any cause of

action against it.

2.2. The learned Commissioner after recording the evidence of the parties concluded that the deceased was a Workman employed with the non-

applicants 1 and 2 (herein respondents-5 and 6). He developed the disease of "Tuberculosis" in the course of his employment with the non-

applicants and ultimately died. In the result, learned Commissioner, taking the view that disease of "Tuberculosis" comes under the category of

occupational diseases having arisen out of and during the course of the employment of the deceased, awarded compensation of Rs. 6,11,400/- in

favour of the respondents-1 to 4. The learned Commissioner concluded further that the non-applicants-1 and 2 (herein respondents-5 and 6) had

insured all their workers under the "Group Insurance Scheme" with the Appellant and, therefore, foisted liability on the Appellant to pay the

compensation to the claimants.

3. The impugned award has been assailed primarily on the ground that the insurance cover granted by the Appellant/- insurer under the insurance

policy issued by it did not cover a claim arising under the Act and the Appellant is not liable to satisfy the award under the Act. It is contended in

this regard in Para-6 (c) of the appeal that "the policy covered the risk of death or injury resulting solely and directly from accident caused by

external violent and visible means".

4. Mr. R.K. Gupta, learned Sr. Advocate, while referring to the copy of the insurance policy No. 1232190600411 lying on the appeal file as also

on the record of learned Commissioner, would say that the said policy obviously does not cover a claim arising under the Act and the Appellant is

not liable to indemnify the insured in a claim under the Act.

5. Per contra, Mr. M.A. Goni, Sr. Advocate, appearing on behalf of the respondents-5 and 6, would say that the insurance cover provided by the

Appellant was in respect of all the claims arising out of any accident suffered by a workmen in the course of employment and was not intended to

exclude a claim arising under the Act.

6. Having accorded consideration to the insurance policy, which is not disputed, I am not persuaded to accept the appellant's plea that it excludes

a claim under the Act. The policy issued by the appellant is named as ""MISCELLANEOUS ACCIDENT INSURANCE POLICY"". It is further

named as ""UNNAMED GROUP PERSONAL ACCIDENT POLICY"". Section-3 of the Act provides for employer's liability to pay

compensation for personal injury suffered by a workman by an accident arising out of and in the course of his employment. That contemplates

compensation to the legal representatives if the injury so suffered results into death of the workman.

7. Mr. Gupta, learned Sr. Advocate, when confronted with the word 'accident' figuring in section 3 of the Act and the similar word figuring in the

insurance policy, could not show convincingly as to why the insurance policy will not cover a claim arising out of an accident as contemplated

under section 3 of the Act. If the group insurance policy issued by the appellant was not intended to cover the liability of the insured (employer)

arising under section 3 of the Act, the insurance policy in that case would be superfluous and of no value for the employer because it is only section

3 of the Act that imposes liability on the employer to pay compensation to a workman in case of an accident. Neither it is made out from the

record nor Mr. Gupta, learned Sr. Advocate, could substantiate the contention that the insurance policy in question covered only risk of death or

injury resulting from an accident caused by external violent and visible means. Employer's liability to pay compensation arises in case of an accident

as envisaged under Section 3 of the Act and such liability cannot be excluded from the ambit of indemnification under the insurance policy (supra).

Challenge to the impugned award on this score, therefore, fails.

8. Another ground, which was canvassed by Mr. Gupta, relates to quantum of compensation. It is contended that the amount awarded by the

learned Commissioner is not in consonance with the evidence adduced before him. Mr. Gupta would say and pointed out from the evidence that

daily wages of the deceased were Rs. 70/- but learned Commissioner took it as Rs. 4000/- per month without any evidence.

9. Section 4(1)(a) of the Act, provides for the quantum of compensation in case of death. The payable compensation is equal to 50 percent of the

monthly wages of the deceased multiplied by relevant factor. The factor is to be determined on the basis of the age of the deceased as provided

under schedule IV to the Act. The age of the deceased was found as 26 years and applicable factor for this age as per Scheduled IV to the Act is

215.28.

10. The learned Commissioner has taken Rs. 4000/- as Monthly wages of the deceased. In the claim application, the claimants had contended that

the deceased was engaged as Helper and promoted as Supervisor. Respondent (claimant)-Pancho Devi, mother of the deceased, while making

statement in support of the claim application before the Commissioner has stated that the deceased used to earn Rs. 150/- to 200/- per day. One

Suram Chand appearing as claimants' witness stated that initially the deceased was engaged as Helper and later was promoted as Supervisor and

his Monthly wages were more than Rs. 4,000/- besides over-time wages. In cross examination, he has stated that the deceased was engaged as

Helper in the end of the year, 2000 and he had fallen sick in the Month of June/ July, 2001. As against claimants' plea and evidence, the employer

(respondents-5 and 6) in their reply, however, categorically contended that the deceased was employed as Helper on 24-04-2000 and was never

promoted as Supervisor. Naval Kishore Singh, Assistant Personnel, of J.P. Industries, while deposing as respondents' witness stated that earlier

the deceased used to get Rs. 50/- per day and after six months, he was made Jr. Supervisor and his wages were raised to Rs. 70/. Yet another

witness, Sarwan Kumar, appearing for the respondents, who was employed as Fabrication Supervisor with the same employer, stated that the

deceased was also working with him and in cross examination stated further that the deceased was being paid Rs. 75/- per day and also that a

Supervisor does not have to do overtime work.

11. It is in backdrop of the above mentioned evidence, the learned Commissioner

took Rs. 4,000/- as Monthly wages of the deceased. Award passed by the learned Commissioner, however, neither depicts the appreciation of the evidence on the point nor does it show as to how Rs. 4,000/- had been taken as Monthly wages of the deceased. No reason for preferring the evidence of claimants over that rendered by respondents is evident in the award. The learned Commissioner has, therefore, fallen into an error of law by recording a finding of fact without appreciation of the evidence on the point. Not only that, the Commissioner, has also fallen into further error of law by awarding the compensation of Rs. 6,11,400/- even by taking Monthly wages of the deceased as Rs. 4,000/- as would be pointed out hereinafter.

12. The evidence available on file of the Commissioner on its comparison, would show that the evidence led by the respondents in this behalf is more reliable and dependable as compared to that led by claimants because one of the respondents' witnesses is an Assistant of Personal Section, where the deceased was employed and the other was similarly employed with the deceased. The reliability of their evidence is strengthened for the reason that they have even gone contrary to the plea of the respondents (employer) that the deceased was never promoted as Supervisor. On the other hand evidence rendered by claimants' sole witness, Suram Chand does not disclose the source of his knowledge about the wages of the deceased. The evidence led by the respondents, therefore, overweighs that of the claimants' and would prove that the Monthly wages of the deceased were Rs. 2250/- (75 x 30) only and compensation should have been assessed, accordingly, by multiplying 50% (Rs. 1125/-) of Rs. 2250/- with the applicable factor of 215.28. The applicable multiplier, as said above would be 215.28 and the compensation payable to the claimants comes out as Rs. 2,42,190/- (1125 x 215.28) and not Rs. 6,11,400/- as awarded by the learned Commissioner.

13. For the aforementioned, the award passed by the learned Commissioner is modified, accordingly, and it is held that the claimants (respondents-1 to 4) are entitled to a compensation of Rs. 2,42,190/, which shall carry interest as awarded by the learned Commissioner and shall be paid by the Appellant/Insurance Company and if deposited in the Court or in the office of the learned Commissioner, be disbursed, accordingly.

Disposed of, accordingly.