

(2015) 04 KAR CK 0288

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 2084/2013 (WC)

The Oriental Insurance Co. Ltd.

APPELLANT

Vs

Gynaneswari and Others

RESPONDENT

Date of Decision : 27-04-2015

Acts Referred:

Citation : (2015) 04 KAR CK 0288

Hon'ble Judges : H. Billappa, J

Bench : Single Bench

Advocate : E.S. Indires, for the Appellant; R. Narayana, Advocates for the Respondent

Final Decision : Dismissed

Judgement

H. Billappa, J.—This appeal by the appellant-Insurance Company is directed against the order and award dated 8.1.2013 passed by the Commissioner for Workmen's Compensation, Bengaluru, in Case No. WCA/B2/FC/CR-15/2008.

2. By the impugned order, the Commissioner has awarded compensation of Rs. 4,15,960/- with interest @ 12% p.a. from 9.11.2007 till the date of deposit.

3. Aggrieved by that, the appellant-Insurance Company has filed this appeal.

4. Briefly stated the facts are:

"The claimants i.e., respondents 1 to 4 are the wife, son and parents of the deceased Harish who is also called as Jambunath. The deceased was working as a driver in the Luxury Tax bearing No. KA-05/C-7958 belonging to the respondent No. 5. That on 6.10.2007, the deceased Harish @ Jambunath had taken the luxury taxi to pick up the passengers to go to M.M. Hills. At about 8.30 p.m., the deceased informed his wife that four passengers in the taxi were drunk. The deceased did not return till 9.10.2007. First information was lodged by his friend Suresh Kumar on 9.10.2007. The investigation revealed that four passengers who took the luxury taxi killed the deceased Harish and threw the

body into the river. The respondents 1 to 4 claimed compensation of Rs. 17,08,560/-. The Commissioner has awarded a sum of Rs. 4,15,960/- with interest @ 12% p.a. from 9.11.2007 till the date of deposit. Aggrieved by that, the appellant-Insurance Company has filed this appeal."

5. The learned counsel for the appellant-Insurance Company contended that there is no casual connection between the death and the employment. The death has not occurred in the course of employment. Therefore, the Insurance Company is not liable to pay compensation. Further, she submitted that Ex. R2-1 driving licence extract shows that the Badge was issued for Motor Cab. It was valid from 15.12.2003 to 14.12.2006. The incident has occurred on 6.10.2007. There was no valid driving licence at the time of incident. Therefore, the Insurance Company is not liable to pay the compensation. Further, she submitted that the owner has deposed that he was not paying salary to the deceased. It was one Satyam Tours and Travels who were paying salary to the deceased. The deceased is one Harish. In the driving licence the name is shown as Jambunath. There is nothing in record to show that deceased Harish and Jambunath are one and the same. Therefore, the Insurance Company is not liable to pay the compensation. In support of her submission, she placed reliance on the decisions of the Hon"ble Supreme Court reported in AIR 2009 S.C. page 2019 and Shakuntala Chandrakant Shreshti Vs. Prabhakar Maruti Garvali and Another, (2007) ACJ 1 : AIR 2007 SC 248 : (2007) 112 FLR 203 : (2007) 1 JT 15 : (2006) 11 SCALE 609 : (2007) 11 SCC 668 : (2006) 8 SCR 939 Supp .

6. As against this, the learned counsel for the respondents 1 to 4 submitted that the impugned order and award does not call for interference. The deceased Harish was also called as Jambunath. In the claim petition it is stated that deceased Harish was also called as Jambunath. Further, Ex. P1-10 the Marriage Invitation shows that Jambunath was also called as Harish. Inviting my attention to the objections filed by the owner, he submitted that the owner has admitted that he was the owner of the Luxury Taxi bearing No. KA-05-C-7598 and Harish had taken the vehicle on 6.10.2007 and did not return. According to the police report, Harish was strangled with nylon wire by the passengers and the dead body was thrown into the river. The police have arrested the accused persons. The deceased had valid driving licence and he was working under the respondent No. 5 owner. The vehicle was insured with the appellant. Therefore, the appellant is liable to pay the compensation. The appellant cannot contend that the deceased was not the employee of the respondent No. 5. Further inviting my attention to Ex. P1-4 driving licence extract he submitted that Item No. 4 clearly indicates that the driving licence was issued on 18.10.1997 and it was valid upto 17.10.2017. Therefore, the appeal may be dismissed. In support of his submission, he placed reliance on the following decisions:

