

(2008) 03 DEL CK 0074
In the Delhi High Court
Case No : FAO. No. 371 of 2006

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Smt. Asha Rani and Others

RESPONDENT

Date of Decision : 18-03-2008

Acts Referred:

Citation : (2008) ILR Delhi 55 Supp

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : Ram N. Sharma, for the Appellant; Arvind Kumar and C.B. Garg for R-1, for the Respondent

Judgement

Pradeep Nandrajog, J.—Heard learned Counsel for the parties.

2. The insurance company has challenged the order dated 31.7.2006 passed by the Commissioner Workmen's Compensation granting compensation in sum of Rs. 2,22,710/- with interest @ 12% per annum from 19.4.1998 i.e. the date when Pradeep Kumar S/o Asha Rani died as a result of injuries sustained at a stated road accident till date of payment.

3. The fact that vehicle No. DL-4C-D-7374 met with an accident and it being driven by Pradeep Kumar as also the fact that Satpal, the owner of the vehicle had obtained an insurance policy from the appellant are not in dispute.

4. Additionally the fact that Pradeep Kumar died during course of employment while he was driving the truck is also not in dispute.

5. 3 points have been urged in the appeal. Firstly that the driving license of Pradeep Kumar was a fake driving license and that the policy of insurance clearly stipulated that in case the insured committed breach thereof, insurance company would be entitled to avoid the policy. Taking the argument further it is urged that a fake license is no license in the eyes of law and hence by the act of handing over the truck to a person not possessing a valid driving license, the insured

having committed a breach of the term of the policy entitled the appellant to repudiate the policy.

6. The second contention urged is that while computing the compensation payable, since the formula prescribed under the statute was followed, age of the deceased becomes relevant.

7. It is stated the compensation has been computed treating the age of the deceased to be 21 years whereas the MLC of the deceased records his age as 24 years. It is urged that the MLC of the deceased has been ignored.

8. Lastly it is urged that no notice u/s 10 of the Workmen's Compensation Act was ever served nor was the insurance company impleaded as a party respondent in the claim petition as originally filed. It is stated that the insurance company was impleaded as a respondent only on 13.1.2003 and hence under no circumstances could insurance company be saddled with the liability to pay interest prior to 13.1.2003.

9. I need not decide the last contention urged for the reason learned Counsel for respondent No. 1 at the outset concedes that in view of the correct facts brought to the notice of this court pertaining to the date of impleadment of the insurance company, viz-a-viz the insurance company, the award may be modified directing that subject to decision on contentions 1 and 2, date with effect wherefrom interest would be payable would be 13.1.2003.

10. Pertaining to the two questions urged by learned Counsel for the appellant it would be useful for this court to note the findings of the Commissioner Workmen's Compensation on the issue of the driving license of Pradeep Kumar. The finding by the Commissioner Workmen's Compensation is as under:

Now, as per the issue the question arises, as to who is liable to pay the amount of compensation and interest for the delay to the claimant? Admittedly, the vehicle No. DL-4C-D-7374 was comprehensively insured with the Respondent No. 2 who has denied the liability stating that the driving license possessed by deceased Pradeep Kumar was fake. The Respondent No. 2 has relied upon the report submitted by their investigator Sh. JS Kalra on 30.9.03. A simply photo copy of the said report has been filed by the Respondent No. 2 in support of their contention. Perusal of the the said report makes it clear that the investigator did not contact the Licensing Authority but he relied upon verbal statement of the licensing clerk who is stated to have told him verbally that the license in question was fake. There is nothing on record that any competent authority has declared the license of deceased Pradeep Kumar as fake. In view of this I am declined to accept this contention of the respondent. However, counsel appearing on behalf of the claimant has drawn my attention to the judgment of the APEX court in the matter of Oriental Insurance Co. Ltd. v. Sh. Nanjappan and Ors. II 2004 SLT 115 in which it has been held that the insurer is liable to pay, compensation to the claimant in case of the driving license is found fake, with the liberty to recover the said amount from the insured.

11. The original record of the Commissioner Workmen's Compensation has been perused by me. The only witness on the issue produced by the insurance company is Sh. Oma Kant Additional Divisional Manager, Oriental Insurance Company, K-37, Cannaught Place, New Delhi. In his affidavit by way of evidence he deposed that his office had deputed one Sh. J.S. Kalra to investigate and verify whether the driving license possessed by Pradeep Kumar was a valid license. Since the license was purportedly issued from the office of the RTO, Karnal, Sh. J.S. Kalra went to the said office and submitted a report R-2/R2 to the effect that information gathered by him through RTO office revealed that the license produced by Pradeep Kumar was not issued by the said office.

12. Suffice would it be to state that the view taken by the Commissioner Workmen's Compensation with respect to the quality of the evidence led is absolutely correct. What prevented the insurance company from summoning the concerned record keeper of the licensing authority is a question which has been posed by me to learned Counsel for the appellant.

13. In response learned Counsel for the appellant urges that an application was filed with the Commissioner Workmen's Compensation seeking summoning of a witness from the office of the RTO at Karnal. Counsel urges that the same was declined.

14. When confronted with the record of the Commissioner Workmen's Compensation which contains no such application, on personally going through the record, learned Counsel for the appellant concedes that indeed no such application was filed.

15. The insurance company had set up the plea of entitlement to avoid the policy of insurance on the ground that the insured handed over the vehicle to a person not possessing a valid license entitling the insurance company to avoid the policy. The onus was on the insurance company to lead credible evidence to sustain said plea.

16. Report of J.S. Kalra sought to be proved by Oma Kant is a wrong method to prove the report. Where the author of the report is in the world of living he must step into the witness box to prove the report. The reason is obvious. He would be subjected to a cross examination and his knowledge whereon the report is based would be tested. Surely, Oma Kant had no personal knowledge as regards the report in question and hence could not be meaningfully cross examined.

17. I find no merits in the first contention urged.

18. On the second plea, no doubt in the MLC age of the deceased recorded is 24 years but I note that mother of the deceased i.e. the claimant, who deposed as her witness and filed her examination-in-chief by way of affidavit clearly stated in paragraph 3 that her son was aged 20 years when he died. She was cross examined. Her cross examination is available at pages 146-147 of the record of the Commissioner Workmen's Compensation. I do not find her testimony to the

effect that her son was aged 20 years when he died being challenged.

19. In that view of the matter it would be unsafe for this court to rely upon the MLC of the deceased to ascertain his age for the reason even the doctor who drew the MLC has not been examined as a witness, much less question as to how he wrote that the deceased was aged 24 years.

20. The second contention urged also fails.

21. In view of the concession made by learned Counsel for respondent No. 1 pertaining to the date wherefrom liability can be fastened on the appellant to pay interest, I dispose of the appeal maintaining the quantification of the compensation under the impugned award. I also maintain the rate at which the interest has been awarded. However, the date wherefrom appellant would be liable to pay interest is shifted to 13.1.2003. Meaning thereby, on the principal sum awarded appellant's liability to pay interest would commence from 13.1.2003 till date payment was deposited with the Commissioner Workmen's Compensation. For the prior period as per the award, the respondent No. 1 would be entitled to recover the differential interest from the owner of the vehicle namely respondent No. 2 as per the award.

22. Parties are left to bear their own cost.

23. TCR be returned.