

(2012) 07 JH CK 0159

In the Jharkhand High Court

Case No : Misc. Appeal No. 400 of 2003

The Branch Manager, New India Assurance Company Limited,
Hazaribagh

APPELLANT

Vs

Mosmat Tripta and Others

RESPONDENT

Date of Decision : 31-07-2012

Acts Referred:

Workmens Compensation Act, 1923 — Section 2(e), 30(1)(a)

Citation : (2013) ACJ 2065 : (2012) 134 FLR 906 : (2012) 4 JLJR 24

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Advocate : Alok Lal, for the Appellant; S.K. Pandey, for the Respondent

Final Decision : Dismissed

Judgement

N.N. Tiwari, J.—This appeal has been filed u/s 30(1)(a) of the Workmen's Compensation Act, 1923 against the order dated 20.5.2003 passed by learned Commissioner, Workmen Compensation, Hazaribagh in W.C. Case No. 31/2002. By the said order, learned Commissioner has directed the appellant-Insurance Company to pay the amount of compensation to the dependants of Gopal Pandey, who died in an accident while he was driving the bus bearing Registration No. BR-13P-6251 belonging to Harishchandra Prasad and insured with the appellant-Insurance Company. The dependants of the deceased driver were the claimants before learned Commissioner. According to them, Gopal Pandey was working as driver of the vehicle Tata 407 bearing Registration No. BR-13P-6251. While he was driving the vehicle with a police party-in course of a combing operation, the members of the M.C.C. blasted the land mines near Village-Oreya and started firing at the vehicle. As a result of which the vehicle was blown off and the driver Gopal Pandey died at the spot. At the time of the accident, the deceased driver was aged about 25 years and his monthly wages was Rs. 3,500/- per month. Since the driver Gopal Pandey died in course of his employment, his dependants (claimants) are entitled to get compensation under

the provisions of the Workmen's Compensation Act.

2. Notices were issued to the owner-O.P. No. 1 and the insurer-O.P. No. 2.

3. The O.P. No. 1 appeared in the case and filed his reply stating, inter alia, that the deceased Gopal Pandey was employed as driver of the said vehicle. While he was driving the vehicle alongwith a police party, in course of combing operation, the members of the M.C.C. blasted land mines, which caused death of the driver at the spot. When the accident took place, the wages of the deceased driver was Rs. 3,500/- per month. It has been further stated that since the said vehicle was insured with the O.P. No. 2 and separate premium covering the risk of the driver was being paid by him, the insurer-O.P. No. 2 is liable to pay compensation.

4. The insurer-O.P. No. 2 (appellant) in its written reply denied its liability stating, inter alia, that the driver of the vehicle died while the vehicle was being used by the Police Department of the State and during the said period he was not an employee of the owner of the vehicle and as such the Insurance Company is not liable to pay compensation on account of the death of the driver.

5. Learned Commissioner, after hearing the parties and considering their respective contentions and the facts and materials on record allowed the claim application and assessed Rs. 1,67,799/- as the amount of compensation payable to the claimants-dependants of the deceased driver. Learned Commissioner held that since the driver died while driving the vehicle which was insured with the Insurance Company and the period of insurance was subsisting at that time, the Insurance Company is liable to pay the compensation amount.

6. The appellant has challenged the said order of learned Commissioner mainly on the ground that while the deceased driver was driving the vehicle, it was under the control of the Police Department of the State and during that period, the owner was not the employer of the deceased driver.

7. Mr. Alok Lal, learned counsel appearing on behalf of the appellant, submitted that the Insurance Company cannot be held liable for payment of compensation on account of death of the driver of the vehicle, as the vehicle was used by the Police Department, at the time of occurrence. The vehicle was hired for such purposes in breach of the terms of the policy and as such the amount of compensation is not payable by the insurance Company. Learned Commissioner without properly considering the said legal position has passed the impugned order, which is wholly erroneous and is liable to be set aside.

8. In support of his said contentions, learned counsel referred to and relied on two decisions of the Supreme Court in Zila Sahakari Kendrya Bank Maryadit Vs. Shahjadi Begum and Others, and National Insurance Co. Ltd. Vs. Deepa Devi and Others,

9. Learned counsel appearing on behalf of the respondents, on the other hand, supported the impugned order and submitted that learned Commissioner has thoroughly considered the facts, circumstances and materials on record and has

rightly awarded compensation to the dependants of the deceased driver holding the appellant liable to pay compensation to the dependants-claimants. Learned counsel submitted that the said vehicle was insured with the Insurance Company-appellant and separate premium covering the risk of the driver was being paid by the owner of the Vehicle. The period of insurance was subsisting. Only because some police personnel boarded the vehicle at the time of incident, they cannot be held to be the owner of the vehicle. The appellant has made frivolous plea and has taken baseless ground for disowning its liability, which has been rightly rejected by learned Commissioner. Learned counsel further submitted that the said decisions cited on behalf of the appellant have absolutely no application to the fact of the instant case. There is no merit in this appeal and the same is liable to be dismissed.

10. I have heard learned counsel for the parties and considered their respective contentions and submissions. I have also perused the record including the impugned order.

11. It is not in dispute that the deceased was the driver of the said vehicle which was insured with the appellant-Insurance Company. It is also not in dispute that the period of the insurance was subsisting when the incident took place causing death of the driver-Gopal Pandey. The only contention of the appellant-Insurance Company is that since the vehicle was under the use of the Department of Police, at the time of the incident, the deceased driver cannot be said to be an employee of the insurer or the owner of the vehicle and the Insurance Company is not liable to pay the amount of compensation, rather the liability is of the State to pay the amount of compensation.

12. Learned counsel for the appellant tried to fortify the said contentions by referring to the decision of the Supreme Court in National Insurance Co. Ltd., (supra). In the said case, it was held that at the time of accident the vehicle in question was requisitioned by the D.M. for election work and the vehicle remained under control of the State or its officer. The owner had no control over the driver during the said period. The owner may be the employer, but the employee was under the charge of the State and therefore the State shall be liable to pay compensation to the claimants and not the registered owner of the vehicle. On the same line, learned counsel also referred to and relied on the decision of the Supreme Court in Zila Sahakari Kendra Bank Maryadit, supra. In the said case, also, the Jeep of the owner was requisitioned under the statute by the State Government for election duty. Death of the driver of the Jeep caused while he was on election duty. On that fact the Apex Court held that during the said period the employer would be the requisitioning authority i.e. the State Government and liability of payment of compensation amount was on the State Government.

13. In the instant case, the fact is entirely different. Neither party has claimed that the said vehicle was requisitioned under any statute from the owner for the purpose of the State Government.

14. In the aforesaid decisions, the Supreme Court has considered the definition of "Employer" provided u/s 2(e) of the Workmen's Compensation Act, which is as follows:--

"Employer" includes any body of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer, and, when the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, means such other person while the workman is working for him;

15. In view of the said definition, the Apex Court has held that since the vehicle in question was requisitioned by the State Government under the statutory provision, the State Government, during the time of requisition, comes within the fold of definition of "Employer". The said decisions of the Supreme Court are of no help to the appellant, as the same are not applicable to the facts and circumstances of the instant case. Only because some police personnel boarded the vehicle, the same does not tantamount requisition of the vehicle and transfer of control and ownership of the vehicle. On that ground the Insurance Company cannot disown its liability, particularly, when separate premium covering the risk of the driver was being paid by the owner of the vehicle. I, therefore, find no substance in the contentions and the ground canvassed by the appellant.

16. There being no merit, this appeal is dismissed. The interim order dated 11.1.2007 stands vacated.