

(1996) 08 DEL CK 0009
In the Delhi High Court
Case No : C.W.P. No-3052 of 1995

Rajasthan Prem Krishna Transport Co.	APPELLANT
Vs	
Commissioner, Workmen's Compensation and Others	RESPONDENT

Date of Decision : 16-08-1996

Acts Referred:

Citation : (1996) 74 FLR 2362 : (1997) 1 LLJ 790

Hon'ble Judges : Devinder Gupta, J; Dalveer Bhandari, J

Bench : Division Bench

Advocate : T.S. Ahuja, for the Appellant; Ashok Aggarwal and D.D. Singh, for the Respondent

Judgement

1. On January 14, 1992 the petitioner took out insurance for its Vehicle No. HR-29A-8336. Copy of Insurance policy is Annexure P-2. The said vehicle met with an accident at Hansi, Dist. Hissar, Haryana on January 25, 1992. A claim petition was preferred by the driver of the vehicle for the injury alleged to have been sustained by him in the said accident, namely loss of both the legs. This claim petition was preferred under the Motor Vehicles Act, 1988 before the Motor Accident Claims Tribunal, Hissar. Respondent No. 3 also filed separate claim petition under the Workmen's Compensation Act before the Commissioner, Workmen Compensation, 30 Hazari, Delhi on March 11, 1992 impleading the petitioner herein, as the respondent. Due intimation was sent by the Petitioner to the Insurance Company about the filing of the Petitions. The petitioner could not put in appearance before the Commissioner, Workmen Compensation, since Summons were misplaced. On July 9, 1993, an ex-parte award (Annexure P-3) was passed for a sum of Rs. 1,03,990.00. In addition a sum of Rs. 51,9951/- was also awarded towards penalty along with interest at the rate of 6% per annum till the date of payment. On August 26, 1993, the petitioner moved an application for setting aside the award on a number of grounds, one of which was that the accident had taken place at Hansi, the claim petition ought to have been filed in Haryana and not in Delhi and as such the Commissioner, Workmen

Compensation, 30 Hazari, Delhi has no jurisdiction to make an award.

2. During the course of the setting aside of the ex-parte proceedings, the Commissioner, Workmen Compensation, Delhi sent the claim petition for being registered before the Commissioner, Workmen Compensation at Hissar. After the petition was registered before the Commissioner, Workmen Compensation, Hissar, the same was transferred to the Commissioner, Workmen Compensation, 30 Hazari, Delhi. Finally, instead of setting aside the ex-parte award, Commissioner, Workmen Compensation proceeded to make a fresh award (Annexure P-8) on March 28, 1995 only for a sum of Rs. 1,03,990/-, without making any provision for penalty or interest. The Insurance Company with whom the vehicle was insured, i.e., the New India Assurance Company Limited was not imp leded as a party before the Commissioner, Workmen Compensation. It is this award which is under challenge in this petition.

3. It has also been pointed out that the petition presented before the Motor Accident Claims Tribunal was dismissed in default on November 3, 1992 and it is not disputed that in those proceedings Insurance Co. was imp leded as respondent No. 4.

4. We have heard the learned counsel for the parties. Learned counsel for the Insurance Company, contends that since the Insurance Co. was not imp leded as a party before the Commissioner, Workmen Compensation, 30 Hazari, it had no occasion to raise any defense. Only in case ex-parte proceedings are set aside that the Insurance Company might raise any of the defenses available to it in law. Learned Counsel for the petitioner also contends that the final order has been passed without granting an opportunity to the petitioner to file its reply.

5. The admitted facts of the case are that Respondent No. 3, claimant was a workman and was deployed as a Driver for the Vehicle in question with a salary of Rs. 1,000/- per month. He was of the age of 30 years as on January 26, 1992 when accident took place. The petitioner is not disputing the fact that the accident occurred during the course of employment. This fact is also not in dispute that the vehicle in question was duly insured with Respondent No. 2 and the validity period was from January 14, 1992 to January 13, 1993. The Insurance Company in its counter has not come out with any of the statutory defenses available to it in law.

6. The Commissioner, while dealing with the Petitioner's application for setting aside ex parte proceedings observed that the question of jurisdiction raised stands satisfied since in the meanwhile the claim petition had duly been registered with the Commissioner, Workmen Compensation at Hissar, who had, in accordance with law transferred it to the Commissioner, Workmen Compensation, Delhi. In the absence of any other dispute raised by the Petitioner in its application for setting aside ex-parte proceedings, as regards the claim, the Commissioner proceeded to make a fresh award in favor of Respondent No. 3. In case the wages of Respondent No. 3 were Rs. 1,000/- per month and he was

of the age of 30 years and his both legs were lost in the accident, which occurred during the course of his employment, there is no dispute that the award is in consonance with law.

7. In the circumstances, we are not inclined to quash and set aside the award at this stage to enable the Insurance Co. to raise defense. Insurance Company is bound to indemnify the insured and satisfy the award.

8. We are also of the view that remitting the case will not be in the interest of either of the parties. The award has also not been challenged by the claimant though in the award, as originally made, penalty and interest were also awarded but in the fresh award interest and penalty have not been awarded.

9. Keeping in view the facts and circumstances of the case and that the amount awarded is in consonance with law, we direct the Insurance Company to discharge its liability under the Award dated March 28, 1995 by making a payment of Rs. 1,03,990/- in this Court within a period of one month from today. On depositing the amount, the same will be paid to the Petitioner.

10. It is stated that the petitioner in pursuance to the order passed by the Court on August 23, 1995 had deposited the awarded amount which has been duly invested. The said amount deposited by the petitioner and which has been invested along with interest accrued thereon will be paid to the claimant, Respondent No. 3 towards satisfaction of the award.

11. The petition stands disposed of.

12. A copy of the order will be sent to the Commissioner, Workmen Compensation.