
(1985) 11 RAJ CK 0013

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 136 of 1985

Shekon Enterprises

APPELLANT

Vs

Naru and Others

RESPONDENT

Date of Decision : 28-11-1985

Acts Referred:

Citation : (1985) WLN 422

Hon'ble Judges : K.S. Lodha, J

Bench : Single Bench

Judgement

Kishore Singh Lodha, J.—The dispute in this appeal lies in a very narrow compass and, therefore, the relevant facts relating to it only need be stated here.

2. The respondent Naru was an employee of M/s Shekon Enterprises, who were the contractors for labour for M/s Udaipur Phosphate & Fertilizer, Khemli which was represented by Manubhai. During the course of employment, Naru had a fall. He, therefore, filed a claim for Rs. 48,000/-under the Workmen's Compensation Act, 1923 against the M/s Udaipur Phosphate & Fertilizer, Khemli and Shri Manubhai. He also impleaded Khemraj as a contractor. Shri Prakash Shah alleged in his reply that the employees were insured with the New India Insurance Company and prayed that the said Insurance Company may also be impleaded. M/s Udaipur Phosphate & Fertilizer, Khemli denied that Naru was their employee but alleged that M/s Shekon Enterprises were their contractors. Later, Shekon Enterprises also moved an application for being impleaded. That application was also allowed. The Insurance Company in its reply alleged that M/s Shekon Enterprises did not give any notice of this incident and they also did not comply with the conditions No. 1, 3 and 4 of the Insurance Policy and did not take necessary precautions and steps to prevent the accident and, therefore, the Insurance Company was not liable. M/s Shekon Enterprises of course admitted that the claimant Naru was their employee on Rs. 9/- per day They also admitted that he had met the accident during the course of employment. They, however, urged that the claim was excessive. After framing the necessary issues and

taking the evidence of the parties, the Workmen's Compensation Commissioner gave an award of Rs. 33,880/- in all i.e. Rs. 21,160.00/- compensation; Rs. 10,080/- penalty; Rs. 2540.00/- interest and Rs. 100.00 costs against the non-petitioner except Insurance Company. He was of the opinion that it has not been established that the employee had taken precautions and steps to prevent the accident and had given notice to the Insurance Company despite objection raised by the Insurance Company in its reply. Being aggrieved of this M/s Shekon Enterprises has come up in appeal.

3. I have heard the learned counsel for the parties.

4. Two contentions have been raised before me. The first contention is that the Insurance Company has wrongly been exonerated and the second is that the award is excessive. The claimant Naru has supported the award whereas, the learned counsel for the Insurance Company has opposed the first contention but supported the second one.

5. I have given my careful consideration to the rival contentions.

6. So far as the liability of the Insurance Company is concerned, it is not disputed before me by the learned counsel for the Insurance Company that once the insured is held liable for the claim, the liability to indemnify the insured lies with the insurer but he urges that in this case the insured had failed to give notice of the accident and had also not complied with the conditions Nos. 1,3 and 4 of the Insurance Policy also and, therefore, the insurer, is not liable and has rightly been exonerated. I am unable to accept this contention raised on behalf of the Insurance Company. It is pertinent to note that it was the Insurance Company who had raised the contention that no notice of this incident was given to the Company and that the insured had not complied with the condition Nos. 1,3 and 4 of the Insurance Policy and therefore, naturally the burden of proving this assertion was on the Insurance Company itself. It is further pertinent to note that the Insurance Company did not insist upon any issue being framed on this account. The learned counsel for the Insurance Company, however urges that this contention is covered by issue No. 5, which relates to the question as to which of the parties is liable for compensation. I am afraid such a general and vague cannot be deemed to have covered the contention raised by the Insurance Company unless a special issue to that effect was framed. It is further pertinent to note that no body has come in the witness box on behalf of the Insurance Company to prove the allegations raised by them. On the other hand, Jairam, who has appeared on behalf of M/s Shekon Enterprises has clearly stated his examination-in-chief that notice of this accident had been given to the Magistrate as well as the Insurance Company. No cross-examination was directed on this statement. In the cross-examination of this witness it has not been brought out that the necessary pre-cautions and steps for preventing the accident had not been taken. In these circumstances, there was absolutely no material before the learned Commissioner to hold that the Insurance Company was not liable.

7. Coming to the amount of the award, it has been urged by the learned counsel for the appellant as well as the learned counsel for the Insurance Company that when the insured Naru was examined by the Medical Board, it was found that there was only 50% dis-ability, whereas, the learned Commissioner has found that there was 80% dis-ability merely on the basis of the statement of a private doctor who had examined the injured much later and in face of the report of medical board, the statement of the private doctor could not carry any value. I do not find force in this contention. From the report of the medical board itself it appears that at the first instance there was a provisional assessment of the dis-ability and that medical board has examined the injured on 11-8-1983 when it found the 50% dis-ability provisionally but it further directed that the injured had to be examined again after about three months. It of course appears that no medical board was constituted after three months but the injured got himself examined by Dr. R.P. Bajaj and on his examination he had found that there was 80% dis-ability. He had not only physically examined the injured but also taken the X-ray Photographs. He has given the details of the dis-ability and in the cross-examination of Dr. Bajaj, nothing has been brought out to dis-credit his testimony. It is also pertinent to note that Dr. Bajaj was formerly a Government employee as Head of the Department of Orthopaedic in Medical College, Udaipur and it was only after his superannuation that he had started private practice. In these circumstances, the evidence of Dr. Bajaj could not have been lightly discarded and the learned Commissioner was perfectly justified in relying on his testimony. Therefore, the award on the basis of 80% dis-ability cannot be said to be improper.

8. The result, therefore, is that this appeal is partly allowed and the award of the learned Workman's Compensation Commissioner, Udaipur dated 23-1-1985 is modified to the effect that M/s New India Insurance Company is also held liable under the award, i.e. the award would be against the Insurance Company also.

9. Looking to the circumstances of the case I shall make no order as to costs.