

(2018) 01 TP CK 0012
In the Tripura High Court
Case No : 16 of 2015

Smti. Chaya Rani Debnath & Anr

APPELLANT

Vs

Sri Rakhal Chandra Roy & Anr

RESPONDENT

Date of Decision : 31-01-2018

Acts Referred:

[Workmens Compensation Act, 1923](#), [Section 2\(1\)\(n\)](#) - Definitions
[Essential Commodities Act, 1955](#), [Section 4-A\(a\)](#) -
[Employees Compensation Act, 1923](#)

Citation : (2018) 01 TP CK 0012

Hon'ble Judges : T. Vaiphei

Bench : Single Bench

Advocate : P.S. Roy, S.D. Choudhury

Final Decision : Allowed

Judgement

1. This appeal under Section 30 of the Employee's Compensation Act, 1923 is directed against the judgment dated 1-4-2015 passed by the learned Commissioner, Employee's Compensation, West Tripura in T.S.(EC) No. 24 of 2011 refusing to award any compensation to the appellants.

2. The facts giving rise to the appeal may be briefly noticed at the outset. The case of the appellants is that on 14-6-2011, the deceased Charulal Debnath, who is the husband of the appellant No. 1 and father of the appellant No. 2, was engaged by the respondent No. 1 as the driver of his truck bearing registration No. TRL-2782 for transporting goods from Mizoram to Agartala. When the truck reached near Kanhmun village on the outskirts of Mizoram-Tripura Road, the truck turned turtle, and as a result, the

deceased sustained grievous injuries on his head, chest, back-bone and other vital parts of his body. The deceased, however, succumbed to his injuries at GBP Hospital, Agartala on 16-6-2011. According to the appellants, the deceased, as a driver, used to earn Rs.6,500/- per month along with Rs.50/- per day for food and Tiffin allowance, and was 40 years old at the time of the accident. The appellants were claiming a compensation of Rs.15,00,000/- for the death of the deceased.

3. Notice under Section 10 of the Act was served upon the respondent No. 1, but he did not take action for payment of the compensation so demanded, which prompted the appellants to file the claim petition before the learned Commissioner. The respondent No. 1 contested the claim petition and filed his written statement denying the claim and his employment as driver of his truck. He, however, pleaded that the truck was insured with the United India Insurance Company Ltd. (respondent No. 2) at the time of the accident and if any compensation was to be awarded, the same should be satisfied by the insurer and not by him. The respondent No. 2 also contested the claim petition and filed its written statement denying and disputing the claims of the appellants and prayed for dismissal of the claim petition.

4. On the pleadings of the parties, the learned Commissioner framed the following issues:

1. Whether the vehicle No. TRL-2782 (Truck) met with an accident on 14-6-2011 at about 11 AM at the outskirts of Kanhmun village along Mizoram-Tripura road?
2. Whether the deceased Charulal Debnath sustained injuries as a result of that accident in course of his employment as driver under the opposite party No. 1 and subsequently died on 16-6-2011?
3. Whether the petitioners are entitled to get any compensation and, if so, what shall be the reasonable amount?
4. Who shall make the payment of compensation, if any?
5. After the trial, the learned Commissioner held that the appellants failed to prove their case that the deceased was ever engaged as driver of the ill-fated truck by the respondent No. 1. He also debunked the enquiry report of the Officer-in-Charge of Kanhmun PS as there was an overwriting over the figure appearing on the date ""16"" and there was no disclosure about

the person who reported the accident. It was under the aforesaid circumstances that the learned Commissioner dismissed the claim petition. In order to appreciate the controversy, the crucial findings of the learned Commissioner may be reproduced below:

9. Shri Rakhal Ch. Roy, OPW-1, in his affidavit-in-chief, has stated that Charulal Debnath was employed by him as a driver for the lorry bearing

No. TRL-2782 and that on the date of accident, he was paid a monthly salary of Rs. 6,500+Rs. 50/- as tiffin allowance. It is also deposed that

Charulal Debnath died on 16-6-2011 at GBP Hospital due to the injury sustained in the accident on 14-6-2011 while driving the lorry from Mizoram to Tripura.

10. Admittedly, claimant No. 1 was not an eye-witness to the alleged accident. PW-2 though has claimed to be an eye witness to the alleged

accident, considering his cross-examination, the claim cannot be accepted. O.P.No. 1 deposing as OPW-1 took a complete U-turn from his

pleading wherein he denied the accident involving his vehicle. He even denied that Charulal Debnath was engaged by him as driver. He further

pleaded that the claim was not maintainable and it was filed for wrongful gain. This was his stand even during the cross-examination of the claimant

No. 1. That being the case, his evidence in total deviation of the pleadings cannot be accepted which accordingly is rejected.

