

(2012) 03 SHI CK 0156
In the High Court Of Himachal Pradesh
Case No : FAO No. : 635 of 2008

Smt. Nirmala Devi

APPELLANT

Vs

Bakshi Ram, Smt. Maya Devi and The Oriental Insurance
Company Ltd.

RESPONDENT

Date of Decision : 06-03-2012

Acts Referred:

Citation : (2012) 03 SHI CK 0156

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Advocate : G.R. Palsra, for the Appellant; Nishi Goel, Advocate for the respondents No. 1 and 2 and Mr. Narender Sharma, Advocate for the respondent No. 3, for the Respondent

Judgement

Deepak Gupta, J.—This appeal by the claimant is directed against the award of the Commissioner Workmen Compensation, Sadar Mandi in case No. 26 of 2002 dated 3.9.2008 whereby the petition filed by Nirmla Devi, the appellant, was rejected solely on the ground that the accident took place with some other vehicle and the relationship of employer and employee was not established in the instant case. The allegation of Nirmala Devi was that her husband deceased Roshan Lal was engaged by the owner of the truck Fuhanu Ram as a driver in the truck and that he had loaded the truck with sand at Ner Chowk and thereafter he had to go to Bhambla. However, on the way the truck got spoilt at Galma and the truck was parked. The son of the owner was also travelling in the truck and in the morning it was found that the deceased had been hit by some other truck. According to the claimant the deceased died during the course of employment and the accident in question arose out of the employment. The learned Commissioner held that the relationship of employer and employee had not been proved. This appeal was admitted on the following substantial questions of law:-

1. Whether deceased Roshan Lal died during the course of his employment when he was driver with the Truck No. HID-917 owned by Shri Fuhanu Ram at the time

of accident?

2. Whether the Commissioner below has gravely fallen into error by ignoring the admission made by the owner of the truck with regard to engagement of the deceased Roshan Lal as driver with the Truck No. HID-917?

3. Whether the Commissioner below has misread the evidence of the parties?

2. In the F.I.R which was lodged immediately after the accident it is not mentioned that the deceased was a driver employed by Fuhanu Ram. There is nothing to indicate as to how he was at the given spot. The claimant, Nirmala Devi, through her counsel Shri C.L. Sharma sent a notice to Fuhanu Ram as well as the Branch Manager of the Insurance Company on 15th October 1997. This notice is Ext. P-1 and in the same it is alleged that Roshan Lal had been engaged by Fuhanu Ram as driver of the truck. It was further alleged that on 14.6.1997 the truck was brought by Roshan Lal from Bhambla to Kansa Khad near Ner Chowk to load sand and when the same was taken to the Bhambla, on the return journey the same was parked near Galma and on the next day the dead body of Roshan Lal was found lying near the tyres of the truck with multiple injuries on the person. It was alleged that the deceased had died during the course of employment. No reply was sent by the Insurance Company but reply was sent by Fuhanu Ram through his counsel Daler Singh. This reply is Ext.P-2 and in this reply it is admitted that deceased Roshan Lal was engaged as a driver. However, it is stated that he was engaged only for one day and that he was not in employment at the time when the accident took place. The allegations in this reply are that on 14.6.1997 Roshan Lal consumed liquor at Kansa Khud from where the sand was carried. He thereafter consumed liquor at Ner Chowk and was not in a position to drive the vehicle and therefore the son of Fuhanu Ram asked Roshan Lal to park the vehicle by the side of the road at Galma and thereafter deceased Roshan Lal alighted from the truck and went away and asked the son of Fuhanu Ram to go to sleep in the truck. The next morning dead body of Roshan Lal was found 30 to 35 feet from the rear of the truck. This is the first stand of the owner of the truck.

3. The second stand is reflected in the reply filed to the claim petition before the Commissioner. This reply is very different from the reply to the notice. In this reply it is again admitted that the deceased was engaged as a driver but the version is that he was engaged as a driver only upto 5 p.m on that particular day only and was not a regular driver. There is further averment that the truck was brought upto Galma at 5 p.m and thereafter Roshan Lal went away. It is alleged that he was employed by the son of owner only upto 5 p.m. The version as given in this reply appears to be that since the employment of Roshan Lal came to an end at 5 p.m he stopped the truck and went away. There is nothing in this version that the vehicle was spoilt or that the deceased Roshan Lal was drunk and unable to drive the truck. Therefore, it is apparent that the stand taken in this reply is totally contrary to the stand taken to the notice.

