

(2016) 03 JH CK 0064

In the Jharkhand High Court

Case No : Miscellaneous Appeal No. 300 of 2013.

Sumitra Devi

APPELLANT

Vs

Sachida Nand Bhadani and Others

RESPONDENT

Date of Decision : 10-03-2016

Acts Referred:

Workmens Compensation Act, 1923 — Section 3, 4-A, 5

Citation : (2016) 4 ACC 499 : (2016) 149 FLR 473 : (2016) 2 JBCJ 501 : (2016) 2 JLJR 259 : (2016) 3 TAC 105

Hon'ble Judges : Ravi Nath Verma, J.

Bench : Single Bench

Advocate : Arvind Kumar Lal, Advocate, for the Appellant; Alok Lal and Santosh Kumar, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Ravi Nath Verma, J. - The claimant/appellant has preferred this appeal against the judgment dated 14.09.2013 passed by the Presiding Officer, Labour Court at Deoghar in W.C. Case No. 50 of 2011 whereby and where under an amount of Rs. 4,16,000/- has been assessed as the just compensation and the United India Insurance Co. Ltd.- the present opposite party no.3, has been directed to pay the compensation amount within a month and if the amount is not paid within the stipulated period, the Insurance Company will be liable to pay interest @ 12 % per annum from the date till its realisation.

2. The appellant's husband Gopal Turi died in an accident working as Khalasi-cum- Cleaner on Oil Tanker no. JH-10J-8661 under the employer Sachida Kumar Bhadani. On the fateful day i.e. on 29.05.2009, on the instruction of his employer Sachida Kumar Bhadani, the deceased along with the driver of the said tanker Shyam Lal Manjhi were going towards Haldia and on 02.06.2009 when the tanker reached at Junglepur at 12.00 a.m., they took road challan and cash and when their tanker crossed Dankuni toll tax station at NH-2 and almost proceeded for 20-25 kilometers, one empty L.P. Truck obstructed the tanker and four

persons came out from the said empty L.P. Truck and forcibly took the tanker in their possession and assaulted the driver and the deceased Khalasi and also compelled the driver and Khalasi to take some liquids and after taking the liquids, they became unconscious. The Khalasi i.e. the husband of the informant, died instantaneously in the said truck itself. Since the Khalasi died during course of the employment of his employer, this claim case was filed under the E.C. Act. After the said accident and death of Khalasi, Dadpur (Hoogli) P.S. Case no. 81 of 2009 was instituted on the fardbeyan of the driver Shyam Lal Manjhi and the police seized the documents of the truck and the dead body of the husband of the claimant was sent for postmortem where after the doctor found the cause of death as severe intro-peritoneal bleeding due to rupture of liver and lumps.

3. After notice by the court below, the owner of the vehicle appeared and filed written statement admitting the deceased Khalasi as his employee and the fact that the monthly salary of the deceased was Rs. 4,500/- per month and he was also getting Rs. 50/- per day as Khuraki (food allowance) and the vehicle in question i.e. oil tanker was insured with United India Insurance Co. Ltd. and the Insurance Co. is liable to indemnify and pay compensation.

4. The Insurance Co. also filed a separate written statement denying the fact that deceased was an employee of the tanker and that the case is not maintainable under E.C. Act. It was also pleaded that there was a violation of the terms and conditions of insurance and so the Insurance Co. is not liable to pay any compensation.

5. The court below after appreciating the pleadings, the documentary as well as oral evidence by the judgment impugned allowed the compensation amount of Rs. 4,16,000/- with certain directions as indicated above.

