(1994) 04 P&H CK 0028

In the Punjab And Haryana At Chandigarh

Case No : F.A. No. 1277 of 1992

Smt. Santosh Rani and Others — APPELLANT

Vs

Black Gold Carrier and Services Co. Ltd. — RESPONDENT

Date of Decision : 27-04-1994

Acts Referred:
Workmens Compensation Act, 1923 — Section 4

Citation : (1995) 1 LLJ 870 : (1994) 108 PLR 222

Hon'ble Judges : Naresh Chander Jain, J

Bench : Single Bench

Advocate : Sanjay Bansal, for the Appellant; Naresh Katyal and Sanjiv Pabbi, for the Respondent

Final Decision : Allowed

Judgement

Naresh Chander Jain, J.—This judgment of mine would dispose of F.A.O. No. 1277 of 1992 filed by the legal heirs of the deceased workman and Cross-objections No. 26-CII of 1994 filed by respondent No. 1-M/s. Black Gold Carrier and Services Co. Ltd., as common question arises in both the cases.

2. Ramesh Kumar husband of Smt. Santosh Rani and father of Miss Anju Bala and Manoj Kumar died while driving the truck belonging to respondent No. 1 which was insured with respondent No. 2 United Insurance Co. Ltd. The claimants claimed a sum of Rs. 2 lacs by way of compensation. The Commissioner under the Workmen''s Compensation Act by his impugned order dated June 23, 1992 held that there was no dispute on facts between the parties and that the deceased died during the course of employment of respondent No. 1. It has further been found that truck of respondent No. I stood insured with respondent No. 2. Compensation in the sum of Rs. 76856/- as per the formula laid down under the Workmen''s Compensation Act 1923 has been assessed.

3. The precise question which arises in the present matters is as to whether the compensation amount has to be paid by respondent No. 1 employer or by the

Insurance Company. The Commissioner has held that for the compensation. Company in question is the liability of the insured.

4. I have heard Sri. Sanjay Bansal, Advocate, counsel for the appellant-claimants, Mr. Naresh Katyal., Advocate, counsel for the respondent No. 1 and Mr. Sanjiv Pabbi, Advocate, counsel for the Insurance Company Respondent No. 2. After hearing their respective contentions, I am of the view that in the present cases the Insurance Company has to bear the liability of payment of the compensation amount. The perusal of the order makes it clear that after noticing the contentions of the counsel for the parties, the Commissioner all of a sudden jumps to the conclusion that the employer will have to deposit the decretal amount. It has not been found anywhere in the impugned order that the driving licence of the driver was either fictitious or fake. The learned counsel for the appellants read out the pleadings of the respondents. No plea was taken about the fakeness of the licence of the truck driver. The Commissioner was never called upon to frame any issue on this point. The counsel for the Insurance Company could not point to any documentary evidence from which it could be safely concluded that the driving licence of the driver was fake. The two documents Exhibits RW. 2/1 and RW. 2/2 have not been proved. RW-2/1 is a letter written by the counsel Mr. Anil Kumar to the Divisional Manager of the Insurance Company to the effect that he visited the office of R.T.O. Kathgodam for verification of the driving licence and he was informed that there was no record in the aforesaid office. Shri Anil Kumar has not stepped into the witness-box to stand the cross-examination. Similarly, RW. 2/2 is another letter written by Mr. Anil Kashyap, Advocate to the office of the R.T.O. Kathgodam requesting them to verify the particulars of the licence of the driver. Mr. Anil Kashyap, Advocate, has again not stepped into the witness-box. In any case, in the absence of any plea this Court is not in a position to confirm the findings recorded by the Commissioner that the Insurance Company is not liable to pay the compensation amount in question. In fact, it has nowhere been found as a fact even in the impugned order that the driving licence of the truck driver was fake.

5. For the reasons recorded above, the appeal filed by the claimants and the Cross-objections filed by the Employer are allowed. The insurance Company is held liable to pay the amount in question which be paid within a period of one month from today. The appellant-claimants would have costs of the appeal which are quantified at Rs. 2000/- to be paid by the Insurance Company. There would be no order as to costs in the Cross-objections. The counsel for the appellant-claimants has not pressed the point of penalty or interest in view of the statement of Smt. Santosh Rani who happens to be present in court.

