

(2021) 12 SHI CK 0012

In the High Court Of Himachal Pradesh

Case No : First Appeal From Order No. 119 Of 2016

Oriental Insurance Company Ltd

APPELLANT

Vs

Bhikmu W/O Sh. Baset Dass And Others

RESPONDENT

Date of Decision : 01-12-2021

Acts Referred:

Employee's Compensation Act, 1923 — Section 4, 30(1)

Citation : (2021) 12 SHI CK 0012

Hon'ble Judges : Ajay Mohan Goel, J

Bench : Single Bench

Advocate : P.S. Chandel, Peeyush Verma

Final Decision : Dismissed

Judgement

Ajay Mohan Goel, J

1. By way of this appeal filed under Section 30 (1) of the Employee's Compensation Act, 1923, the appellant herein has assailed award dated 27.11.2015, passed by the Court of learned Civil Judge (Senior Division), Shimla, exercising the powers of Commissioner, under the Employee's Compensation Act, 1923, in claim petition No. 19/2 of 2011/2013, titled as Smt. Bhimku and another vs. Sh. Roop Lal and another, which petition stood allowed by the learned Commissioner in the following terms:-

"31. In view of my findings on the Issues No. 1, 2, 3, 4, 5, 6, 7, 8 and 9 above, the petition succeeds and the same is as such allowed with no order as to costs and the compensation amount is payable to the petitioners is as under:-

218.47x3750= 8,19,263/- along with interest @

12% P.A. from 13.02.2011 till today, which is calculated to be Rs. 4,70,803/-.

Total 8,19,263 + 4,70,803=Rs. 12,90,066/-Funeral expenses of Rs. 5000/-

Grand total 12,80,055+5000= Rs.12,95,066/-

And the petitioner shall be entitled for the compensation amount as under:-
Petitioner No. 1(50%) =Rs. 6,47,533/-

Petitioner No. 2 (50%) =Rs. 6,47,533/-"

2. Brief facts necessary for the adjudication of the present appeal are that a petition under Section 4 of the Employee's Compensation Act, claiming grant of Rs.15.00 Lac as compensation, was filed by the claimants/petitioners on the ground that deceased Inder Singh, their son, whose date of birth, in terms of certificate Ext. PW4/A was 26.05.1987, lost his life in harness, in an accident on 13.02.2011, while performing his duties as Driver of Truck bearing registration No. HP-63-0708, which ill-fated vehicle met with an accident on the ill-fated day while on way from Bharara to Parwanoo near Bagipul. According to the claimants, the income of the deceased was Rs.7500/- per month, as was being paid to him by employer/ respondent No. 1, and in addition, the employer was also paying Rs.100 per day to the deceased. On these bases, compensation to the tune of Rs.15.00 Lac was claimed.

3. The petition was resisted by respondent No. 1 before the learned Commissioner inter alia on the ground that the deceased lost his life on account of rash and negligent driving and further compensation, if any, was payable by Oriental Insurance Company, with whom the Truck in question was duly insured.

Respondent No. 2 inter alia took the defense that there was no relationship of employer and employee between the owner of the Truck and the deceased, who happened to be the real brother of the owner of the Truck, which fact was concealed in the claim petition and further the income and daily allowance allegedly paid to the deceased by the owner of the vehicle was false and fabricated. In addition, it is also stated that the deceased was not having valid and effective driving licence to drive the vehicle.

4. On the basis of pleadings of the parties, the following issues were framed by learned Commissioner:-

"1. Whether Sh. Inder Singh died on 13.02.2011 while he was driving Truck bearing No. HP-63-0708, during the course of his employment with respondent No. 1, being driver of the said vehicle which met with an accident causing fatal injuries to him, as alleged? OPP

2. If Issue No. 1 is proved in affirmative, whether the petitioners are entitled for compensation to the tune of Rs. 15,00,000/- along with interest and penalty being dependents of Inder Singh as claimed? OPP

3. Whether the claimant/petitioners are not entitled for claim as deceased Inder Singh was not having valid licence at the time of accident, as alleged? OPR2.

