(1988) 06 MP CK 0014

In the Madhya Pradesh High Court

Shanker Lal Agrawal APPELLANT

Vs

Kanhaiyalal and Others RESPONDENT

Date of Decision : 27-06-1988

Acts Referred:

Employees Compensation Act, 1923 — Section 10, 30

Citation : (1989) 2 ACC 118

Judgement

1. This appeal is by the owner of the truck u/s 30 of the Workmen''s Compensation Act against the order dated 5-3-1987, passed by the Commissioner, Workmen Bilaspur, whereby exonerating the New India Insurance Co., Bilaspur, from the liability, passed an award for an amount of Rs. 21,000/- towards compensation, and the penalty of Rs. 10,000/- with interest @ Rs. 6% P.A., against the owner of the truck, where the deceased Krishna as working.

2. In short, the case is that the deceased Krishna, who was an employee of the appellant Shankerlal, died on 13-3-84 on account of the accident of the truck, bearing registration No. MPL 4587.

3. Immediately after the accident, the respondents No. 1 to 3, who are the legal heirs of late Krishna, moved an application u/s 10 of the Workmen''s Compensation Act (hereinafter referred to as the Act) before the Commissioner, Workmen''s Compensation (Labour Court) Bilaspur, claiming compensation against the owner of the truck Shankerlal Agrawal, and New India Insurance Company, the insurer of the truck.

4. That by the impugned award dated 5-3-87, the learned Com missioner for workmen, while awarding compensation, stated aforesaid, exonerated the New India Insurance Company on the ground that the original insurance policy has not been produced, but only a Photostat copy was filed. Therefore, the learned Commissioner Workmen''s Compensation, Bilaspur, reached the conclusion that the claimants failed to prove that the truck in question was insured with the respondent No. 4, New India Insurance Company. As such, the liability was fastened upon the owner of the truck exonerating the Insurance Company.

5. The learned Counsel appearing on behalf of the appellant, has moved an application under Order 41 Rule 27 C.P.C., and submitted that the motor policy be taken on record, according to which the truck was insured with the New India Insurance Company, which covers the third party risk, and as such, it is the Insurance Company, who has to indemnify the loss occurred to the legal representatives of late Krishna on account of his death, and both the appellant and respondent No. 4 are liable to pay the compensation jointly and severely.

6. No doubt, before the Court of Workmen''s Compensation, original motor policy was not produced, and as such, was not proved in accordance with the law; but the truck in question was insured with the Insurance Company, covering the risk of third party. The Insurance Company cannot escape its liability. However, in the instant case, the respondent No. 4, while filing the written statement has admitted this fact that the truck in question was insured with them. Therefore, on the face of this admission, it hardly matters if the policy is not filed and proved.

7. However, the learned Counsel appearing for the appellant strongly relied on the decision of the appex Court of the land, The Sindhu Resettlement Corporation Ltd. Vs. The Industrial Tribunal of Gujarat and Others, , and submitted that in imparting justice even at this stage it may be seen whether the truck in question was insured with the respondent No. 4 or not, and if the vehicle is insured then merely for non-observance of certain rule of evidence, the claim of the party cannot be refused. The learned Counsel relied on the observations made in S.R. Corporation (supra) in Para 3 of the judgment, which are as under:

At no stage was it challenged that the documents filed could not be taken into account until proved formally in the manner required to be proved in a regular civil proceeding in accordance with the provisions of the Indian Evidence Act. This order of Sindhu Hot-chief dated 5th September, 1953, was addressed to respondent No. 3 himself and, when there was no challenge on behalf of respondent No. 3 that he did not receive this order, there was no justification for the High Court to hold that this order had not been served on him. In proceedings before the Industrial Tribunal, strict proof of documents in accordance with the provisions of the Indian Evidence Act is not required". (Emphasis supplied by the Court).

8. This being so, the application made under Order 41 Rule 27 C.P.C. is allowed and the policy so filed is taken on record.

9. This legal position is not disputed that the liability to pay compensation is upon the owner of the vehicle in question; but if the same is insured, then it is for the Insurance Company to indemnify the same in terms of the policy, and therefore, in the instant case, the respondent No. 4 cannot be absolved from the liability of third party risk in paying the compensation to the claimants.

10. Now, the next question arises for decision is that whether the Insurance Company under such circumstances, is also liable to pay the penalty. The facts of

this case reveal that the owner of the truck had informed the Insurance Company well within time, despite that, the compensation amount was neither paid to the claimants, nor to the owner, for being paid to the claimants. In such situation, the Insurance Company, Respdt. No. 4, is definitely liable to pay the penalty as well. See Om Prakash v. Ramkali and Ors. 1987 A.C.J. 803. This being so, this appeal deserves to be modified as under:

11. The appellant and the respondent No. 4--New India Insurance Company, Bilaspur, are liable to pay the compensation amounting to Rs. 21,000/- with penalty of Rs. 10,000/- with interest @ Rs. 6% p.a. to the respondents No. 1 to 3 jointly severely. However, under the circumstances, the parties are directed to bear their own costs, as incurred.

