
(2007) 08 OHC CK 0006
In the Orissa High Court
Case No : F.A.O. No. 250 of 2006

Oriental Insurance Company Limited

APPELLANT

Vs

Sri. Mohan Das and Another

RESPONDENT

Date of Decision : 17-08-2007

Acts Referred:

Citation : (2007) 08 OHC CK 0006

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Advocate : G.P. Dutta, K.C. Nayak and M.K. Swain, for the Appellant; R.C. Routray, M. Mohanty and S.K. Mohanty for Respondent 1 to 5 and Brundaban Rout, for Respondent 6, for the Respondent

Final Decision : Dismissed

Judgement

L. Mohapatra, J.—This appeal is directed against the order dated 24.3.2006 passed by the learned Commissioner for Workmen's Compensation-cum-Assistant Labour Commissioner, Cuttack in W.C. Case No. 153-D of 2004 directing payment of compensation of Rs. 3,36,000/-with simple interest at the rate of 9% per annum from the date of filing of the claim case.

2. The Respondents 1 to 5 are legal heirs of deceased Bhagaban Das. The case of the claimant-Respondents 1 to 5 is that the deceased Bhagaban Das was working as a helper in a truck bearing Registration No. OR-04-6119 belonging to Sabuddin Khan. While discharging his duties on 15.4.2004 at about 9.30 P.M. as a helper in the said truck, he met with an accident in the said truck near Kaudikhol and sustained injuries. The further case of the claimant-Respondents is that the deceased succumbed to the said injuries on the spot. The death having occurred in course and out of employment, the application for payment of compensation was filed.

3. The Respondent No. 6, who was arrayed as the owner of the truck, filed written statement admitting employment, wage, accident and accidental death of

the deceased but at the same time took a stand that the vehicle having been insured with the Appellant, any compensation payable is to be indemnified by the Appellant. The Appellant filed written statement denying all the allegations made in the claim case.

4. On the pleadings of the parties, the learned Commissioner framed four issues and with reference to the evidence adduced before him allowed the application holding that the deceased died in an accident arising in course and out of employment and as such is entitled to compensation. The wage of the deceased was calculated at Rs. 3,000/- per month and age of the deceased having been assessed at 20 years, compensation as stated above was directed to be paid.

5. Shri Dutta, learned Counsel appearing for Appellant challenged the award on the ground that fraud has been committed on the Court for obtaining the compensation. According to Shri Dutta, the learned Counsel appearing for the Appellant in course of hearing of the claim petition, one Baharuddin Khan examined himself as O.P.W. 1 and stated that he is the owner of the concerned vehicle even though one Sabuddin Khan was impleaded as owner of the vehicle and he also filed written statement supporting the case of the claimants. It was further contended that the said Baharuddin Khan in his cross-examination admitted to be the brother of Sabuddin Khan and stated that the said Sabuddin Khan is in Saudi Arab for last 12 years and had come to village some time in December 2003 and went back in April, 2004. Relying on the aforesaid statement of O.P.W. 1, it was contended by the learned Counsel for the Appellant that Sabuddin Khan having left India in April, 2004, could not have filed the written statement on 13.9.2004, specially in absence of any evidence to show that he had also come to India in September, 2004 during which period the written statement was filed. On the above basis, Shri Dutta, learned Counsel appearing for the Appellant contended that the written statement was filed by one Sabuddin Khan, who admittedly was not in India on 13.9.2004 when the written statement was filed. The learned Counsel also contended that in view of such fraud committed on the Court, the claimants are not entitled to compensation and the matter should be remitted back to the learned Commissioner for reconsideration. The learned Counsel appearing for the claimant-Respondents submitted that even if the written statement was filed by a person who was not present in India at the relevant time, the claimants should not suffer for any kind of fraud if at all committed on the Court. The learned Counsel for the claimant-Respondents submitted that written statement was signed by Sabuddin Khan as is evident from the evidence of O.P.W. 1 but it was filed later on and, therefore no fraud has been committed on the Court.

