
(2015) 10 DEL CK 0240
In the Delhi High Court
Case No : F.A.O. No. 464 of 2013

Progressive Finlease Ltd.

APPELLANT

Vs

Usha Srivastava

RESPONDENT

Date of Decision : 05-10-2015

Acts Referred:

Employees Compensation Act, 1923 — Section 2(1)(dd), 2(1)(n), 30
Penal Code, 1860 (IPC) — Section 279, 304A

Citation : (2016) 1 AD 18 : (2015) 4 LLJ 326

Hon'ble Judges : J.R. Midha, J.

Bench : Single Bench

Advocate : Satender Verma, Advocate, for the Appellant; Anup J. Bhambhani Advocate and Lakshita Sethi, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

J.R. Midha, J.—The appellants have challenged the order dated 28th June, 2013 whereby the learned Commissioner, Employee's Compensation awarded compensation of Rs. 3,32,580/- along with the interest @ 12% per annum from the date of the accident till realisation to respondent. The respondent is the widow of late Vinod Kumar Srivastava, who met with an accident on 18th May, 2005 which resulted in his death. The deceased was working with the appellants at the time of the accident.

2. The respondent filed an application for compensation against the appellants before the Commissioner, Employee's Compensation in which she pleaded that her husband was working with appellant No. 1 at a monthly salary of Rs. 8,400/- for the last 11 years. On 18th May, 2005, the respondent's husband did not return till late night whereupon the respondent telephoned the manager, Mr. Prem Kumar in the appellant's office who informed her that appellant's director, Govind Gupta had sent the deceased for some work and he would return by 10:00 p.m. - 10:30 p.m. Between 10:30 to 11:00 p.m., a rickshaw brought the respondent's husband and told her that her husband has met with an accident.

The respondent rushed her husband to Babu Jagjivan Ram Hospital, Jahangir Puri where he was declared dead. The police registered FIR No. 383/05 at P.S. Jahangir Puri under section 279 /304A IPC.

3. The appellants contested the claim petition on the ground that the accident did not occur during the course of the employment as the deceased left the office premises in the evening and was not on duty at the time of the accident and secondly, the deceased was not a workman within the meaning of Section 2(1)(n) of the Employee's Compensation Act.

4. On 14th December, 2007, the respondent filed her evidence by way of affidavit in which she deposed that the appellants used to assign field work to the deceased apart from the office work due to which the deceased used to invariably return home at 12 am in the night. The appellants failed to cross examine the respondent despite repeated opportunities and ultimately, the appellant's right to cross-examine was closed on 28th January, 2009 and the case was listed for the appellant's evidence. The appellants stopped appearing thereafter and the appellant's evidence was closed on 13th May, 2009.

5. The Commissioner, Employee's Compensation accepted the un rebutted testimony of the respondent that her husband was working as Accounts Assistant and he was also doing field work. The Commissioner held the deceased to be workman within the meaning of Section 2(1)(n) read with the Second Schedule of the Employee's Compensation Act. The Commissioner further held that the accident occurred during the course of employment and awarded the compensation of Rs. 3,32,580/- along with interest @ 12% p.a. to the respondent.

6. Learned counsel for the appellants has urged at the time of hearing of the appeal that the deceased was not a workman within the meaning of Section 2(1)(n) of the Employee's Compensation Act. The second ground of challenge is that after the remand of the matter by this Court vide judgment dated 04th December, 2012 in FAO No. 106/2010, the appellants were not served with the notice and, therefore, the appellants could not appear before the Commissioner, Employee's Compensation. The third ground of challenge that the accident did not occur during the course of employment as the deceased had left the office in the evening at about 06:00 p.m.

7. Mr. Anup J. Bhambhani, learned amicus curiae submitted that the designation of the employee is not decisive in the matter and the Court has to see the dominant nature and functions assigned to an individual. Reliance is placed on Managing Director, J and K. P.C.C. Vs. Commissioner for Workmen's Compensation and Others, and Gulabdei Ahir Vs. Union of India (UOI) and Another, . It is further submitted that Section 2(1)(n) of the Employee's Compensation Act, 1923 has been amended w.e.f. 18th January, 2010, on which date the claim was still pending, and the definition of "workman" has been substituted with "employee" in Section 2(1)(dd) of the Employee's

Compensation Act, 1923 read with Second Schedule and the category of clerks excluded earlier have been deleted meaning thereby that even the clerks are now employees who are entitled to claim compensation under the Employee's Compensation Act. It is submitted that the respondent would be entitled to compensation even according to the amended definition of an employee. Reliance is placed on *Bharat Singh Vs. Management of New Delhi Tuberculosis center, New Delhi and Others*, .