4. Whether there exists no relationship of employer and employee between deceased Inder Singh and respondent No. 2, as alleged? OPR-2

5. Final Order."

5. On the strength of the pleadings as well as evidence led to prove their respective stand by the parties, the issues so framed were answered by the learned Commissioner as under:-

"Issue No. 1: Yes.

Issue No. 2: Partly Yes/Partly No.

Issue No. 3: No.

Issue No. 4: No.

Issue No. 5: No.

Final Order: The petition is allowed as per operative part of the order."

6. The relief given to the claimants has already been mentioned hereinabove.

7. Feeling aggrieved, the appellant/Insurance-Company has filed this appeal, which was admitted by this Court on 01.08.2016, and on 28.07.2021, following substantial question of law was framed:-

"1) Whether the order under challenge suffers from perversity as the same has been passed ignoring the fact that there was no proved relationship of employer and employee between the owner of the vehicle and the deceased, and furthermore, it was not proved on record that the deceased died in the course of employment?"

8. Mr. Prittam Singh Chandel, learned Counsel for the appellant-Insurance Company has argued that the age of the deceased at the time of his death was more than 25 years, which fact has been ignored by the learned Commissioner and it has also ignored the fact that the claim petition was collusive in nature, as the claimants and owner of the vehicle were hand in glove in filing the same. He has also argued that award of funeral expenses by the learned Commissioner is beyond the jurisdiction as no such expenses could have been awarded by the learned Commissioner under the Act.

9. On the other hand, Mr. Peeyush Verma, learned Counsel for respondents No. 1 and 2/claimants has argued that there is no infirmity with the order, subject matter of this appeal and as the findings returned by the learned Commissioner are duly borne out from the record of the case, he has prayed for dismissal of the appeal.

10. I have heard learned Counsel for the parties and gone through the order passed by the learned Commissioner as well as record of the case.

11. Death of the deceased in an accident involving Truck bearing registration No. HP 63-0708 is not much in dispute. It is also not in dispute that owner of the Truck happened to be the real brother of the deceased. A perusal of the claim petition demonstrates that it was not so spelled out by the claimants in the claim petitioner that the deceased was the real brother of the owner of the vehicle. Be

that as it may, the factum of the deceased being engaged as a Driver by its owner has not been denied by the owner in the reply which was so filed before the learned Commissioner and there is no law which estops a person from engaging his brother as a Driver in his vehicle on payment of salary. Otherwise also, it is settled law that if the workman being an employee is not disputed by the employer, then, the Court need not look any further for the purpose of adjudication on this issue. Herein, when it was admitted by the owner of the vehicle that the deceased stood engaged by him as a Driver on the ill-fated vehicle on the terms spelled out by the claimants, then, the onus shifted upon the Insurance Company to prove to the contrary which has not been done by it. It could not prove that deceased was not the employee of the owner of the vehicle or deceased did not die in the course of employment.

12. Now coming to the second point with regard to the age of the deceased, there is on record Ext. PW4/A, the certificate of Middle Standard Examination of the deceased, issued by the Himachal Pradesh Board of School Education, in terms whereof, the date of birth of the deceased is stated to be 26.5.1987. That being the case, the deceased was to turn 24 on 26.5.2011 and before attaining the age of 24 years, he has died. Therefore, the contention of learned Counsel for the appellant that wrong factor has been applied by the learned Commissioner while determining the compensation, cannot be accepted by the Court. As far as the plea raised with regard to the grant of Rs.5,000/- as funeral expenses is concerned, the same being beyond the jurisdiction of the learned Commissioner has been wrongly granted by it. To this extent only, the appeal succeeds. Accordingly, the appeal is dismissed, save and except that on the factum of grant of funeral expenses to the tune of Rs.5,000/- it succeeds. Substantial questions of law is answered accordingly. Pending miscellaneous application(s), if any, also stand disposed of accordingly.

13. At this stage, Mr. Peeyush Verma, learned Counsel for the claimants submits that the award amount be ordered to be released in favour of the claimants with up-to-date interest thereon. Ordered accordingly. The amount of award passed by learned Commissioner minus Rs.5000/-, with-up-to-date interest thereon, be released in favour of the claimants. The amount of Rs.5000/- with up-to-date interest thereon, be paid back to the appellant company. It is clarified that the amount so ordered to be released on the strength of this order shall be released by the learned Commissioner.