
(2007) 07 MP CK 0054
In the Madhya Pradesh High Court

Smt. Laxmi and Others

APPELLANT

Vs

Jai Karan Prasad Shukla and Another

RESPONDENT

Date of Decision : 03-07-2007

Acts Referred:

Employees Compensation Act, 1923 — Section 4, 4A

Citation : (2007) 3 MPHT 421

Hon'ble Judges : K.S. Chauhan, J;A.K. Mishra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Arun Mishra, J.—This appeal has been preferred as against an order dated 19-9-2005 passed by Commissioner for Workmen's Compensation, Satna in Case No. 12/ WC Act/Fatal/2004.

2. The claimants have come up in this appeal aggrieved by the impugned order dismissing their claim petition, they claimed compensation on account of death of Surendra Kumar Dwivedi, a driver in the employment of respondent Jaikaran Prasad Shukla. He used to drive the Jeep (MP-19/9648). It was also not disputed by the owner that on 27-6-03, deceased was going from Satna to Orchha, District Chhatarpur, before 7-8 kms. from Chhatarpur at Village Gadebara Gautam, some unknown persons committed murder of driver Surendra Kumar Dwivedi after gagging his mouth with a cloth. Body was thrown away in the agricultural field. They took away the vehicle, ultimately vehicle could not be traced. Report of the incident was lodged as PS-Civil Lines, Chhatarpur on 28-6-03 where the case was under investigation. Autopsy was performed. Deceased used to obtain salary of Rs. 4,000 per month, apart from the allowance of Rs. 50 per day used to be paid to him, his age was 42 years. The claimants prayed for award of suitable compensation along with interest and penalty.

3. Owner in the reply submitted that salary of deceased was Rs. 3500, however, no separate allowance used to be given to the deceased. The vehicle never used

to be plied for hire or reward. On date of accident the vehicle had gone from Railway Station to Chhatarpur. The risk was covered under the policy cover note 91963 with effect from 11-4-03 to 10-4-04. Liability, if any, was to be borne by the insurer, thus, he was not liable.

4. The insurer in its reply denied the liability contending that there was no evidence to prove that murder of Surendra Kumar Dwivedi was committed. It was submitted that some unknown persons had committed murder of Surendra Kumar Dwivedi, excessive claim as to the salary and compensation was made. Deceased was not holding valid and effective driving licence, vehicle was not used for the purpose it was insured, thus, insurer was not liable to make indemnification.

5. The Commissioner for Workmen's Compensation has found that it was not established that Surendra Kumar Dwivedi was murdered during the course of employment. Commissioner has found that deceased was a "workman", income has been assessed at Rs. 4,000 per month, however, Commissioner for Workmen's Compensation has held that as there was possibility of breach of policy, hence insurer has not been held liable to make payment of compensation, if any. Claim petition has been dismissed, consequently, this appeal has been preferred.

6. The questions which arise for consideration are whether murder of deceased was committed during the course of employment and whether insurer can be said to be liable for making payment of compensation.

7. We have heard learned Counsel for parties at length and gone through the entire evidence with their help.

8. Firstly, we advert to the question whether the finding recorded by Commissioner for Workmen's Compensation that deceased Surendra Kumar Dwivedi did not die during the course of employment can be said to be proper.

It was not disputed by owner in the reply that deceased was his driver and had taken the jeep to Chhatarpur. It was also not disputed that murder of Surendra Kumar Dwivedi was committed by some unknown persons. It was also not disputed that ultimately the jeep was taken away by miscreants after committing murder, the jeep could not be traced though an offence was registered at PS-Civil Lines, Chhatarpur in that regard. When we consider the evidence on record, Laxmirani (C.W. 1) has stated that her husband had taken the Jeep as per the instructions of the owner to Chhatarpur, certain relatives were taken to Chhatarpur, some unknown persons committed murder of Surendra Kumar Dwivedi and threw away the body in an agricultural field. Police had recorded her statement during the course of investigation in the criminal case, vehicle was not plied as a private taxi. Santosh Tiwari (C.W. 3) has stated that he went to collect the dead body to Chhatarpur, obtained the body, thereafter cremation was done, deceased was his brother-in-law. Jaikaran Prasad Shukla (N.A.W. 1) has stated that deceased was in his employment as driver, deceased used to be paid a sum