6. Learned counsel appearing for the claimant-appellant submitted that the court below while computing the just compensation failed to consider that besides the salary, the deceased was also getting an amount of Rs. 50/- per day towards Khuraki (food allowance) and that the court below also failed to consider that the Employees Compensation Act being a welfare legislation for the benefit of the employee's family, wrongly interpreted that the amended legislation was not prospective in nature and so the maximum salary of any workman admissible for computing compensation would be only Rs. 4,000/- per month. Lastly, it was submitted that the claimants are entitled to the compensation from the date of accident or at best from the date of filing of claim petition and in support of his contention relied on judgments of Hon^{ble} Supreme Court in cases United Indian Insurance Company Ltd. v. Habibur Rahman (MD) and another; 2014(1) T.A.C. 612 (Gau.), United India Insurance Co. Ltd. v. Smt. Dhairi and others 2014(1) T.A.C. 136 (Raj.) and Saberabibi Yakub Bhai Shaikh and Others v. National Insurance Co. Ltd. and Others, 2014(1) T.A.C. 385 (S.C.).

7. Contrary to the aforesaid submissions, the learned counsel representing the respondent no.-3- United India Insurance Company Limited submitted that the

amount of Rs. 50/- per day given to the deceased towards Khuraki was the part of the wages as defined under Section 2(m) of the Employee's Compensation Act, 1923 and the court below while computing the just compensation has rightly held that the maximum salary of a workman admissible for compensation under the Old Act was only Rs. 4,000/- per month and that includes the amount of Rs. 50/- per day given to the deceased towards Khuraki and only after amendment of the year 2009, which came into force from 18.01.2010, the upper limit of Rs. 4,000/- per month for computing compensation has been deleted but as the deceased died on 02.06.2009, the benefit of amended provision cannot be bestowed to the claimants in computing the just compensation.

8. Before I enter into the veils of submissions of the learned counsels, a reference of the term "wages" as defined in Section 2 (m) of the Employee's Compensation Act, 1923 is necessary for proper appreciation of the dispute between the parties, which is quoted herein below:-

"Section 2(m).- "wages", includes any privilege or benefit which is capable of being estimated in money, other than a travelling allowance or the value of any travelling concession or a contribution paid by the employer of an employee towards any pension or provident fund or a sum paid to an employee to cover any special expenses entailed on him by the nature of his employment."

9. From bare perusal of the above provision, it would appear that any privilege or benefit which is capable of being estimated in money comes within the definition of "wages" and for assessing the compensation, any allowances within the Khuraki of Rs. 50/- as claimed by the claimants in the instance case would be included in the wages. I have gone through the judgments cited by the learned counsel for the claimants/appellants and I find that even in the cases United India Insurance Co. Ltd. (supra), the daily wages of the nature as the workman was being paid was included in the wages for assessing the compensation. The only exception given in the definition of "wages" is that the travelling allowances or the value of any travelling concession or a contribution paid by the employer of a workman towards any pension or provident fund were excluded from the definition of "wages". Admittedly, the deceased was getting a monthly salary of Rs. 4,500/- and Rs. 50/- as Khuraki per day but the upper limit prescribed under the Act for computing the compensation was only Rs. 4,000/-.

10. As regards the submission of the learned counsel for the appellants that the claimants were entitled to the compensation amount from the date of accident or at best from the date of filing of the claim application, I find force in the submission. The Hon'ble Supreme Court in the case Oriental Insurance Co. Ltd. v. Siby George and Others; (2012) 12 SCC 540 while considering the similar issue held that an employer becomes liable to pay compensation as soon as the personal injury is caused to the workman by the accident, which arose out of and in course of the employment. Apparently, in the light of ratio decided in the aforesaid case, the relevant date for determination of payment of compensation would be the date of the accident and not the date of final adjudication of the

claim. However, the interest would only be applicable on the compensation amount if there is delay in payment of the amount due and the said interest would be applicable from the date of judgment.

11. In view of the aforesaid settled proposition of law, I do not find any cogent reason to interfere in the impugned judgment/Award. The court below has rightly computed the just compensation of Rs. 4,16,000/- only payable by United India Insurance Co. Ltd. However, the said compensation amount will be payable to the claimants from the date of accident i.e. 02.06.2009. Hence, the impugned Judgment/Award is modified to the extent that the just compensation amount as awarded by the court below would be payable from the date of accident with interest @ 12 % per annum from the date of judgment as held by the impugned Judgment.

12. The appeal is, thus, dismissed with the above modification.