(2014) 04 DEL CK 0132

In the Delhi High Court

Case No : FAO No. 50/2012 & CM No. 1773/2012 (Stay)

Oriental Insurance Co. Ltd. APPELLANT

Vs

Palwinder Kaur RESPONDENT

Date of Decision : 15-04-2014

Acts Referred:

Employees Compensation Act, 1923 — Section 30

Citation : (2014) 3 ACC 951 : (2015) ACJ 1016 : (2014) 142 FLR 517 : (2014) LLR 604

Hon'ble Judges : Valmiki J. Mehta, J

Bench : Single Bench

Advocate : R.C. Mahajan, Advocate for the Appellant; Pratima N. Chauhan, Advocate for Respondents No. 1 to 3, Advocate for the Respondent

Judgement

Valmiki J Mehta, J.—This first appeal is filed u/s 30 of the Employee''s Compensation Act, 1923 by the insurance company impugning the judgment of the Commissioner dated 25.11.2011 by which the claim, petition filed by the legal representatives of the deceased Tarsem Singh, respondent Nos. 1 to 3 herein, has been allowed and compensation awarded of a sum of Rs. 3,84,280 alongwith funeral charges of Rs. 2500 and also, interest at 12% p.a. from the date of the accident. The case as set up by the respondent Nos.: 1 to 3 before the Commissioner was that the deceased Tarsem Singh, late husband of respondent No. 1 and father of respondent Nos. 2 and 3, was employed as a driver of respondent No. 4 herein (respondent No. 1 before the Commissioner), for driving a truck bearing No. HR-55-9697. It was pleaded by the claimants that on 7.10.2004, the deceased Tarsem Singh was on his occupational trip as a driver on the said vehicle from Satara to Delhi. The truck was loaded with Rajma and the deceased Tarsem Singh was murdered by some miscreants near Nardana village on Mumbai-Agra road. It was pleaded that the deceased was drawing wages of Rs. 4500 per month and Rs. 100 per day as daily allowance. The claim petition was accordingly filed under the Employee''s Compensation Act, 1923 (hereinafter referred to as the Act'').

2. The case of the appellant-insurance company was that the deceased was never an employee of respondent No. 4 herein but the deceased was in, fact owner of the subject truck. It was further argued that the deceased could not have got any claim under the Motor Vehicles Act, 1988 because this was a case of murder and not a case of accident which would be covered under the insurance policy and hence the subject false case has been filed under the Act. It is also argued before this Court that the only way in which the compensation could be claimed was by falsely showing that Tarsem Singh was an employee and hence entitled to compensation under the Employee''s Compensation Act.

3. Before me, learned counsel for the appellant has argued and contended that the Commissioner has overlooked the admitted documents which showed that the permit issued with respect to subject truck on 19.7.2004 and the same was in the name of deceased Tarsem Singh. Since permit of a vehicle is only issued by an owner and the permit in this case was issued in the name of Tarsem Singh hence Tarsem Singh was the owner of the vehicle and was not an employee of respondent No. 4. It is also argued that the registration of the vehicle was as of 8.11.2004 applied for being changed to the name of deceased Tarsem Singh clearly showing that when the accident took place on 7.10.2004, actually it was Tarsem Singh who was the owner of the vehicle and not that Tarsem Singh was an employee of respondent. No. 4 herein. Though in the R.C. transfer form, the date of transfer to Tarsem Singh has been shown as 4.11.2004, but the fact that the permit was earlier issued in the name of deceased Tarsem Singh, hence the deceased Tarsem Singh was actually the owner and definitely not the employee of respondent No. 4 herein.

4. I have gone through the documents filed by the respondent Nos. 1 to 3 before the Commissioner. Three of these documents are very relevant and are required to be noticed. Two of the documents i.e., Ex. AW1/37 and Ex. AW1/44 are very important and relevant but they have only been mentioned cursorily by the Commissioner. The three documents are exhibited as Ex. AW1/35 (Insurance Policy), AW1/37, (Certificate of Registration), and Ex. AW1/44 (Authorization for National Permit).

5. The first document Ex. AW1/35 being the insurance policy shows that no doubt the insurance was in the name of Harvinder Singh but the vehicle was financed and hence hypothecated to M/s. Sundram Finance Limited. It is only for this reason that the insurance policy was in the name of respondent No. 4 i.e., Harvinder Singh. The question is that whether respondent No. 4 was the owner of the vehicle or the deceased Tarsem Singh was the owner of the vehicle, in my opinion there remains no doubt that the deceased Tarsem Singh was the owner of the vehicle because the document Ex. AW1/44 is a document dated 19.7.2004 i.e., much before happening of the accident on 7.10.2004, and which document shows that the authorisation for national permit of the vehicle by the Regional Transport Authority was applied for and granted to the deceased Tarsem Singh with respect to the subject vehicle. A permit can only be granted to the owner of

the vehicle and the document Ex. AW1/44 in my opinion is enough to show that the deceased Tarsem Singh was in fact owner of the vehicle on the date of the accident and he was not the employee of respondent No. 4. Any doubt with respect to owner of the vehicle only being Tarsem Singh is removed by the fact that respondent Nos. 1 to 3 admit that the vehicle was transferred in the name of Tarsem Singh after the death of Tarsem Singh. I have failed to understand the reasoning as to why a vehicle will be transferred in the name of a deceased employee because a vehicle is transferred only in the name of the owner, it may also be noted that the hypothecation agreement was cancelled on 8.11.2004 for effecting the, transfer of the vehicle in the name of Tarsem Singh deceased.

6. In view of the above, it is clear that the claim petition was wholly misconceived because the deceased Tarsem Singh was the owner of the vehicle in question. Once the deceased was the owner of the vehicle in question and he got murdered, under the ordinary insurance policy he could not have got any compensation. Respondent Nos. 1 to 3 therefore devised this modality to fleece the appellant-insurance company by falsely contending that when the deceased was the driver/employee of the respondent No. 4 herein whereas there can be no doubt that the deceased Tarsem'' Singh was not an employee but in fact was the owner of the truck in question which was insured by the appellant-insurance company. Ordinarily, I would have imposed costs while allowing this appeal but taking a lenient view inasmuch as respondent Nos. 1 to 3 are the widow and children of the deceased Tarsem Singh, the appeal is allowed, leaving the parties to bear their own costs.

If respondent Nos. 1 to 3 have received amounts pursuant to the impugned judgment, appellant is entitled to initiate appropriate legal proceedings for recovery of the amount paid under the impugned judgment to the respondent Nos. 1 to 3.

