

(2009) 03 JH CK 0093
In the Jharkhand High Court

Ratan Prasad Agrawal

APPELLANT

Vs

Dharam Deo Paswan and Others

RESPONDENT

Date of Decision : 25-03-2009

Acts Referred:

Citation : (2009) 03 JH CK 0093

Hon'ble Judges : M.Y. Eqbal, J;Jaya Roy, J

Bench : Division Bench

Judgement

1. By Court Since in all these appeals common question of law and facts ARE involved, they have been heard together and are disposed of by this order.

2. M.A. No. 111 of 2006 and M.A. No. 112 of 2006 have been filed by the appellant-Insurance Company against the judgment and award dated 31.1.2006 passed by Deputy Labour Commissioner cum Commissioner Workmen's Compensation in C.W.C. No. 5 of 2002 and C.W.C. No. 6 of 2002 awarding compensation on account of death of the driver and cleaner of a truck bearing registration No. BPN 8211.

3. The claimants' case is that on 27.5.2001 an information was lodged with the Khelari Police Station to the effect that the driver Umesh Prasad and cleaner Jitendra Sharma went to the Mines on 15.5.2001 and thereafter they proceeded to Chandil along with the truck loaded with coal. Thereafter both the driver and the cleaner along with the truck became traceless. On the basis of First Information Report, the police conducted investigation and two accused persons were apprehended who confessed that both the driver and cleaner have been killed. The Claim Case was filed in the year 2002 and on being noticed the Insurance Company appeared and contested the case on the ground, inter alia, that the claimants case is not maintainable as because unless the driver and cleaner are presumed to be dead after the expiry of seven years no compensation is payable on the ground of death of these persons. On the basis of evidence adduced by the parties, the Commissioner in terms of the order dated 31.1.2006 held that the claimants are entitled to get compensation and

directed the Insurance Company to pay compensation and respondent-owner of the vehicle was directed to pay the interest on the said compensation amount from the date of accident. Hence, M.A. No. 111 of 2006 and 112 of 2006 have been filed by the Insurance Company against the award whereas M.A. No. 158 of 2006 has been filed by the owner of the vehicle against the interest on the awarded amount.

4. From perusal of the impugned order it transpires that on the basis of First Information Report, investigation was conducted and two persons were apprehended who confessed that the driver and cleaner were murdered. Charge sheet was submitted against the accused persons and other documents were filed in support of the fact that deceased, driver and cleaner, died in course of employment.

5. Mr. Alok Lal, learned Counsel appearing for the appellant- Insurance Company very fairly submitted that although the claim cases were filed within one year from the date when the Information was lodged regarding the missing of the two persons along with the truck but since by efflux of time more than seven years have passed, the maintainability of the claim cases cannot be assailed at this stage. However, learned Counsel submitted that at the time when the claim case was filed, certainly it was not maintainable.

6. It is well settled that appeal under the Workmen's Compensation Act can be entertained only when substantial question of law is involved and not against the finding of fact recorded by the Commissioner, Workmen's Compensation. In the instant cases the commissioner on the basis of F.I.R., Charge sheet, Supervision report of the Superintendent of police has recorded finding that the deceaseds were killed while they were going in a truck loaded with coal. We find that no evidence was adduced by the appellant in the Court below to come to a different conclusion. Hence, the impugned award passed by the Commissioner needs no interference by this Court. Accordingly, M.A. No. 111 of 2006 and M.A. No. 112 of 2006 are dismissed.

7. So far M.A. No. 158 of 2006 filed by the owner against the direction for payment of interest is concerned; we find that interest has been awarded from the date of accident. But in the light of the decision of the Supreme Court in the case of National Insurance Co. Ltd. Vs. Mubasir Ahmed and Another, , the award of compensation against the owner of the vehicle cannot be sustained in law. However, Mr. Ashutosh Anand, learned Counsel appearing for the owner submitted that in the facts and circumstances of the present case, the owner be directed to pay the interest on the awarded amount at least from the date of adjudication of the claim and not from the date of accident. We find substance in the submission of the learned Counsel appearing for the owner. The owner is directed to pay interest from date of adjudication of the claim.

8. With the above direction and observation, the M.A. No. 158 of 2006 stands disposed of.