

(2015) 08 SHI CK 0072
In the High Court Of Himachal Pradesh
Case No : FAO No. 150 of 2013

United India Insurance Co. Limited	Vs	APPELLANT
Gayatri Devi and Others		RESPONDENT

Date of Decision : 03-08-2015

Acts Referred:

Constitution of India, 1950 — Article 136
Workmens Compensation Act, 1923 — Section 22

Citation : (2015) 08 SHI CK 0072

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Advocate : Pritam Singh Chandel, for the Appellant; Virender Singh Rathore, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sharma, J.

1. This appeal is instituted against the award dated 21.9.2012 rendered by the Commissioner (IV), Shimla Exercising Power under Employee's Compensation Act, 1923 in Case No. 13/2 of 2011/09.

2. "Key facts" necessary for the adjudication of this appeal are that respondent Nos. 1 and 2 instituted a claim petition under section 22 of the Workmen Compensation Act, 1923. Sh. Kishori Lal was engaged as driver by Sh. Narayan Singh, father of respondent No. 2 and husband of respondent No. 1. The truck met with an accident on 5.6.1997 near Petrol Pump, Kandaghat, District Solan. The age of Kishori Lal was 27 years at the time of accident and was paid Rs. 5,000/- per month as salary. FIR No. 44 of 1997 dated 5.6.1997 was registered.

3. Petition was contested by respondent Nos. 3 and 4. Factum of age of deceased has been denied. It was averred that every care was taken in maintaining the vehicle and it was in good running condition. He had instructed the driver to drive the vehicle safely. The truck in question was insured with the appellant

insurance company. Appellant-insurance company has denied that deceased died during the course of employment and was paid Rs. 5,000/- per month. There was no employer-employee relationship. Kishori Lal was not holding valid and effective driving licence.

4. Issues were framed by the Commissioner under Employee's Compensation Act. He awarded a sum of Rs. 4,27,140/- in favour of claimants with simple interest @ 12% per annum from 6.7.1997 till its actual realization. Hence, the present petition. This appeal was admitted on the following substantial question of law on 31.5.2014:

"Whether on account of misinterpretation and misconstruction of the given facts and circumstances and legal provisions, the impugned award being vitiated is perverse and is not legally sustainable?"

5. PW-1 Gayatri Devi has testified that Kishori Lal was her husband. He died on 5.6.1997. She has no source of income. Her husband used to earn Rs. 5,000/- per month and Rs. 100/- as daily expenses. He was holding valid licence for HMV vide Ex. PW-1/A. She has also tendered in evidence birth certificate of her daughter Ex. PW-1/B. The post-mortem report was mark-X. FIR was also registered.

6. RW-1 Sandeep Kumar has deposed that his father has died. His father had employed Kishori Lal as driver of truck. Truck met with an accident on 5.6.1997. Kishori Lal was driving the bus before driving truck. His licence was checked, which was verified from R.L.A. Theog. It was found to be correct. He has proved Ex. RW-1/A, insurance policy Ex. RW-1/B and cover note Ex. RW-1/C. The salary of Kishori Lal was Rs. 4,000/- per month and daily allowance was Rs. 80/-.

7. According to RW-1/3 Sheela Sharma, licence was renewed with effect from 24.8.1992 to 24.8.1995 and thereafter w.e.f. 28.9.1995 to 24.8.1998. Verification report was issued by the department. RW-3/3 Shashi Saini has deposed that as per record, policy Ex. PW-1/B was issued by their office, which was correct. The same was issued in the name of Narayan Singh. According to him, Kishori Lal was not having valid driving licence and the appellant-insurance company was not liable to pay compensation.

8. The insurance was valid with effect from 23.4.1997 to 22.4.1998. The accident has occurred on 5.6.1997. Factum of accident has been duly proved as per the statement of PW-1 Gayatri Devi coupled with FIR. Income of the deceased was Rs. 4,000/- per month and he was getting Rs. 80/- daily as dietary expenses. It is evident from the statement of RW-1 Sandeep Kumar that prior to driving truck, Kishori Lal used to drive the bus. He was holding a valid and effective driving licence. The driving licence was verified from R.L.A. Theog. Factum of renewal of driving licence stood proved from the statement of RW-1/3 Sheela Sharma from the office of SDM/RLA, Theog. The owner of the truck has taken all care to verify genuineness of the licence of the driver at the time of his engagement.

9. Mr. Pritam Singh Chandel has vehemently argued that the interest was payable from the date of award and not from the date of accident.

10. This question is no more res integra in view of the law laid down by their Lordships of the Hon"ble Supreme Court in *Saberabibi Yakubbbhai Shaikh and Others Vs. National Insurance Co. Ltd. and Others*, (2014) 1 ACC 82 : (2014) ACJ 467 : AIR 2014 SC 1393 : (2014) AIRSCW 1584 : (2014) 1 JT 550 : (2014) 1 SCALE 153 : (2014) 2 SCC 298 . Their Lordships have held as under:

