
(2013) 07 BOM CK 0118
In the Bombay High Court
Case No : First Appeal No. 330 of 2010

The Oriental Insurance Company Ltd.	APPELLANT
Vs	
Mohammad Sabir and Others	RESPONDENT

Date of Decision : 23-07-2013

Acts Referred:

Workmens Compensation Act, 1923 — Section 8

Citation : (2013) 5 ABR 975 : (2013) 6 ALLMR 130 : (2013) 6 MhLj 910

Hon'ble Judges : A.P. Bhangale, J

Bench : Single Bench

Advocate : A.R. Godbole, for the Appellant; D.T. Shinde, for Respondent Nos. 1, 3 and 4, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Bhangale, J.—The appeal is directed against the judgment and order, dated 30-03-2009 passed by the Commissioner under Workmen's Compensation Act, Amravati in Application (WCA) No. 20 of 2005 whereby the compensation in the sum of Rs. 3,73,915/- was awarded with interest @ 12% p.a. after one month from the date of incident holding the respondents jointly and severally liable to deposit the amount within one month from the date of the order. On failure to make payment within time, the respondents were directed to deposit 20% penalty on the principal amount of the compensation. The facts, briefly stated, are as under:-

The victim namely Mohammad Nisar Mohammad Sabir, aged about 23 years, was in the employment of respondent no. 1 on the vehicle-Metador bearing registration no. MH02-T 3035-407 owned by respondent no. 1 at the time of incident. On the fateful day, the deceased was driving the said vehicle from Anjangaon Surji to Daryapur. When the Metador reached near the Darshan Dhaba, it suddenly turned turtle on the road and the victim suffered serious injuries and died on the spot. The incident was reported to the Anjangaon Police Station on the same day. Police registered the offence accordingly. The vehicle

was insured with respondent no. 2/Insurer under the policy no. 163400/2005/4454 with the validity period from 16-07-2004 to 15-07-2005. The deceased was earning the salary of Rs. 4,500/- per month. The applicant/claimants-parents and sister of the deceased had issued notice to the respondents, but they failed to pay the compensation demanded. Hence, the applicants also demanded penalty from the respondents. Respondent no. 1 adopted the Written Statement filed by respondent no. 2/Insurer (vide pursis Exh. 23). The Insurer/Company denied the averments made in the application and disputed that the victim was on duty and in the employment of respondent no. 1 as a driver. Learned Commissioner held that victim Mohammad Nisar died while acting in discharge of his duties and that the accident arose out of employment and awarded compensation and penalty as aforesaid.

2. Heard the submissions at the bar. The question that arises for consideration is: whether the impugned Judgment and Order require any interference by this Court in exercise of its appellate jurisdiction and my answer is in the negative for the following reasons -

3. The incident was reported at Anjangaon Surji Police Station and the offence was registered vide FIR Exh. No. U13 and the post mortem examination was done over the dead body of the victim. It is surprising to note that though respondent no 1 was supposed to have thrown light upon the facts regarding the employment and wages of the deceased, respondent no. 1 chose to adopt the Written Statement filed by the Insurer and not to contest the claim independently. The deceased was holding driving license Exh. U15, with validity period covering the date of accident from 23.02.2005 to 22.02.2008 - for light motor vehicle. The salary of the deceased was Rs. 4,500/- per month including bhatta. In Anjangaon Surji, which falls within Zone II, the minimum wages were in the sum of Rs. 2000/- + special allowance of Rs. 378.

4. Mr. A.R. Godbole, learned Counsel for the appellant relied upon the ruling in the case of Gottumukkala Appala Narasimha Raju and Others Vs. National Insurance Co. Ltd. and Another, to argue that the Claim Petition ought to have been rejected on the ground that there was no evidence to establish relationship of the employer and the employee. In the ruling cited, the Apex Court in the facts of that case held that it was wholly absurd to suggest that the husband would be "Workman" of his wife as "employer" in the absence of any specific Contract. It was found that the appellants in that case had concocted the story of husband and wife living separately because if they have been living separately for certain dispute, the question of her husband being a "Workman" under her appears farfetched. The claim was held to be not bona fide but collusive between the owner of the tractor and the claimant against the Insurer. In the absence of relationship of the employer and the workman between the husband and the wife, the claim was held to be not maintainable under the Workmen's compensation Act.