" S. Iyyapan Vs. United India Insurance Company Ltd. and Another, (2013) 5 ABR 385 : (2013) 3 ACC 19 : (2013) ACJ 1944 : (2013) 7 AD 202 : AIR 2013 SC 2262 : (2013) 10 JT 85 : (2013) 172 PLR 409 : (2013) 3 RCR(Civil) 654 : (2013)

7 SCALE 637 : (2013) 7 SCC 62

National Insurance Co. Ltd. Vs. Swaran Singh and Others, (2004) 1 ACC 1 : (2004) ACJ 1 : AIR 2004 SC 1531 : (2004) 118 CompCas 396 : (2004) 1 JT 109 : (2004) 136 PLR 510 : (2004) 1 SCALE 180 : (2004) 3 SCC 297 : (2004) 1 SCR 180 : (2004) AIRSCW 663 : (2004) 1 Supreme 243

2009-III-LU (Kerala) page.796

1996 LLR (Kerala) page.521

2000 LLR (Orissa) page.632"

7. I have carefully considered the submissions made by the learned counsel for the parties.

8. On 21.1.2015 the appeal is admitted to consider the following points;

"a. Whether the Workmen Compensation Commissioner has committed serious illegality in ignoring the non-existence of relationship of the employer and employee inspite of sufficient evidence placed on record.

b. Whether the Commissioner has committed serious illegality in not noticing that the driver of the vehicle in question had possessed valid driving license as on the date of accident."

9. After hearing the parties, the point for consideration is reframed as follows;

"1. Whether the Commissioner was justified in holding that the deceased died in the course of and arising out of employment? Whether the impugned order and award calls for interference?"

10. It is relevant to note, the respondents 1 to 4 are the wife, son and parents of the deceased Harish alias Jambunath. They have claimed compensation for death of deceased Harish @ Jambunath in the course of employment. The respondents 1 to 4 have contended that on 6.10.2007 the deceased Harish had taken the luxury taxi belonging to the respondent No. 5 to pick up the passengers to go to M.M. Hills. The deceased did not return till 9.10.2007. The investigation revealed that four passengers killed the deceased and the dead body was thrown into the river. The Commissioner has awarded compensation of Rs. 4,15,960/- with interest @ 12% p.a. from 9.11.2007 till the date of deposit holding that the deceased was a workman and the death has occurred in the course of and arising out of employment.

11. The learned counsel for the appellant-Insurance Company contended that there was no casual connection between the death and employment. The death has not occurred in the course of employment. Ex. P1-8 is the First Information Report. PW.1 has deposed that the deceased was working as driver with the respondent No. 5. On 6.10.2007 the deceased carried passengers to M.M. Hills. He did not return till 9.10.2007. Therefore, complaint was lodged. The investigation revealed that the deceased was murdered by the passengers. The

