

(2004) 04 SHI CK 0013
In the High Court Of Himachal Pradesh
Case No : F.A.O. (MVA) No. 150 of 1996

United India Insurance Co. Ltd.

APPELLANT

Vs

Chanchala Devi and Another

RESPONDENT

Date of Decision : 27-04-2004

Acts Referred:

Workmens Compensation Act, 1923 — Section 30

Citation : (2004) 3 ACC 46 : (2005) ACJ 777 : (2005) 1 LLJ 263 : (2004) 2 ShimLC 7823

Hon'ble Judges : R.L. Khurana, J

Bench : Single Bench

Advocate : Devyani Sharma, for the Appellant; Anup Ratan and Rahul Mahajan, for the Respondent

Judgement

R.L. Khurana, J.—One Kartar Chand on April 15, 1994 while working in the stone crusher of respondent No. 2 during the course of his employment sustained multiple grievous injuries and he succumbed to the injuries on April 18, 1994 at P.G.L, Chandigarh to which hospital he was shifted for treatment. Respondent No. 1 Smt. Chanchala Devi, his. widow approached the Commissioner, Workmen's Compensation, Nalagarh, u/s 4 of the Workmen's Compensation Act, 1923, seeking compensation for the death of the deceased.

2. Respondent No. 2, the employer of the deceased, admitted that the deceased was under his employment and that during the course of employment the deceased had sustained multiple injuries and he died due to such injuries.

3. The appellant, Insurance Company, while resisting the claim petition denied the deceased to be under the employment of respondent No. 2 at the relevant time. It was pleaded that the claim petition had been filed by respondent No. 1 in connivance with respondent No. 2 just to secure illegal compensation.

4. The Commissioner, on the basis of the evidence led before him by the parties, held that the deceased Kartar Chand was an employee, of respondent No. 2 at

the relevant time and that since the deceased sustained injuries during the course of his employment and had subsequently died, respondent No. 1 being the widow of the deceased was entitled to compensation. The Commissioner by taking the wages of the deceased as Rs. 1,000 per-month assessed total compensation payable at Rs. 67,776. Interest at the rate of 6% per annum with effect from April 18, 1994, the date of death of the deceased, till the date of the award, that is, March 29, 1996 amounting, to Rs. 7,794 was also awarded to the respondent No. 1. The respondent No. 2 as well as the appellant were called upon to deposit the amount of compensation as well as interest within 45 days of the making of the award, failing which they were held liable to penalty at the rate of 10% of the amount of compensation awarded.

5. Feeling aggrieved by the award dated March 29, 1996, the appellant is before this: Court by way of the present appeal assailing the award on the following grounds:

(a) the deceased was not in employment of respondent No. 2 at the relevant time and as such the claim petition was not maintainable under the Workmen's Compensation Act; and

(b) the appellant is not liable towards interest and penalty.

6. The question, whether the deceased was in the employment of respondent No. 2 or not, is purely a question of fact. Section 30 of the Workmen's Compensation Act, 1923 restricts the right of appeal to substantial questions of law only. No appeal lies on questions of fact. It is not open to the High Court to re-assess the evidence and to reverse any finding of fact reached by the Commissioner.

7. The findings of the Commissioner holding the deceased to be an employee under respondent No. 2 are based on evidence coming on record. Apart from the admission of respondent No. 2, the evidence produced by the appellant itself shows that the deceased at the relevant time was an employee of respondent No. 2. Therefore, it is not a case of findings on a question of fact based on no evidence.

8. In *National Insurance Co. Ltd. v. Bhan Singh and Anr.* 1998 Lab. I.C. 1181 two claim petitions were filed by the legal heirs of two deceased workmen. It was averred in both the petitions that the two deceased were drivers of the truck involved in the accident. A contention was raised by the Insurance Company therein that there could not have been two drivers in a truck and as such both the claim petitions were liable to be dismissed. The Commissioner, on the basis of the admission of the owner of the truck and evidence coming on record held one of the deceased to be the driver of the truck and the other deceased to be the helper and allowed compensation to both the sets of claimants. In appeal, it was held by the High Court of Orissa that such findings are essentially findings on a question of fact not liable to be disturbed in an appeal u/s 30 of the Act.

9. Again in *New India Assurance Co. Ltd. v. Kanmakar Bhoi Das and Anr.* 1998

Lab.I.C. 3254 it has been held that finding whether claimant was a workman arrived at by Commissioner on the basis of material on record is essentially a finding of fact which cannot be challenged in an appeal u/s 30 of the Act.

10. In so far as the liability of the appellant towards interest and penalty is concerned, the question is no more res- Integra in view of the authoritative pronouncement of the Hon''ble Apex Court in Ved Prakash Garg Vs. Premi Devi and others, wherein it has been held that the insurance company would be liable towards interest awarded but it would not be liable for payment of the amount of penalty levied u/s 4-A(3)(b) of the Act.

11. In view of the aforesaid law laid down by the Hon''ble Supreme Court, the appellant Insurance Company cannot escape its liability towards the amount of interest. However, it would not be liable for the amount of penalty imposed. The liability for payment of the amount of penalty shall be that of respondent No. 2, the employer of the deceased.

12. As a result, the present appeal is partly allowed and the impugned award dated March 29, 1996 of the Commissioner is modified to the extent that the appellant Insurance Company would be liable to pay the principal amount of compensation of Rs. 67,776 along with interest amounting to Rs. 7,794 as awarded by the Commissioner whereas the respondent No. 2 would be liable for payment of the amount of penalty of Rs. 6,778 as awarded by the Commissioner. The parties are left to bear their own costs.

13. The appellant Insurance Company has deposited a sum of Rs. 67,776, that is, the principal amount of compensation in this Court out of which a sum of Rs. 30,000 stands released in favour of the respondent No. 1. The balance amount lies invested in fixed deposit. It is directed that such balance amount along with interest accrued due thereon be paid to respondent No. 1 by remitting the same to her bank account, the particulars of which shall be supplied by the learned counsel for respondent No. 1 to the Registry of this Court.

14. The appellant Insurance Company and respondent No. 2 respectively shall deposit the amount of interest and penalty with the Registry of this Court within six weeks from today and on the amounts being so deposited, the same shall be paid to respondent No. 1 as aforesaid.