
(2004) 11 DEL CK 0064
In the Delhi High Court
Case No : FAO 355 of 2003

United India Insurance Co. Ltd.

APPELLANT

Vs

Omwati and Others

RESPONDENT

Date of Decision : 23-11-2004

Acts Referred:

Workmens Compensation Act, 1923 — Section 22, 32

Citation : (2004) 11 DEL CK 0064

Hon'ble Judges : R.S. Sodhi, J

Bench : Single Bench

Advocate : K.L. Nandwani, for the Appellant; Pratima Chaudhary, for R1, 2 and 3, for the Respondent

Judgement

R.S. Sodhi, J.—CM.758/2003 :

Delay condoned. Application disposed of.

2. FAO 355/2003 and CM.757/2003:

FAO 355/2003 is directed against the order dated 13.3.2003 of the Commissioner, Workmen's Compensation, Ashok Vihar, Delhi in WCD/16/NWD/02 whereby the Commissioner has awarded a sum of Rs. 4,19,840/- as compensation for the death of Vijay Kumar who according to the Commissioner, Workmen's Compensation was an employee of Sh.Sunil and died during the course of employment. The claimant was also awarded Rs. 2500/- as funeral charges.

3. Facts of the case as noted by the CWorkmen's Compensation are as follows:-

In the claim petition the petitioner has stated that her husband the deceased Sh. Vijay Kumar, son of Sh. Randhir Singh, a workman, was employed with the opposite party No. 1 as driver on his vehicle bearing No. HR-55-A-1344- Truck. On 9-12-2001 at about 7.00 am the deceased Sh. Vijay Kumar started his professional visit from Ladpur on the said vehicle as driver and got the vehicle

repaired at Punjabi Bah and after getting the said vehicle repaired the deceased driver Sh. Vijay Kumar completed 2 local trips for carrying goods in Delhi. Thereafter he started for 3rd trip and reached Bawana but while he was driving the said vehicle, he felt problem due to continuous hard work thought out the day and strain and stress of fetching the goods and driving the same and the truck was stopped on the road side at Bawana and he went to a shop but he fainted. It was about 8.00 pm. He was immediately taken up by the PCR to Babu jagjivan Ram Memorial Hospital and there he was declared as brought dead at 9.10 pm. case was registered under police station Bawana vide DD No. 18 A dated 09.12.2001. It has been further stated that the deceased died out of and during the course of employment as the position of the deceased deteriorated due to strains and stress of continuous driving which resulted into his death causing failure of bodily organ. The vehicle bearing NO HR-55-A-1344 was owned by the respondent No. 1 at the time of accident and it was insured with respondent No. 2 vide policy No. 221900/31/01/01640 for the period of 15.10.2001 to 14.10.2002. A comprehensive policy was taken and an additional premium was paid under W.C. Act. The applicants are dependents of the deceased workman being his widow and minor daughters. It has been also stated that the deceased was drawing wages @ Rs. 3016/0- per month as per Minimum Wages Act plus Rs. 50/- per day as allowances, which comes to Rs. 4516/- per month and the deceased was aged about 24 years at the time of accident. Respondent No. 1, owner of the vehicle was having the notice of accident since the day of its occurrence and he informed the Insurance Co. /respondent No. 2 immediately after the accident. They prayed for compensation as per workmen's compensation Act along with interest @ 12% p.a. And penalty @ 50 as envisaged under the W.C. Act.