11. Now, coming to Exbt. 1, the inquiry report of the O.C. Kanhmun PS as GDE No. 218 dated 16-6-2011, it clearly has an overwriting on the

date ""16 and it does not disclose who reported the accident. It states that the post mortem examination was conducted on 16-6-2011 and the

dead body was handed over to the relatives of the deceased through Constable Mihir Pal. The post mortem examination report marked Exbt. 3

series reveals that autopsy was conducted at 1.40 PM. This being the case, the question that comes to mind is how sitting at Kanhmun PS in

Mizoram, the Officer-in- Charge could give such report after making inquiry as mentioned therein on 16.6.2011 itself.

12. Claimants thus failed to prove the story as claimed. Issues are thus decided in the negative.

6. This Court, while admitting the appeal, formulated the following question as substantial question of law:

Whether the deceased died as a result of injuries arising out of an accident which had causal connection with the accident?

7. In the light of the above findings, the first point for consideration is whether the deceased was driving the ill-fated truck as the driver of the

respondent No. 1 on 16-6-2011? PW-1 is the appellant-claimant No. 1, is the wife of the deceased, and has deposed that the deceased expired

on 16- 6-2011 at GBP Hospital, Agartala due to serious accident, which occurred on 14-6-2011 at about 11 AM along Mizoram-Agartala Road

at the outskirt of Kanhmun village, Mizoram. She further deposed that her husband was employed by the owner of the truck (OPW-1) as the

driver of the truck bearing registration No. TRL-2782 at the time of the accident; that he was engaged on duty at the time of the accident and that

he was under the direct control of the owner of the ill-fated truck. She also testified that the police registered Kanhmun PS Case No.

GDE/218/2011 dated 16-6-2011 in connection with that accident. According to PW-1, the deceased was 50 years old at the time of the accident

and was paid a monthly wage of Rs.6,500/- plus Rs.50/- per day for food/tiffin allowance. She also deposed that OPW-1 gave her Rs.7,000/- for

performing the Sharaddha ceremony as well as his salary due for one month and that her entire family was depending on the deceased for their

livelihood. The cross-examination of PW-1 is in the nature of denial only and did not elicit anything to falsify her testimony. She, however, admitted

that she could not produce any document to show that her husband was earning Rs.6,500/- per month as a salary.

8. The statement of PW-1 is fully corroborated by the evidence of PW-2, who deposed that he was the Assistant-cum-Cleaner of another truck

bearing registration No. TRO1L-1703 on 14-6-2011 and was present when the accident took place, which resulted in the death of the deceased.

According to PW-2, the deceased was engaged as a driver of the ill-fated truck at the time of the accident. He testified that the deceased was

performing duties as per the instruction of the owner of the truck and that the deceased was earning Rs.6,500/- per month plus Rs.50/- per day as

tiffin allowance and that this information was based on what the deceased told him one day. His cross-examination is again in the nature of denial

and no tangible material came out from his cross-examination. The owner of the vehicle was examined as OPW-1, who corroborated the

statement of PW-1 by testifying that the deceased was driving his truck at the time of the accident and that he engaged him for duty at that time;

that he gave a monthly salary of Rs.6,500/- plus tiffin allowance of Rs.50/- per day. No cross-examination of this witness was made by the Insurer-

respondent. In the absence of cross-examination and denial of his statement, it is reasonable to hold that the version of the appellants as to the

factum of the accident involving her husband, of his employment of the ill-fated truck as its driver at the time of the accident or of the manner in

which the accident took place, is true. What prompted the Tribunal to hold that the appellants could not prove their case is that OPW-1 in his

written statement made averments to the effect that the claim petition was not maintainable; that the claim petition was barred by estoppel, waiver

and acquiescence and was made for wrongful gain and that he denied the statements made by the appellants in para 1,2,3,4,5, 6 and 7. True, there

is variance between the stance taken by the owner-respondent in his written statement and the one taken by him in his evidence. In his evidence,

OPW 1, contrary to his stated position in his written statement, admitted the allegations of the appellant. The law is now well-settled that where a

party makes an admission of liability, any finding made in favour of the other party on the basis of such admission is not incompetent even though it

is at variance with the case set up by the latter in his pleading, inasmuch as there could be no surprise or prejudice in such case.- See Srinivas Ram

Kumar v. Mahabir Prasad and others, AIR 1951 SC 177; Debi Singh v. Bhim Singh and ors., AIR 1971 Delhi 316 and Mir Niyamath Ali Khan

v. Commercial and Industrial Bank Ltd. and others, AIR 1969 AP 294. Moreover, we cannot lose sight of the glaring fact that the insurer did not

bother to cross-examine OPW 1 or lead rebuttal evidence against such admission. In this view of the matter, I am satisfied that the appellants have

adequately proved that the deceased was driving the ill-fated truck belonging to the respondent No. 1/OPW No. 1 within the meaning of Section