evidence of PW-1 and the documents show that on the date of the alleged incident the deceased was the driver and in the course of employment the deceased was murdered. The learned counsel for the appellant placing reliance on the decisions of the Hon"ble Supreme Court reported in *Malikarjuna G. Hiremath Vs. The Branch Manager, The Oriental Insurance Co. Ltd. and Another*, (2009) ACJ 721 : AIR 2009 SC 2019 : (2009) 121 FLR 216 : (2009) 2 JT 396 : (2009) 2 LLJ 305 : (2009) 3 SCALE 210 : (2009) 13 SCC 405 : (2009) 2 SCR 320 : (2009) 3 SLJ 122 : (2009) 2 UJ 708 : (2009) AIRSCW 1688 : (2009) 2 Supreme 169 and *Shakuntala Chandrakant Shreshti Vs. Prabhakar Maruti Garvali and Another*, (2007) ACJ 1 : AIR 2007 SC 248 : (2007) 112 FLR 203 : (2007) 1 JT 15 : (2006) 11 SCALE 609 : (2007) 11 SCC 668 : (2006) 8 SCR 939 Supp submitted that the incident has not occurred in the course of employment. In *Mallikarjuna G. Hiremath v. Branch Manager, Oriental Insurance Company Limited and another* reported in *Malikarjuna G. Hiremath Vs. The Branch Manager, The Oriental Insurance Co. Ltd. and Another*, (2009) ACJ 721 : AIR 2009 SC 2019 : (2009) 121 FLR 216 : (2009) 2 JT 396 : (2009) 2 LLJ 305 : (2009) 3 SCALE 210 : (2009) 13 SCC 405 : (2009) 2 SCR 320 : (2009) 3 SLJ 122 : (2009) 2 UJ 708 : (2009) AIRSCW 1688 : (2009) 2 Supreme 169 , it was a case of death of a truck driver due to drowning. In *Shakuntala Chandrakant Shreshti Vs. Prabhakar Maruti Garvali and Another*, (2007) ACJ 1 : AIR 2007 SC 248 : (2007) 112 FLR 203 : (2007) 1 JT 15 : (2006) 11 SCALE 609 : (2007) 11 SCC 668 : (2006) 8 SCR 939 Supp , it was a case of cardiac arrest (heart attack). On facts, the decisions relied upon by the learned counsel for the appellant are not applicable to the facts of the present case.

12. On the other hand, the learned counsel for the respondents 1 to 4 placed reliance on the decision of the Kerala High Court reported in 2009 III LLJ page 796 (Ker)(NOC 44) wherein the driver was murdered by passengers hiring autorickshaw. The Kerala High Court has held that the accident occurred in the course of employment. There was nexus between the death and his employment.

13. Similarly in *United India Insurance Company Limited v. Philo* reported in 1996 LLR page 521 where the workman was killed in the course of employment by an unknown person, the Kerala High Court has held, the death was caused as a result of an accident arising out of and in the course of his employment.

14. In *National Insurance Company Limited v. Nalini Dehuri and others* reported in 2000 LLR page.632, the driver was waylaid and killed by miscreants. The Orissa High Court has held that the accident has occurred in the course of employment and there is casual connection between the death and employment of the deceased.

15. The decisions relied upon by the learned counsel for the respondents 1 to 4 are squarely applicable to the facts of the present case. In the present case, the deceased Harish @ Jambunath was driving the vehicle at the time of incident. The passengers have killed him. The dead body has been thrown into the river. Therefore, it cannot be said that there is no casual connection between the death

and the employment. The Commissioner has rightly held that the death has occurred in the course of and arising out of employment.

16. Insofar as the contention of the learned counsel for the appellant that the deceased did not possess valid driving licence is concerned, there is no merit in this contention. Ex. P1-4 which is also marked as Ex. R2-1 clearly shows that the deceased had valid driving licence. The licence was issued on 18.10.1997 and it was valid up to 17.10.2017. Therefore, there is no merit in the contention that the deceased did not possess valid driving licence at the time of accident and accordingly, it is rejected.

17. The learned counsel for the appellant further contended that the deceased is one Harish. In the license the name is shown as Jambunath. There is nothing on record to show that Harish and Jambunath are one and the same. There is no merit in this contention. In the claim petition the claimants have stated that Harish was also called as Jambunath. The Wedding Invitation Ex. P1-10 shows that the deceased was also called as Jambunath. In Ex. P1-1 Ration Card also the name of the deceased is shown as Jambunath @ Harish. Therefore, there is no merit in the contention that the deceased Harish and Jambunath are not one and the same person. Accordingly, it is rejected.

18. It is clear from the evidence on record that the incident has occurred in the course of and arising out of employment. The deceased had valid driving licence at the time of incident. The Commissioner on proper consideration of the material on record has rightly awarded compensation. It is just and proper. Therefore, the impugned order and award does not call for interference.

Accordingly, the appeal is dismissed.

It is stated, the amount has been deposited by the appellant-Insurance Company before this court. The claimants i.e., respondents 1 to 4 are permitted to withdraw the amount.

I.A.1/14 does not survive for consideration and accordingly, it is rejected.