Notices were served upon the respondents. Respondent No. 1 in his reply has raised some preliminary objections viz. Sh. Vijay Kumar son of Sh. Randhir Singh was engaged to driver truck/dumper bearing No HR -55-A-1344 of Respondent No. 1 for a day only i.e. 9.1.2001, in the absence of regular driver Sh. Sanjay and Sh. Vijay Kumar does not come within the definition of the term "workman" as defined u/s 32(n) of the W.C. Act. At the time of assigning the work of driver on 9.1.2.2001 late Sh. Vijay Kumar neither disclosed that he was suffering from any disease including that of heart trouble at the relevant time nor did he appear to be sick on the very appearance. No employee-employer relationship was subsisting between the parties. The person engaged on casual basis does not fall within the definition "workman" as defined under the provisions of W.C. Act. It has been further stated that the respondent No. 1 is not liable to pay any amount as compensation to the petitioners u/s 22 of W.C. Act because no accident has arisen or taken place on 9.12.2001 on the vehicle. On merits it has been stated that on 9.12.2001 late Sh. Vijay Kumar brought the vehicle from Ladpur to Mangolpuri, Delhi for some repairs up to 3.00 pm Late Sh. Vijay Kumar took delivery of the vehicle at about 3.00 pm and thereafter he went to collect soil to Bamrolli, a village in Haryana in the vicinity of Delhi, for dumping the

same in land of Bawana Industrial Area. Sh. Vijay Kumar made 2 rounds of dumping the soil till 6.00 pm and when the Respondent No. 1 along with late Sh. Vijay Kumar who was driving the truck, returning to Ladpur, on the way near Bawana the near left side wheel of the truck got punctured and the truck was taken to the nearby workshop for getting he puncture repaired. Late Sh. Vijay Kumar parked the vehicle for the repair of the puncture and told the respondent No. 1 that he is going to visit some relations and he shall not drive the truck back to village Ladpur and Respondent No. 1 should make necessary arrangement for taking the vehicle back to Ladpur. It has been further stated that as far as the mater concerning arrival of PCR and PCR having taken late Sh. Vijay Kumar to Babu Jagjivan Ram Memorial Hospital where he was declared brought dead is concerned, the same was not within the knowledge of the respondent No. 1. He could come to know the matter latter. In his reply the factum of wages has been denied. It has been stated that late Sh. Vijay Kumar was engaged for driving the respondent's truck/dumper for only one day i.e. 9.1.2001 and the casual employment is not covered under W.C. Act. Respondent No. 2 has also filed the reply. The objection of the Insurance CO. is that no documents pertaining to the alleged claim were supplied to the Insurance Co. The deceased was not employed with the insured Sh. Sunil Kumar. The petitioner is not the legal heir/only legal heir of the alleged deceased Sh. Vijay Kumar was not holding a valid and effective driving license at the time of the death. There was no accident with the deceased and it was a natural death. Respondent No. 2 has denied all the averments made in the petition. However, factum of insurance has not been denied on the pleadings of the parties the following issues were framed:

1. Whether the deceased was the workman under the workmen's compensation Act or not?
2. Whether this was an accident and the deceased died due to accident out of and during the course of employment?
3. If issues 1 and 2 are affirmative, to what about of compensation the applicants are entitled and what directions are necessary?
4. It is contended by counsel for the Insurance Company that there is no evidence on record, in the nature of an affidavit by the employer, that the deceased was a permanent employee. He submits that workman had been employed for one day only to ply a truck and towards the fag end of the evening abandoned the truck and employment. He is not "workman" under the Workmen's compensation Act who could claim compensation. Further, the workman did not die during the course of employment.
5. Heard counsel and have gone through the judgment under challenge. It appears to me that this issue of whether deceased was a workman, has been raised before the Commissioner who has categorically found that the workman was employed with Shri Sunil and was drawing a wage of Rs. 3,016/- per month

plus Rs. 50 per day as allowance.

6. Having gone through the record, I find there is no mention of the workman having been paid daily wages. There is also nothing on record to show that any payment was made to him on the date when he allegedly relinquished his service.

7. In that view of the matter a bald statement of the owner of the vehicle that the workman had been employed on daily wage is of no consequence. Further, this being a question of fact having been adjudicated upon by the workmen's Commissioner, I find no ground to interfere.

8. FAO 355/2003 is dismissed. CM.757/2003 also stands dismissed. The amount deposited may be released forthwith to the claimant in accordance with law.