

(2023) 04 SHI CK 0099

In the High Court Of Himachal Pradesh

Case No : First Appeal Order (WCA) No. 448 Of 2010

New India Assurance Company Ltd

APPELLANT

Vs

Fulla Devi And Others

RESPONDENT

Date of Decision : 25-04-2023

Acts Referred:

Employee's Compensation Act, 1923 — Section 22, 30
Workmen's Compensation Act, 1923 — Section 4A(3)(b)

Citation : (2023) 04 SHI CK 0099

Hon'ble Judges : Satyen Vaidya, J

Bench : Single Bench

Advocate : B.M. Chauhan, Amit Himalvi, Surender Verma, Narender Sharma, Rajiv Jiwan, Prashant Sharma

Final Decision : Dismissed

Judgement

Satyen Vaidya, J

1. By way of instant appeal under Section 30 of the Employees Compensation Act, the Appellant/Insurer has assailed Award dated 8.7.2010 passed by the Commissioner under Workmen Compensation Act-cum-SDO (C), Sundernagar, District Mandi, H.P. in Case No.16/2008, whereby respondent No.1 herein/claimant has been awarded a sum of Rs.5,41,910/- as compensation on account of death of Sh. Santosh alias Ganpat Ram.

2. Brief facts necessary for adjudication of appeal are that respondent No.1 (hereinafter referred to as the 'claimant') applied under Section 22 of the Employees' Compensation Act (for short, 'the Act') to the Commissioner under the Act for compensation on account of death of her son Sh. Santosh alias Ganpat Ram. The deceased Sh. Santosh alias Ganpat Ram was a workman employed by respondent No.2 (hereinafter referred to as the 'employer') as a helper on JCB Machine No. HP-51B-3921. On 10.07.2008, the deceased was working on the aforesaid machine and in the meanwhile, retaining wall of the road on which the machine was parked gave way, causing machine to roll down

alongwith the deceased. Consequently, the deceased received fatal injuries and died.

3. The appellant (hereinafter referred to as the 'insurer') was impleaded as respondent before the Commissioner as the employer had purchased a policy of insurance from the insurer having coverage for 15 of his workmen.

4. The Commissioner having found proofs in respect of the employment of the deceased with employer, his age, monthly wages and cause of accident etc. proceeded to award a compensation of Rs.4,36,940/- besides interest to the tune of Rs.1,04,870/- in favour of the claimant.

5. Dis-satisfied with the award passed by the Commissioner, the insurer has filed this appeal. On 22.11.2010, the appeal was admitted on following substantial questions of law:

(i) Whether the learned Commissioner below has erred in directing the appellant company to pay interest @ 12% per annum from one month after the date of the accident till the actual amount is realized. Whether the learned Commissioner below has erred in awarding interest to the petitioner more particularly when as per policy there is no liability of the appellant to pay interest?

(ii) Whether the learned Commissioner has gravely erred in fastening the liability to pay compensation upon the appellant as the JCB machine which met with an accident and which resulted in death of the deceased, was not insured with the appellant?

(iii) Whether the learned Commissioner has erred in passing orders to proceed against the appellant under section 4- A(3)(b) of the Workman's Compensation Act within 30 days from the receipt of copy of the Award?

6. I have heard learned counsel for the parties and have also gone through the records of the case carefully.

7. Learned Senior counsel representing the Appellant/Insurer has raised following contentions at the time of hearing:

(i) The Commissioner was not justified in awarding interest against the insurer in view of exclusion clause contained in the policy of insurance.

(ii) The assessment of wages of deceased @ Rs.4000/- per month by the Commissioner was against the terms of policy whereby the employer had insured 15 employees having accumulated charges of Rs.4,32,000/-. As per the insurer, the deceased could be given benefit of pro-rata wages in terms of the disclosure made in the insurance policy.

(iii) The employer had also purchased a policy of insurance from respondent No.3 i.e. National Insurance Company Ltd. under the Motor Vehicles Act and the claimant could have been granted compensation by fastening the liability on respondent No.3.

8. Substantial question of law No. (ii), as noticed above, appears to have been framed wrongly. It is not the case of appellant/ insurer that the employer had not purchased policy of insurance from it. Rather, the appellant/insurer has itself placed reliance upon the policy of insurance placed on record as Ext. R-3 in support of its contentions noticed above.