6. Admittedly, in the claim petition, Sabuddin Khan is described as the owner of the truck in which it is claimed that the deceased was working as a helper but the said Sabuddin Khan was not examined in Court. However, he filed written statement on 13.9.2004 admitting the statements made in the claim petition. Baharuddin Khan was examined as O.P.W. 1 and in his evidence, he stated that

he is the owner of the vehicle bearing Registration No. OR-04C-6119 but the vehicle is in the name of his elder brother Sabuddin Khan. He also stated that he looks after the vehicle business and on 15.4.2004 at 7.30 P.M. the vehicle met with an accident near Kaudikhol and he got a message that the deceased, who was working as helper in the said vehicle, had died in the accident. He has also stated that the deceased was working under him for last two years and was getting wages of Rs. 3,000/- per month. In cross-examination, he stated that his elder brother, who is in Saudi Arab since 12 years, he came to village some time in December, 2003 and went back in April, 2004. He also stated in cross-examination that he is not the owner of the vehicle. He further stated in the cross-examination that he had signed the written statement and had received notice for the first time issued by the Court, which was in the name of his brother and no notice had been returned un-delivered. Again in cross-examination, he stated that he was authorized by his brother on 20th April, 2004 and had signed in the written statement and he further stated that his brother signed in the written statement before he left but could not say the date on which the brother signed the written statement. There is considerable substance of the contention of the learned Counsel for the Appellant to the extent that the O.P.W. 1 is not a witness, who could be relied upon. In cross-examination, this witness stated that he is not the owner of the truck and his brother Sabuddin Khan is the owner of the truck. He also stated that his brother is in Saudi Arabia for last 12 years and had come to village some time in December, 2003 and went back in April, 2004. The learned Counsel for the Respondents submitted that this witness has explained in the cross-examination that Sahabuddin Khan before leaving India in 2004, had signed the written statement and, therefore, there is nothing to disbelieve him. Such submission has been made by the learned Counsel for the Respondents without verification of the records. The claim petition was filed on 11.8.2004 much after April, 2004. Therefore, Sahabuddin Khan could not have signed the written statement before the claim petition was filed. It is, therefore, obvious that the written statement filed before the Court on behalf of Respondent No. 6 had not been signed by Sahabuddin Khan but somebody else had signed the written statement. In view of the above, such statement could not have been taken into consideration for any purpose whatsoever.

7. Shri Dutta, the learned Counsel appearing for the Appellant further submitted that though O.P.W. 1 submits that he had been authorized on behalf of the owner of the truck-Sabuddin Khan to sign the written statement and participate in the proceeding, in view of the decision of the Apex Court in the case of Janki Vashdeo Bhojwani and Another Vs. Indusind Bank Ltd. and Others, , even a power of attorney holder cannot depose in place or instead of principal.

8. The learned Counsel for the claimant-Respondents relied on a decision of the Apex Court in the case of N.K.V. Bros. (P) Ltd. v. M. Karumani Ammal and Ors. reported in T.A.C. 1950 S.C. 287 and submitted that Accidents Tribunals must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some

obscurity there. Save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable. The Court should not succumb to niceties, technicalities and mystic maybes. The heavy economic impact of culpable driving of public transport must bring owner and driver to their responsibility to their "neighbour". Indeed, the State must seriously consider no fault liability by legislation.

9. There is no dispute about such proposition of law but the Courts also cannot close their eyes, if fraud is committed in obtaining the compensation. Here is a clear case where written statement was filed on behalf of the owner of the truck when admittedly the owner of the truck was not available in India and, therefore such written statement could not have been accepted by the Court for the purpose of deciding the claim. Apart from the above, considering the deposition made by the brother of the owner O.P.W. 1, no reliance can be placed on such witness, who has made prevaricating statements at different places. In view of the above, neither employer-employee relationship is established nor it is proved that the accident took place in course and out of employment.

10. Under the circumstances, I am constraint to set aside the impugned award and remit the matter back to the Commissioner for fresh disposal in accordance with law. It will be open for the claimant-Respondents as well as Respondent No. 6 to adduce further evidence, if so advised.

The appeal is accordingly disposed of.