4. The matter does not end here. Fuhanu Ram died during the proceedings and son of Fuhanu Ram, namely, Bakshi Ram appeared as RW-1 and here he comes up with different version. According to him Subhash Chand was the driver of the truck and he had never engaged Roshan Lal and that the truck had got spoilt at Galma and thereafter witness Bhakshi Ram slept in the truck and asked Subhash Chand to go and meet his father and get the money to get the truck repaired. Thus the owner has taken three totally contradictory stands. Subhash Chand has been examined as RW-2 and according to him it was he who was driving the truck on that fateful day and this truck had got spoilt near Galma. He admits that a log book was maintained since according to him the entry with regard to payment of salary was being entered only in the log book and no receipt was being given. However, no such log book has been produced before the learned Commissioner.

5. It is, therefore, apparent that the first stand of the owner was that Roshan Lal had been employed for a day. The second stand was that Roshan Lal was employed for a day only till 5 p.m and lastly the stand now taken in the evidence was that Roshan Lal was never employed. When an employee takes three totally contradictory stand, his statement cannot be accepted at its face value and in such eventuality the owner or his legal heir should have produced the log book to show who was driving the truck in question at the relevant time. When the log book was not produced an adverse inference should have been drawn against the owner and a presumption could be drawn that Roshan Lal had been engaged as a driver at least on that day.

6. There is another contradiction i.e. with regard to the manner in which the truck was stopped at Galma. According to the first reply to the notice since Roshan Lal was totally drunk Bakshi Ram i.e. the son of the original owner asked him not to drive the truck and go home. In the reply to the petition it is stated that since the truck reached at Galma at 5 p.m Roshan Lal left the truck. There is no mention that there was some fault with the truck. The third version is that the truck was stopped at Galma due to a fault but Roshan Lal was not the driver. Here again there is another contradiction. If there was no fault with the truck there was no reason why the truck should have been stopped at Galma that too at about 5 p.m in the month of June when there is sufficient light till 7.30 or 8 p.m. If the truck had developed a fault then again the owner should have led the evidence to show as to what was the nature of the fault and from whom it was repaired. In these circumstances it can be presumed that Roshan Lal was driving the truck till Galma and since the truck developed a fault it was stopped at Galma.

7. The question that next arises is whether the accident arose out of the employment or not? The deceased as held by me above was definitely employed by Bakshi Ram on that day. It is also not believable that his employment was only upto 5 p.m. It may be that the employment was a stop gap arrangement for one or two days but there was no stipulation that the employment was for

particular hours. If Roshan Lal had been engaged to take the truck to Kansa Khud to load sand obviously his engagement would not come to an end till the sand was unloaded at Bhambla. He would be deemed to be on duty till he was at Bhambla. When a vehicle gets spoilt a driver is supposed to stay with the vehicle and if at that time even if the driver is hit by some other vehicle the accident arises out of employment and definitely has causal connection with the employment. Therefore, I am of the considered view that all the three questions have to be answered in favour of the claimant and answered against the respondents. Therefore, the award of the Tribunal is set-aside and the claim petition has to be allowed. Coming to the question of quantum, according to the claimant her husband was employed at Rs. 3000/- per month. The accident occurred in the year 1997 The maximum wages which could be taken into consideration at that time were Rs. 2000/-. 40% of this wages have to be taken into consideration which comes to Rs. 800/- per month. Since the deceased was 41 years of age the relevant factor would be 181.37 and the compensation therefore, works out to Rs. 1,45,096/-. In addition thereto the claimant shall be entitled interest @ 12% per annum from 15.7.1997 till date of payment/deposit of the amount. Since the vehicle was duly insured and it has not been pointed out how the Insurance Company was not liable to pay the awarded amount or interest, the entire liability is of the Insurance Company. The Insurance Company is directed to deposit the awarded amount in the Registry of this Court by 31st May, 2012. On deposit of the amount, a sum of Rs. 1 lakh shall be immediately released to the claimant on her furnishing bank account number alongwith copy of the pass book and the remaining amount shall be kept in a fixed deposit for a period of five years. The interest accruing on quarterly basis shall be paid to the claimant. The appeal is disposed of accordingly.