of Rs. 3,500 per month and an allowance of Rs. 50 per day, he had purchased the vehicle for his personal use, while deceased was taking the vehicle to Chhatarpur, his murder was committed by some unknown persons and jeep was also taken away which was not recovered. Sunil Dharmadhikari (N.A.W. 2) examined on behalf of insurer has not controverted the aforesaid facts.

9. In *Smt. Rita Devi and Ors. v. New India Assurance Co. Ltd. and Anr.* AIR 2000 SC 1579, deceased, a driver of auto rickshaw, was taking the passengers to their destination. During the course of his duty, the passengers decided to commit an act of felony of stealing the auto rickshaw, they murdered the auto rickshaw driver, it was held by Apex Court to be an accidental murder. The stealing of auto rickshaw was the object of felony and the murder that was committed in the said process of stealing auto rickshaw, therefore, the Apex Court held that death was caused accidentally in a process of committing theft of auto-rickshaw. Their Lordships held that murder of deceased auto rickshaw driver was due to an accident arising out of the user of motor vehicle. Therefore, the claimants were entitled to claim compensation. In the context of Motor Vehicles Act and Workmen's Compensation Act, the Apex Court observed that both the enactments are beneficial enactments operational in the same field, hence judicially accepted interpretation of the word "death" in Workmen's Compensation Act was applicable to the interpretation of the word "death" in the Motor Vehicles Act also. The facts are writ large in the instant case, deceased was in the employment of Jaikaran Prasad Shukla, he was on duty at the relevant time when his murder was committed by some unknown persons, thus, in our opinion, death took place during the course of employment.

10. Coming to second question whether there was violation of policy, the Commissioner for Workmen's Compensation without giving categorical finding has observed that there was violation of policy as relatives have not been examined who were traveling in the vehicle. Main question for consideration is whether there is evidence on record to show that vehicle was plied for hire or reward. We have gone through the entire evidence on record. We are compelled to observe that there is nothing brought out on record so as to infer that vehicle was plied for hire or reward except the bald statement made by Sunil Dharmadhikari, that is based on his assumption not based on investigation made by him, thus, we are unable to accept the statement of Shri Sunil Dharmadhikari examined on behalf of insurer. From the statement of owner, claimants Smt. Laxmirani, Shri Ravi Kushwaha and Shri Santosh Tiwari, it cannot be said that vehicle was plied for hire or reward.

11. Coming to the question of income of deceased, we deem it appropriate to assess the income at Rs. 3,500 per month instead of Rs. 4,000 per month. Age of deceased was 43 years, the factor applicable is 175.54, income inclusive of allowance was Rs. 3,500 as such taking 50% of the aforesaid amount as per Section 4 of Workmen's Compensation Act, the compensation would come to Rs. $1750 \times 175.54 = \text{Rs. } 3,07,195$ (Rupees Three lacs seven thousand one hundred

and ninety five only). The same to carry interest from the date of accident at the rate of 12% per annum as prescribed in Section 4A(3)(a) of Workmen's Compensation Act, 1923. Liability to make payment of compensation and interest is held to be joint and several of the owner and insurer. Insurer is liable to pay interest also as held in *Kashibhai Rambhai Patel v. Shanabhai Somabhai Parmar and Ors.* AIR 2000 SCW 4932. However, considering the facts and circumstances of the case, we deem it proper that no penalty be imposed on the owner.

12. Appeal is allowed to the aforesaid extent. However, we leave the parties to bear their own costs as incurred of his appeal.