2(1)(dd)(ii)(c) of Employee's Compensation Act, 1923 and that death was caused to him by accident arising out of and in the course of his

employment. The doubt expressed by the learned Commissioner on the genuineness of the enquiry report of the O.C., Kanhamun PS pales into

insignificance in the light of the evidence of PW-1, PW-2 (the eye witness) and OPW 1. The findings to the contrary made by the learned

Commissioner cannot, therefore, be sustained in law.

9. As already noticed, OPW No. 1 has admitted in his crossexamination that the deceased was engaged by him as his driver. There is, however,

no evidence to show the nature of his employment, namely, whether he was merely engaged as a casual driver and not as regular driver. In other

words, whether the deceased can be said to be "a person recruited as driver" within the meaning of Section 2(1)(dd)(ii)(c) of the Act. At this

stage, it may be observed that the term "workman" occurring in Section 2(1)(n) of the Workmen's Compensation Act, 1923 has undergone

substantial change by substituting it by the term "employee" under the Employee's Compensation Act, 1923, which came into force on 18-1-2010.

It may be noted that Section 2(1)(n) of the erstwhile Workmen's Compensation Act, 1923 defined the term "workman" as under:

2. (1)(n) "workman" means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the

purposes of the employer's trade or business) who is-

* * *

(ii) employed in any such capacity as is specified in Schedule II,

whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in

writing; but does not include any person working in the capacity of a member of the armed forces of the Union and any reference to a workman

who has been injured shall, where the workman is dead, include a reference to his dependants or any of them.

The ingredients of the said provisions are:

(i) the workman must not be employed as a casual workman;

(ii) his employment must be in connection with the employer's trade and business.

Thus, under the pre-amended provision extracted above, the ingredients of the said provisions are:

(i) the workman must not employed as a casual workman;

(ii) his employment must be in connection with the employer's trade and business.

(Underlined for emphasis)

10. The afore-mentioned provisions may be compared with Section 2(1)(dd) of the Employee's Compensation Act, which substituted the term

workman" for the term "employee" and the latter is now defined as:

(dd) "employee" means a person, who is-

(i) a railway servant as defined in clause (34) of Section 2 of the Railways Act, 1989 (24 of 1989), not permanently employed in any

administrative district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II; or

(ii) (a) a master, seaman or other member of the crew of a ship,

(b) a captain or other member of the crew of an aircraft,

(c) a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle,

(d) a person recruited for work abroad by a company,

and who is employed outside India in any such capacity as is specified in Schedule II and the ship, aircraft or motor vehicle, or company, as the

case may be, is registered in India; or

(iii) employed in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this

Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of

the Armed Forces of the Union; and any reference to any employee who has been injured shall, where the employee is dead, include a reference

to his dependants or any of them;

11. From the provisions extracted above, it is quite obvious that the Parliament has not only amended the name of the Act from "Workmen's

Compensation Act, 1923" to "Employee's Compensation Act, 1923" but also substituted the term "workman" for the term "employee" by giving

new definition as noticed already. In my opinion, the net effect of this amendment is that the term driver coming within the purview of "employee

under Section 2(1)(dd)(ii)(c) is not qualified by any words such as "other than a person whose employment is of a casual nature and who is

employed otherwise than for the purpose of the employer's trade or business or who is employed in any such capacity as is specified in Schedule

II", which are found in the unamended Act. The question to be determined is

whether, in the absence of any evidence to show that the deceased in the instant case was a regular employee of the respondent No. 1, he could be said to be a "driver" within the meaning of Section 2(1)(dd)(ii)(c) of the amended Act? Or, is it necessary that to come within the meaning of the term "employee" under Section 2(1)(dd)(ii)(c) of the amended Act for availing of the benefit of compensation so payable, the employment of the driver should not be of a casual nature and who should be employed for the purpose of the employer's trade or business or who is employed in any such capacity as is specified in Schedule II?

12. It is cardinal rule of interpretation of a statute that the effect of deletion of words must receive serious consideration while interpreting a statute.