8. The record of the Commissioner, Employee's Compensation has been perused which reveals that the notice was duly served on appellant No. 2 through his wife. Learned counsel for the appellants submits that the wife of appellant No. 2 forgot to inform appellant No. 2. This averment does not constitute a sufficient ground to declare the service of notice to be bad in law. The service of notice on appellant No. 2 is a valid service on appellant No. 1 as appellant No. 2 is the Director of appellant No. 1.

9. With respect to the appellants contention that the deceased was not a workman within the meaning of Section 2(1)(n) of the Employee's Compensation Act, it is noted that the appellants did not lead any evidence whatsoever before the Commissioner. The appellants also did not cross-examine the respondent, who deposed that her husband was working as an Accounts Assistant and appellants were also taking field work from deceased. In that view of the matter, the finding of the Commissioner based on un-rebutted testimony of the respondent do not suffer from any infirmity.

10. With respect to the appellants' contention that accident did not occurred during the course of employment, it is noted that the respondent deposed in evidence that the appellant No. 3 had sent him for some official work after the office hours and he met with an accident during that period. No evidence has been led by the appellants to rebut the same. In view of the un-rebutted testimony of the respondent, the Commissioner rightly held that the accident occurred during the course of employment.

11. On careful consideration of the rival contentions of the parties, this Court is of the view that there is no infirmity in the Commissioner accepting the un-rebutted testimony of the respondent with respect to the status of the deceased and further that the accident occurred during the course of the employment of the deceased since the appellants failed to lead any evidence before the learned Commissioner, Employee's Compensation and did not even cross-examine the respondent. It is well settled that the designation of the employee is not decisive and the Court has to see the dominant nature and function assigned to an individual. Since the deceased was doing field work in addition to the work of Accounts Assistant which has not been rebutted by the appellants, the finding of the Commissioner, Employee's Compensation cannot be faulted. That apart no question of law arises for consideration in this matter which is a mandatory requirement of the proviso to Section 30 which provides that no appeal shall lie against any order unless substantial question of law is involved in the appeal.

12. There is no merit in this appeal, which is hereby dismissed.

13. The appellants have deposited Rs. 6,51,880/- with the Registrar General of this Court in terms of the order dated 20th January, 2015. The Registrar General is directed to transfer the aforesaid amount along with interest accrued thereon to UCO Bank, Delhi High Court Branch by means of cheque drawn in the name of UCO Bank A/c. of Usha Srivastava.

14. Upon receipt of the amount, the UCO Bank, Delhi High Court Branch shall keep the sum of Rs. 5,00,000/- in ten fixed deposits in the name of the respondent in the following manner:

- (i) Fixed deposit for Rs. 50,000/- for a period of 1 year.
- (ii) Fixed deposit for Rs. 50,000/- for a period of 2 years.
- (iii) Fixed deposit for Rs. 50,000/- for a period of 3 years.
- (iv) Fixed deposit for Rs. 50,000/- for a period of 4 years.
- (v) Fixed deposit for Rs. 50,000/- for a period of 5 years.
- (vi) Fixed deposit for Rs. 50,000/- for a period of 6 years.
- (vii) Fixed deposit for Rs. 50,000/- for a period of 7 years.
- (viii) Fixed deposit for Rs. 50,000/- for a period of 8 years.
- (ix) Fixed deposit for Rs. 50,000/- for a period of 9 years.
- (x) Fixed deposit for Rs. 50,000/- for a period of 10 years.

15. The balance amount, after making the fixed deposits for Rs. 5,00,000/-, be paid to respondent by transferring the same to her savings bank account.

16. The interest on all the fixed deposits shall be paid monthly by transferring the same in the savings bank account of respondent. The respondent may open the savings bank account with UCO Bank. Alternatively, the respondent shall furnish the particulars of her existing saving bank account, whereupon the UCO Bank shall transfer monthly interest by RTGS to her savings bank account every month.

17. The original fixed deposit receipts shall be retained by UCO Bank. However, the statements of FDRs along with photocopies of the FDRs shall be given to the respondent. Upon the expiry of the period of each FDR, the UCO Bank shall automatically credit the maturity amount in the savings bank account of the respondent.

18. No loan, advance or premature discharge of the FDRs shall be permitted without the permission of this Court.

19. This Court appreciates the effective assistance rendered by Mr. Anup J. Bhambhani, learned amicus curiae in this matter. Copy of this judgment be given

dasti to counsels for both the parties as well as UCO Bank, Delhi High Court Branch, under the signatures of the Court Master.