5. Learned Counsel for the appellant also made reference to the ruling in the

case of National Insurance Company Ltd. Vs. Smt. Sabia Begum and Others, . In that case, the deceased driver of the lorry was son of the owner of the lorry. The father remained absent during the claim proceedings. Under the circumstances, the interested version of the wife was rightly disbelieved. Thus, there was no cogent evidence to prove relationship of the employer and the workman between the owner of the lorry and the deceased who were, in fact, father and son respectively.

6. Mr. D.T. Shinde, learned Counsel for Respondent nos. 1, 3 and 4 opposing the appeal contended that collusive and bogus claims were bound to be dismissed as in the rulings cited. He submitted that the rulings cited are not attracted in the facts and circumstances of the present case. In the case in hand, the claimants had led evidence about the relationship of the employer and the workman between the respondent no. 5 and the deceased. Nothing prevented the appellant from rebutting the evidence in the trial Court about the alleged absence of relationship between the deceased and the respondent no 5. But, for the reasons best known to the appellant, the Insurer and the respondent no. 5 chose not to lead the evidence to dispute the relationship of the employer and the employee between the deceased and the respondent no. 5/employer. The employer chose not to file Written Statement and filed only a precipe to state that he was merely adopting the Written Statement filed by the appellant/Insurer. Thus, there was no direct denial of the relationship of the employer and the workman between the respondent no. 5 and the deceased. Though participated in the proceedings in the trial Court, he chose not to lead any evidence nor challenged the impugned decision in this regard. Thus, the evidence led before the learned Commissioner positively indicated that the deceased stood in the relationship of the employer and the employer with respondent no. 5 when the deceased met the accident. Thus, in view of the socio-economic policy and objective of the Act, claim under Workmen's Compensation Act was rightly accepted and allowed.

7. Reference may be made to the ruling in the case of Oriental Insurance Co. Ltd. vs. Dyamavva & Ors. decided on 5 February, 2013 by the Bench comprising of Justice B.S. Chauhan and Justice Jagdish Singh Khehar, wherein it is observed in para 9 thus:-

9. Sub-sections (1) to (3) of Section 8 extracted above, leave no room for any doubt, that when a workman during the course of his employment suffers injuries resulting in his death, the employer has to deposit the compensation payable, with the Workmen's Compensation Commissioner. Payment made by the employer directly to the dependants is not recognized as a valid disbursement of compensation. The procedure envisaged in Section 8 of the Workmen's Compensation Act, 1923, can be invoked only by the employer for depositing compensation with the Workmen's Compensation Commissioner.

Consequent upon such "suo motu" deposit of compensation (by the employer) with the Workman's Compensation Commissioner, the Commissioner may (or

may not) summon the dependants of the concerned employee, to appear before him under sub-section (4) of Section 8 aforesaid. Having satisfied himself about the entitlement (or otherwise) of the dependants to such compensation, the Commissioner is then required to order the rightful apportionment thereof amongst the dependants, under sub-sections (5) to (9) of Section 8 of the Workmen's Compensation Act, 1923. Surplus, if any, has to be returned to the employer.

8. Regarding the quantum of the compensation, in the absence of the documentary evidence of the wages or salary, the learned Commissioner rightly resorted to the notification dated 3.4.2001 applicable to Anjangaon Surji falling within Zone II, in which the salary for skilled worker was Rs. 2000/- per month and special daily allowance prescribed was Rs. 378/- as per entry at s. no. 40/- for driver going on outstation duty in a transport vehicle computed at Rs. 1000/- per month and daily bhatta of Rs. 50/- per day, thus total minimum wages at Rs. 3,400/- per month do not appear to be unreasonable or excessive under the Minimum Wages Act. Thus, the Award was based on the minimum wages payable under the Minimum Wages Act was a well reasoned Award. Hence, no interference is warranted in the impugned order in exercise of the appellate jurisdiction. For the reasons stated hereinabove, therefore, the appeal has no merit. Consequently, the appeal is dismissed.