In my opinion, the substitution of the term "workman" by the term "employee" and the definition of the newly amended term "employee" cannot be

without significance. Parliament must have realized the practical difficulties and hardship faced by the victims, who mostly belong to unorganized

sectors, or their legal representatives, in proving whether the victim was/is not a casual employee. The very fact that the Act was amended by

deleting the words "other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the

employer's trade or business", which used to qualify the definition of the erstwhile term "workman", is itself a pointer to show that Parliament must

have intended that the mischief which was prevailing prior to the amendment must be avoided, after all a statute like Employee's Compensation

Act is a social welfare or beneficent legislation, and must ensure that the benefit of compensation reach maximum number of employees, be they

casual employee or otherwise, or their families without the technicalities of law. The Apex Court in *Lalu Prasad Yadav v. State of Bihar*, (2010) 5

SCC 1 has an occasion to consider the effect of amendment of a statute and observed:

39. However, if the later statute does not use the same language as in the earlier one, the alteration must be taken to have been made deliberately.

In his classic work, *Principles of Statutory Interpretation* by G.P. Singh, 12th Edn., 2010 at p. 310, the following statement of law has been made:

Just as use of same language in a later statute as was used in an earlier one in *pari materia* is suggestive of the intention of the legislature that the

language so used in the later statute is used in the same sense as in the earlier one, change of language in a later statute in pari materia is suggestive that change of interpretation is intended.

The learned author also refers to the observations of Lord MacMillan in D.R. Fraser & Co. Ltd. v. Minister of National Revenue, AIR 1949 PC

120 ""When an amending Act alters the language of the principal statute, the alteration must be taken to have been made deliberately.

13. Thus, on a plain reading of Section 2(1)(dd)(ii)(c) of the amended Act, there can be no two opinions that a person recruited as a driver,

irrespective of whether he is/was a casual employee or not, comes within the definition of the ""employee"". This view of mine is reinforced by the

fact that the expression ""a person recruited as driver"" is not qualified by any word unlike the previous definition of the term ""workman"", which was

qualified by the words ""other than a person whose employment is of a casual nature and who is employed otherwise than for the purpose of the

employer's trade or business"", who is employed in any such capacity as is specified in Schedule II ..."" In that view of the matter, it can be held that

once there is evidence to show that a person is recruited as driver by his employer and was found to be driving the vehicle of the owner at the time

of the accident, he will be treated as ""employee"" within the meaning of Section 2(1)(dd)(ii)(c) of the amended Act, irrespective of whether his

employment was of a casual nature. Thus, on the facts and circumstances of this case, I hold that the deceased died as a result of injuries arising

out of an accident which had causal connection with the accident and that the deceased was the employee of the respondent/OPW 1.

14. For determination of the quantum of compensation payable to the appellants, ordinarily, the case has to be remanded to the Tribunal, but

keeping in mind the fact that some seven years have lapsed, I am of the considered view that it will be more expedient for this Court to work out

the quantum of compensation payable to the appellants and dispose of the entire case at this stage to shorten the litigation and to give the much

needed compensation to the appellants. In the instant case, the appellants claimed that the deceased was earning Rs.6,500/- per month by way of

salary and another sum of Rs.50/- per day as tiffin allowance. As per his driving licence, he was the driver of a heavy vehicle. No dispute is raised

concerning the age of the deceased, which is claimed to be 50 years at the time of his death. Keeping in mind the indisputable fact that the

deceased was driving a heavy truck at the time of his death, it is reasonable to fix his income at Rs.7,000/- per month as the driver of the ill-fated

heavy truck. Thus, as per Schedule IV to the Employees Compensation Act, the completed years of age on the last birthday of the date on which

the compensation fell due, is 50 years, the factor for which is 153. Hence, the amount of compensation payable to the appellants is computed thus:

$\text{Rs.7,000} \times 50 \text{ per cent} \times 153 = \text{Rs.5,35,500/-}$.

Funeral expenses to the order of Rs.15,000/- are also awarded. The total amount of compensation payable to the appellants will come to

Rs.5,50,500. They will also be entitled to interest at the rate of 12% per annum under Section 4-A(a) of the EC Act from the date of accident, i.e.

14- 6-2011. As decided by the Apex Court in *New India Assurance Co. Ltd. v. Sahas Rao Sonwane*, 2016 ACJ 721, the appellants are also

entitled to costs of Rs.25,000/-.

15. The offshoot of the foregoing discussion is that the appeal is allowed. The impugned judgment dated 1-4-2015 is hereby set aside. The

insurerrespondent is, therefore, directed to deposit with this Registry a sum of Rs.5,75,500/- carrying interest at the rate of 12% per annum within

two months from the date of receipt of this judgment. On depositing the aforesaid amount with the accrued interest within the stipulated time, the

Registry will, without further reference from this Court, release forthwith half of the deposited amount to the appellant No. 1 on her satisfying the

usual formalities, while the remaining amount will be kept in a fixed deposit with any nationalized Bank till the appellant No. 2 became a major.

Transmit the LC record.