
(2007) 02 RAJ CK 0087
In the Rajasthan High Court

Oriental Insurance Company Ltd.

APPELLANT

Vs

Birbal and Another

RESPONDENT

Date of Decision : 13-02-2007

Acts Referred:

Workmens Compensation Act, 1923 — Section 10

Citation : (2008) 1 RLW 573

Hon'ble Judges : R.S. Chauhan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.S. Chauhan, J.—The appellant, Oriental Insurance Company, challenges the award dated 30.9.2002 passed by the Workmen Compensation Commissioner, Sikar (hereinafter referred to as "the Commissioner", for short) whereby the Commissioner has awarded a compensation of Rs. 3,42,082/- to the claimant-respondent, Birbal.

2. In brief, the facts of the case are that Birbal, was alleged it employed by Bhanwar Lal, his father. He met with an incident on 7.10.1999 while he was operating the thresher attached to the tractor, bearing Registration No. RJ-23-R-4079, which was insured with the appellant Company. Due to this accident, his upper right arm was crushed. Eventually, it was amputated. The son filed a claim petition against the father stating therein that he was employed by his father on a salary of Rs. 2,500/- per month and was also paid Rs. 50/- per day as expenses. Since he has suffered the accident during the course of employment, he claimed a compensation of Rs. 5,50,000/- from his father- his employer. While filing his written statement, Bhanwar Lal, defendant No. 1, the father accepted the contentions of the claim petition. He further claimed that since the vehicle was insured with the Insurance Company, the liability for the payment of the compensation was that of the Insurance Company and not his.

3. The Insurance Company also filed its written statement wherein it claimed

that it had not received any notice u/s 10 of the Workmen Compensation Act, 1923 (henceforth to be referred to as "the Act", for short). Secondly, that the accident was caused by the thresher, which was not covered by the Insurance policy. According to the Insurance Company, it is tractor, which is insured and not the thresher. Thirdly and most importantly the claim petition has been filed as a result of collusion between the father and the son. In fact the injured was not an employee of the insured person.

4. In order to substantiate his claim, the claimant examined himself and one Mr. Prem Sukh, his friend. The father, as the alleged employer, also appeared in the witness box. The Insurance Company examined one Mr. Hardev Ram as its witness. After going through the oral and the documentary evidence, vide order dated 30.9.2002, the Commissioner awarded the compensation as mentioned above. Hence, this appeal before this Court by the Insurance Company.

5. Mr. Vigyan Shah, the learned counsel for the appellant Company, has strenuously argued that the respondent-defendant No. 1, Bhanwar Lal, was an agriculturist, who happened to own the insured tractor. He was not carrying out any systematic business. Even the thresher was used for his own personal use and for the use of family members. Therefore, the claimant has failed to prove the existence of a relationship of the employer and the employee between him and his father. In India ordinarily sons are not employed as employees and that too, in the unorganized sector like agriculture. In the absence of the relationship of the employer and the employee, the claim petition was not maintainable under the Act. Secondly, that all though there was not an iota of evidence to prove the fact that the claimant was paid Rs. 2,500/- per month as wages by the father. Thirdly, that the tractor was insured only for the driver and not for the thresher or a person working on the thresher. Although the tractor was comprehensively insured, but it does not mean that it would cover the risk of employee, who has not been specified in the insurance policy. Lastly, the learned Commissioner has not given any cogent reason for calculating the compensation for an amount of Rs. 3,42,082/-. Thus, the award is a non-speaking-one. In order to buttress his contention, the learned counsel for the appellant relies upon the case of Ramashray Singh Vs. New India Assurance Co. Ltd. and Others,

6. At the time of hearing of this case, no one had appeared on behalf of the respondent. Therefore, this Court did not have the benefit of assistance from the learned counsel for the respondent. However, subsequently the learned counsel for the respondent has submitted two judgments in his favour namely Poonam Singh v. Kamla and Ors. 1996 ACJ 398 (MP) and United India Insurance Company Limited, Bhadravathi Vs. Jhonsa and Others,

We have heard the learned counsel for the appellant, have perused the case laws produced at the Bar and have examined the record submitted before this Court.

The legal issue that arises for consideration by this Court is whether a comprehensive Insurance of a tractor would also include an employee working on

the thresher, although such an employee has not been named in the insurance policy, or not?

7. A bare perusal of the insurance policy (Ex. NA1) clearly shows that the only person who has been insured in the said policy is the driver of the tractor. The insurance policy nowhere states that other employees employed along with the tractor are insured. Thus, even if the learned Commissioner had concluded that the claimant was an employee of his father, the fact still remains that the worker on a thresher was not insured under the insurance policy. An insurance policy is a contract between the insurer and the insured. In case the contract does not provide that the insurance company would indemnify for the injury of an employee, the Insurance Company cannot be held liable for indemnifying such an injury. In the case of Rama Singh (*supra*), a tractor was comprehensively insured. Such an insurance included the driver and the conductor, but not the "khalsi" (cleaner). While the tractor was being driven, it met with an accident. Consequently, the "Khalsi" expired. The question arose before the Hon'ble Apex Court was whether the comprehensive insurance would also include "the Khalsi" or not? It was contended by the owner of the vehicle that in the insurance certificate under the head "particular of vehicle insurance", there is a column, which referred to "seating capacity including the driver and the cleaner". Therefore, the cleaner (Khalsi) is also included. Rejecting this contention, the Hon'ble Supreme Court clearly held that "an insurance policy also covers the persons or classes of persons specified in the policy. A comprehensive policy merely means that such person/persons will be payable upto the insured amount irrespective of actual loss suffered." Since "the Khalsi" was not named as a person insured, the appeal filed by the owner was dismissed.

8. Similarly, in the present case, the comprehensive insurance policy clearly reveals that the only driver is insured. According to the insurance policy, no other employee of the owner is insured as the owner has paid premium only for the driver. The Commissioner has not dealt with this aspect of the matter and has erroneously concluded that merely because the tractor was comprehensively insured ipso facto the policy covered the other employees. Therefore, the Commissioner was not justified in directing the Insurance Company for making the payment.

9. We have perused the case of Poonam Singh (*supra*) and the case of United Insurance Co. Ltd. v. Jhonsa and Ors. (*supra*). However, the said cases are not applicable to the present case. Therefore, the respondent does not deprive any benefit from them.

10. In the result, this appeal is allowed and the order dated 30.9.2002 is modified to the extent that the Insurance Company is not liable to indemnify the employer, the defendant No. 1, for the compensation of Rs. 3,42,082/-. The claimant is entitled to receive the said claimed amount from the respondent-defendant No. 1, Bhanwar Lal. In case any amount has been disbursed to the claimant by the learned Commissioner during the pendency of this Court, the

Insurance Company is at liberty to recover the said amount from the claimant.