

(2015) 10 TP CK 0014
In the Tripura High Court
Case No : MFA(WC) No. 11 of 2012

The Oriental Insurance Co. Ltd.

APPELLANT

Vs

Tinku Roy and Others

RESPONDENT

Date of Decision : 08-10-2015

Acts Referred:

Citation : (2015) 10 TP CK 0014

Hon'ble Judges : Deepak Gupta, C.J.

Bench : Single Bench

Advocate : P. Gautam, Advocate, for the Appellant; A. Dasgupta, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Deepak Gupta, C.J.

1. This appeal arises out of the award passed by the Commissioner, Workmen's Compensation dated 08.03.2011 whereby the Commissioner has awarded compensation of Rs. 3,11,970/- along with interest from the date of the incident till payment of the amount to the claimant.

2. This appeal has been filed only by the insurance company. The employer has not filed any appeal.

3. In the petition filed before the commissioner it was alleged that the victim Arjun Roy husband of the claimant was employed as a driver with Sukanta Mitra. It was further alleged that on 10.04.2005 at night when he was on duty as per instruction and direction of the owner of the vehicle and the father of the owner namely, Shyamal Mitra he proceeded towards Santirbazar and was killed by some persons. It was alleged that since he was on duty the claimants were entitled to claim compensation. It was also alleged that the deceased was earning Rs. 4,500/- per month.

4. The claim petition was contested by both the respondent No. 1 and the

insurance company. The stand of the respondent No. 1 was that he is the owner of the vehicle. He has also admitted that the deceased Arjun Roy was the driver of the said maruti vehicle. It was however urged that Arjun Roy did not die during the course of duty. According to the owner on 10.04.2005 Arjun Roy was not on duty with the vehicle and no instructions had been given to Arjun Roy either by the respondent No. 1 or by his father to proceed towards Santirbazar or any other place. It was further alleged in the written statement filed by the respondent No. 1 that he has no knowledge about the manner in which the driver died but it was reiterated that the driver was not on duty. With regard to income it was stated that the deceased used to be paid Rs. 100/- day including food and tiffin charges.

5. The learned Commissioner after recording evidence held that the deceased had died because the miscreants who killed him wanted to steal the vehicle and therefore, according to the learned Tribunal the death was directly connected with the nature of duties and hence compensation was awarded. The appeal has been filed by the insurance company in which it is again urged by Sri Gautam that there is no evidence to show that the deceased died while he goes on duty. It is submitted that the finding of the learned Tribunal is based on conjunctures and surmises and is, therefore, not a proper finding.

6. Sri Dasgupta, learned counsel appearing on behalf of the respondent No. 2, owner has submitted that the deceased was only a casual employee, employed on day to day basis and he was not on duty on that day. He also urges that the deceased was murdered but that murder has no connection with his duties as driver and, therefore, the application is misconceived.

7. As far as the first objection of Sri Dasgupta is concerned that is totally misconceived and not based on record. Not a word has been said in the written statement that the deceased was a casual employee. It has been in no clear cut terms admitted by the owner in his written statement that the deceased Arjun Roy was the driver of the said maruti vehicle. No point had been raised before the trial Court that he was a casual employee and not a permanent employee. I do not understand on what basis it has been urged before this Court that Arjun Roy was a casual employee. The fact remains that Arjun Roy was an employee as admitted in the written statement. He was in possession of the car. In the written statement it was urged that no instruction had been given on that day to him to take the car to any place. The claimant had made a specific allegation which she had repeated in her evidence that the father of the owner of the maruti vehicle had instructed Arjun Roy to take the car. This fact was denied. The owner Sukanta Mitra filed his own affidavit wherein he again reiterated that he never instructed the deceased to proceed towards Santirbazar and he again reiterated that the deceased was not on duty. As pointed out earlier, the widow had clearly stated in her affidavit that her husband had been directed to proceed from Santirbazar by driving the vehicle to some other place through Udaipur. The father has not been examined by the owner.

8. The learned Tribunal has come to a finding of fact that the version given by the owner is false and incorrect. The learned Tribunal has made reference to the large number of documents including the FIR and charge sheets and on going through the documents he found that Arjun Roy was murdered and in the charge sheet it was alleged that he was murdered with a view to sell the vehicle in Bangladesh. The said vehicle was also being used for illicit carriage of timber. It is thus obvious that the miscreants who killed him because they wanted to steal the vehicle. Therefore, his death has a direct connection with his employment. He has not been killed because of some personal enmity but he has been killed because the miscreants wanted to steal the vehicle and sell it in Bangladesh. This case as rightly held by the Tribunal is squarely covered by the judgment of Court in Smt. Rita Devi and Others Vs. New India Assurance Co. Ltd. and Another, wherein the Apex Court held as follows:

"10. ***** There is no doubt that "murder", as it is understood, in the common parlance is a felonious act where death is caused with intent and the perpetrators of that act normally have a motive against the victim for such killing. But there are also instances where murder can be by accident on a given set of facts. The differences between a "murder" which is not an accident and a "murder" which is an accident, depends on the proximity of the cause of such murder. In our opinion, if the dominant intention of the Act of felony is to kill any particular person then such killings is not an accidental murder but is a murder simpliciter, while if the cause of murder or act of murder was originally not intended and the same was caused in furtherance of any other felonious act then such murder is an accidental murder.

14. Applying the principles laid down in the above cases to the facts of the case in hand, we find that the deceased, a driver of the autorickshaw, was duty bound to have accepted the demand of fare paying passengers to transport them to the place of their destination. During the course of this duty, if the passengers had decided to commit an act of felony of stealing the auto rickshaw and in the course of achieving the said object of stealing the auto rickshaw, they had to eliminate the driver of the auto rickshaw then it cannot but be said that the death so caused to the driver of the auto rickshaw was an accidental murder. The stealing of the auto rickshaw was the object of the felony and the murder that was caused in the said process of stealing the auto rickshaw is only incidental to the act of stealing of the auto rickshaw. Therefore, it has to be said that on the facts and circumstances of this case the death of the deceased (Dasarath Singh) was caused accidentally in the process of committing the theft of the auto rickshaw.

18. In the instant case, as we have noticed the facts, we have no hesitation in coming to the conclusion that the murder of the deceased (Dasarath Singh) was due to an accident arising out of the use of motor vehicle. Therefore, the trial court rightly came to the conclusion that the claimants were entitled for compensation as claimed by them and the High Court was wrong in coming to

the conclusion that the death of Dasarath Singh was not caused by an accident involving the use of motor vehicle."

9. The deceased was the driver of the vehicle. The story of the owner that the deceased was not on duty is unbelievable and unacceptable. The deceased admittedly was the driver and if he had taken the vehicle without the permission of the owner, the owner would have reported the matter immediately to the police. It was the police who brought to the notice of the owner that his vehicle had been found at some other place. The owner never lodged a complaint with the police that his vehicle was missing or that his driver had stolen the vehicle. It is thus clear that the story now put up by the owner is a totally false story just to try and avoid paying the penalty.

10. In view of the above discussion, I find that the finding given by the Commissioner, Workmen's Compensation are total findings of fact. No question of law much less substantial question of law arises in this appeal. Therefore, the appeal is dismissed. No order as to costs.

Send down the LCRs forthwith.