9. In order to test the contention of appellant/insurer regarding exclusion clause in the insurance policy to absolve it from liability of payment of interest, the material on record needs to be scanned. Noticeably, the insurer has not led any evidence before the Commissioner. The policy of insurance effective between the dates 30.7.2007 to 29.7.2008, has been placed on record as Ext.R-3. The date of accident is 10.7.2008, which makes the above noted insurance policy relevant for adjudication. The document Ext.R-3 has been placed on record by the insurer. Evidently, no terms and conditions of the policy have been placed on record. Even the insured has not made any effort to place on record any terms and conditions of the policy of insurance which excludes the liability of payment of interest of the insurer. Thus, the insurer/appellant is not justified in claiming the benefit of any exclusion clause.

10. To support its contention regarding assessment of wages of the deceased on higher side, learned senior counsel representing the appellant/insurer has referred to the document Ex. R-3, policy of insurance, wherein the total wages in respect of 15 insured workmen has been shown as Rs.4,32,000/-. On the strength of this, he contends that the wages paid by the insured to his 15 employees has to be calculated pro-rata and in this view of the matter, the deceased would not be getting salary at Rs.4000/- per month. Learned senior counsel representing the insurer has further made a reference to the statement of insured recorded by the Commissioner as RW-1, wherein it was admitted that he had purchased the policy of insurance on the basis of Rs.4000/- and Rs.3000/- respectively as the wages for skilled and unskilled labourers. The contention so raised on behalf of the insurer is liable to be rejected for the reasons that the document Ext.R-3, has a format in which the details of skilled and unskilled workers is required to be provided. However, no such detail is there. The policy of insurance is issued by the insurer and such lapse has not been explained. The total wages as shown to be paid by the insured to his 15 employees is Rs.4,32,000/-. In absence of any details as to how many of 15 employees of insured were skilled and how many were unskilled workmen and as to what was the salary drawn by each of them, it cannot be assumed that the deceased Santosh alias Ganpat Ram was getting salary less than Rs.4000/-. This assumes significance in light of the fact that the insured, while deposing before the Commissioner on oath, had specifically stated that he was paying Rs.4500/- per month to the deceased as helper with JCB machine. Neither such statement of insured has been rebutted nor any evidence contrary to his version has been placed on record. In such view of the matter, no fault can be found with the findings returned by the Commissioner, whereby the monthly wages of the deceased have been calculated as Rs.4000/- per month.

11. The third and last contention raised on behalf of the insurer that the liability should have been fastened on respondent No.3 – National Insurance Company Ltd. also deserves rejection for the reasons that it was for the claimant to have opted for claim of compensation either under the Workmen's Compensation Act or under the Motor Vehicles Act. The insurer in the instant case cannot have any possible grievance in that regard. Claimant sought her option to claim compensation under the Employees Compensation Act in preference to Motor Vehicles Act for which she had every right.

The insured had purchased a policy of insurance under Employees Compensation Act for his 15 workmen from the appellant/insurer, therefore, the appellant/insurer is liable to indemnify the insurer/employer.

12. Learned senior counsel representing the insurer has further contended that the liability of penalty under the Act could not be fastened on the insurer and to that extent, the impugned award is bad in law. The Commissioner has drawn the operative part of the award in the following terms:

"11. Therefore, as per operative part of this judgment on the reasons mentioned above, the resent applicant shall be paid compensation amount to Rs.5,41,910/- (Rupees five lacs forty one thousand nine hundred ten only) by the opposite party No.3 by way of depositing the amount without deducting any tax at source, in this court within a period of one month from the date of receipt of copy of this order, failing which the proceedings u/s 14-A(3) (b) of the Act shall be initiated against the opposite party No.3."

13. I have not found anything in the impugned award which fastens the liability of penalty on the insurer or directs it to pay the penalty. In the impugned order, it is only recorded that in case the insurer fails to deposit the awarded amount within one month from the date of receipt of copy of order, proceedings under Section 4-A (3) (b) of the Act shall be initiated against it. That being so, the grievance of the appellant/insurer, as noticed above, is pre-mature. It is not the case of appellant/insurer that any such proceeding has been initiated against it till date.

14. Substantial questions of law Nos. (i) and (iii) are answered accordingly.

15. In light of the above discussion, I find no merit in the appeal and the same is accordingly dismissed, so also the pending miscellaneous application(s), if any.