"[8] We have perused the aforesaid judgment. We are of the considered opinion that the aforesaid judgment relied upon by the learned counsel for the appellants is fully applicable to the facts and circumstances of this case. This Court considered the earlier judgment relied upon by the High Court and observed that the judgments in the case of *National Insurance Co. Ltd. Vs. Mubasir Ahmed and Another*, (2007) 2 ACC 374 : (2007) ACJ 845 : AIR 2007 SC 1208 : (2007) 112 FLR 1033 : (2007) 3 JT 176 : (2007) 1 LLJ 1035 : (2007) 2 SCALE 455 : (2007) 2 SCC 349 : (2007) 1 SCC(L&S) 643 : (2007) 2 SCR 117 : (2007) 3 SLJ 62 : (2007) 1 UJ 240 and *Oriental Insurance Co. Ltd. Vs. Mohd. Nasir and Another*, (2006) ACJ 2742 : (2009) 121 FLR 1103 : (2009) 8 JT 26 : (2009) 3 LLJ 559 : (2009) 156 PLR 778 : (2009) 8 SCALE 161 : (2009) 6 SCC 280 : (2010) AIRSCW 866 : (2009) AIRSCW 3717 : (2009) 4 Supreme 589 were per incuriam having been rendered without considering the earlier decision in *Pratap Narain Singh Deo Vs. Srinivas Sabata and Another*, (1976) ACJ 141 : AIR 1976 SC 222 : (1976) LabIC 222 : (1976) 1 LLJ 235 : (1976) 1 SCC 289 : (1976) 2 SCR 872 : (1976) 8 UJ 139 . In the aforesaid judgment, upon consideration of the entire matter, a four-judge Bench of this Court had held that the compensation has to be paid from the date of the accident.

[9] Following the aforesaid judgments, this Court in *Oriental Insurance Company Limited versus Siby George and others* reiterated the legal position and held as follows:

"11. The Court then referred to a Full Bench decision of the Kerala High Court in *United India Insurance Co. Ltd. v. Alavi* and approved it insofar as it followed the decision in *Pratap Narain Singh Deo*.

12. The decision in *Pratap Narain Singh Deo* was by a four-judge Bench and in *Valsala K.* by a three-judge Bench of this Court. Both the decisions were, thus, fully binding on the Court in *Mubasir Ahmed* and *Mohd. Nasir*, each of which was heard by two Judges. But the earlier decisions in *Pratap Narain Singh Deo* and *Valsala K.* were not brought to the notice of the Court in the two later decisions in *Mubasir Ahmed* and *Mohd. Nasir*.

13. In the light of the decisions in *Pratap Narain Singh Deo* and *Valsala K.*, it is not open to contend that the payment of compensation would fall due only after the Commissioner's order or with reference to the date on which the claim application is made. The decisions in *Mubasir Ahmed* and *Mohd. Nasir* insofar as they took a contrary view to the earlier decisions in *Pratap Narain Singh Deo* and

Valsala K. do not express the correct view and do not make binding precedents."

[10] In view of the aforesaid settled proposition of law, the appeal is allowed and the judgment and order of the High Court is set aside. The appellants shall be entitled to interest at the rate of 12% from the date of the accident."

11. Their Lordships of the Hon''ble Supreme Court in Kerala State Electricity Board and Another Vs. Valsala K and Another, (1999) 2 ACC 656 : (2000) ACJ 5 : AIR 1999 SC 3502 : (2000) 1 CTC 563 : (1999) 7 JT 292 : (1999) 2 LLJ 1112 : (1999) 6 SCALE 31 : (1999) 8 SCC 254 : (2000) SCC(L&S) 50 : (1999) 2 SCR 657 Supp : (1999) AIRSCW 3496 : (1999) 8 Supreme 362 have held that the relevant date for determination of the rate of compensation is the date of the accident and not the date of adjudication of the claim. Their Lordships have held as under:

"[3] A four Judge Bench of this Court in Pratap Narain Singh Deo Vs. Srinivas Sabata and Another, (1976) ACJ 141 : AIR 1976 SC 222 : (1976) LabIC 222 : (1976) 1 LLJ 235 : (1976) 1 SCC 289 : (1976) 2 SCR 872 : (1976) 8 UJ 139 speaking through Singhal, J. has held that an employer becomes liable to pay compensation as soon as the personal injury is caused to the workmen by the accident which arose out of and in the course of employment. Thus, the relevant date for determination of the rate of compensation, is the date of the accident and not the date of adjudication of the claim.

[4] A two Judge Bench of this Court in The New India Assurance Company Limited v. V.K. Neelakandan, Civil Appeal Nos. 16904-16906 of 1996, decided on 6-11-1996, however, took the view that Workmen's Compensation Act, being a special legislation for the benefit of the workmen, the benefit as available on the date of adjudication should be extended to the workmen and not the compensation which was payable on the date of the accident. The two Judge Bench in Neelakandan's case (supra), however, did not take notice of the judgment of the larger Bench in Pratap Narain Singh Deo Vs. Srinivas Sabata and Another, (1976) ACJ 141 : AIR 1976 SC 222 : (1976) LabIC 222 : (1976) 1 LLJ 235 : (1976) 1 SCC 289 : (1976) 2 SCR 872 : (1976) 8 UJ 139 as it presumably was not brought to the notice of their Lordships. Be that as it may, in view of the categorical law laid down by the larger Bench in Pratap Narain Singh Deo's case, the view expressed by the two Judge Bench in Neelakandan's case is not correct.

[7] Insofar as these special leave petitions are concerned, we find that the accident took place long time back. Compensation became payable to the workmen, as it is not disputed that the accidents occurred during the course of employment, as per the law prior to the amendment made in 1995. Keeping in view the peculiar facts and circumstances of these cases, pettiness of the amounts involved in each of the cases and the time that has since elapsed, we are not inclined to interfere with the impugned orders, decided on the basis of the 1995 amendment, in exercise of our jurisdiction under Art. 136 of the Constitution of India and, therefore, dismiss the special leave petitions, but, after

clarifying the law, as noticed above."

12. Accordingly, in view of the analysis and discussion made hereinabove, there is no merit in the appeal and the same is dismissed. Pending application(s), if any, also stands disposed of. No costs.