(2016) 09 UK CK 0027

In the Uttarakhand High Court

Case No : Appeal from Order No.107 of 2015.

Oriental Insurance Company Limited - Appellant @HASH Smt. Bindu Devi and another

Date of Decision : 21-09-2016

Acts Referred:
Workmens Compensation Act, 1923 — Section 3, Section 4

Citation : (2017) AAC 304 : (2017) 1 ACC 833 : (2017) 1 AnWR 197 : (2016) 151 FLR 789 : (2017) LabLR 446 : (2017) 1 TAC 534

Hon'ble Judges : Servesh Kumar Gupta, J.

Bench : Single Bench

Advocate : Mr. V.K. Kohli, Senior Advocate assisted by Mr. I.P. Kohli and Ms. Rajni Supyal, Advocates, for the Appellant; Mr. A.S. Bisht, Advocate, for the Respondent No. 1; Mr. C.S. Rawat, Advocate, for the Respondent No. 2

Final Decision : Allowed

Judgement

Servesh Kumar Gupta, J. - All these appeals are being taken for adjudication as have arisen out of the same accident, though separate judgment has been passed in each case, but on the same date and for the same cause of action. Matter in controversy is also wholly identical, as has been delved during the course of arguments put forth by learned Counsel for the parties.

2. Accident occurred on 2.9.2012 in which as many as 7 labourers lost their life while being engaged in soil excavation, its removal and excavation of stones work at the place, which is situated 2 kilometres ahead from the place called Darbangling within the territorial limits of Police Station Chhana, Dharchula, District Pithoragarh. Suddenly, the boulders followed by abundant silt became fatal to all the deceased, who were under the engagement of Mr. Dalip Singh Adhikari (contractor) and deployed by him in the work under his contract.

3. Widows/dependants of the deceased persons filed their respective cases before the Workmen Compensation Commissioner, who vide the impugned judgments dated 5.1.2015 has awarded the compensation ranging from nearly rupees seven lakhs to rupees eight lakhs and odd amount in different cases.

However, the authority concerned has fastened the liability on the appellant Oriental Insurance Company Limited to satisfy the awards along with simple interest @ 9 per cent per annum w.e.f. 31.10.2012.

4. Feeling aggrieved, the insurance company has preferred these appeals.

5. Learned Senior Counsel on behalf of the appellant has drawn attention of this Court towards the insurance policy taken by Mr. Dalip Singh Adhikari, wherein it is manifested under the heading ''risk information'' that only those employees will be covered by this policy who would be getting monthly wages below rupees four thousand. In each of the claim petitions, the claimants have pleaded that the deceased were getting salary @ rupees four thousand per month. Therefore, it is amply clear that such deceased persons were not covered under the policy because there is an evident difference between rupees four thousand and below rupees four thousand.

6. That apart, the authority concerned has determined the compensation deeming the monthly salary of each of the deceased persons to be rupees eight thousand per month in accordance with the minimum wages notified by the Central Government.

7. I feel that the impugned judgments are perverse on both the scores because the premise/analogy upon which the salary @ rupees eight thousand per month could have been made applicable in the inter se dispute of such salary between the employer and the employee. Such notion cannot be accepted to have any applicability for determining the compensation against the insurer and more so, when in the pleadings itself it has been admitted by each of the claimants that the salary of the deceased persons was rupees four thousand per month and such amount too excludes all the deceased from the insurance cover.

8. Cover note further makes it clear that the insurer was liable only when the employees would be occupied in the work of excavation, earth removal and filling and reclamation ? (not for sewers and roads) ? Excl. use of explosives blasting, tunnelling and quarrying.

9. As admitted by the claimants in their pleadings, the deceased persons were employed in the soil excavation and its removal, but the place where accident happened was 2 kilometres ahead from Darbangling, where they were engaged in the construction of the Power Channel. The policy, which was an inter se agreement between Mr. Dalip Singh Adhikari and the Neeraj Singh Hayanki (jointly) on the one hand and the insurer on the other, specifically states that the place of employment of the workers shall be at Sikinmg, District Pithoragarh. It signifies that the employer was not at liberty to deploy the unskilled labourers at any place other than what was stipulated in such agreement.

10. Learned Senior Counsel has heavily relied upon a precedent of Hon''ble Apex Court rendered in New India Assurance Co. Ltd. v. Harshadbhai Amrutbhai Modhiya, reported in (2006) 5 SCC 192, wherein Hon''ble Apex Court has

observed as under:

"A contract of insurance is governed by the provisions of the Insurance Act. Unless the said contract is governed by the provisions of a statute, the parties are free to enter into a contract as per their own volition. The Act does not contain a provision like Section 147 of the Motor Vehicles Act. Where a statute does not provide for a compulsory insurance or the extent thereof, it will bear repetition to state that the parties are free to choose their own terms of contract. In that view of the matter, contracting out, so far as reimbursement of amount of interest is concerned, in our opinion, is not prohibited by a statute."

11. In the aforementioned verdict, the Hon''ble Apex Court relied upon its another judgment rendered in P.J. Narayan v. Union of India, wherein it was held as below:

"This writ petition is for the purposes of directing the insurance company to delete the clause in the insurance policy which provides that in cases of compensation under the Workmen''s Compensation Act, 1923, the insurance company will not be liable to pay interest. We see no substance in the writ petition. There is no statutory liability on the insurance company. The statutory liability under the Workmen''s Compensation Act is on the employer. An insurance is a matter of contract between the insurance company and the insured. It is always open to the insurance company to refuse to insure. Similarly, they are entitled to provide by contract that they will not take on liability for interest. In the absence of any statute to that effect, insurance companies cannot be forced by courts to take on liabilities which they do not want to take on. The writ petition is dismissed. No order as to costs."

12. It was further clarified by the Hon''ble Apex Court in the above-cited case that unlike the scheme of the Motor Vehicles Act, the Workmen''s Compensation Act does not confer a right on the claimant for compensation under that Act to claim the payment of compensation in its entirety from the insurer himself. The entitlement of the claimant under the Workmen''s Compensation Act is to claim the compensation from the employer. As between the employer and the insurer, the rights and obligations would dependent upon the terms of the insurance contract.

13. Learned Counsel on behalf of the contractor (respondent no. 2) has argued that none of these points were ever raised by the insurance company before the Court below.

14. I am not convinced with the above submission because even if this argument is accepted for a moment, then a judicial authority is not supposed to be in oblivion of the pleadings of either of the parties, and in the additional plea No. 7 of its written statement, the insurance company has specifically raised all these pleas, as have been discussed by this Court hereinabove.

15. Learned Counsel of the contractor has relied upon a precedent of Hon''ble

Apex Court rendered in Commissioner of Central Excise, Mumbai v. Oswal Petrochemicals Limited, Mumbai, reported in (2010) 12 SCC 758. This judgment is not applicable in the present controversy because the same has been rendered in an entirely different perspective.

16. In view of what has been set forth above, I find all these appeals worth accepting. Consequently, I allow all the appeals and set aside the impugned judgments in their entirety including the fastening of the liability on the insurance company (appellant) to make the payment of compensation. However, liberty is granted to the claimants/dependents of the deceased persons to institute fresh proceedings for claiming compensation but only against the contractor and if such proceedings shall be initiated afresh within a reasonable time, the question of limitation would not come in the way.

17. Entire amount deposited by the appellant insurance company in each of the cases shall be returned to it along with up-to-date interest which it has earned.

18. Let the lower court records be sent back.