
(2018) 07 J&K CK 0099

In the Jammu And Kashmir High Court

Case No : Miscellaneous Appeal No.266 Of 2010

United India Insurance Co. Ltd. @APPELLANT@Hash Begma Begum And Others.

Date of Decision : 27-07-2018

Acts Referred:

Employees' Compensation Act, 1923 — Section 4, 30

Citation : (2018) 07 J&K CK 0099

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. This appeal under Section 30 of the Employees' Compensation Act, 1923 (hereinafter referred to as 'the Act') is directed against the award

of the Commissioner Workmen's Compensation Act (ALC), Kishtwar (hereinafter referred to as 'the Commissioner') dated 08.02.2010.

2. Briefly stated, the facts leading to the filing of this appeal are that the deceased-workman, namely, Ghulam Mohd. Ganai was employee of

respondent No.8. He met with an accident under and in the course of employment with respondent No.8 on 13.06.2006 and sustained grievous injuries to which he later succumbed on 26.06.2006. The respondent No.1 is wife of the deceased whereas respondent Nos. 2 to 7 are his children. The

respondent No.1 to 7 filed a claim petition under the Act before the Commissioner alleging therein that the deceased at the time of accident was 45

years old and earning monthly wages of Rs.4,000/-. It was also pleaded that since the accident had taken place under and in the course of

employment of respondent No.8, as such, respondent No.8 was liable to pay compensation in terms of Section 4 of the Employees Compensation Act.

The appellant was also arrayed as party respondent on the ground that the

appellant had insured respondent No.8 qua five labourers working under him. The notices in the claim petition were sent to the appellant as well as respondent No.8. Both chose not to appear and contest the claim.

Accordingly, the claim petition proceeded ex-parte and culminated into passing of the award to the tune of Rs.3,38,880/- in favour of respondent Nos.

1 to 7. Feeling aggrieved, the appellant-Insurance Company has filed the instant appeal after making requisite pre-deposit of the whole of the awarded amount i.e. Rs.3,38,880/- before the Commissioner.Â

3. Heard learned counsel for the parties and perused the record.

4. The only argument raised by the appellant in this appeal to assail the validity of the award is that the respondent No.8 had sought insurance cover

with regard to five labourers working under him and had disclosed their monthly wages as Rs.1200/- for which the appellant-Company had charged

requisite premium and therefore, the appellant cannot be fastened with the liability higher than the one computable by reference to the wages of the

deceased as Rs.2700/-. It is, thus, submitted that the Commissioner while awarding compensation has taken the wages of the deceased-workmen as

Rs.4,000/- per month and, accordingly, worked out the compensation.

5. The learned counsel for the appellant further submitted that he is not against the award of compensation given by the Commissioner but is

aggrieved only to the extent of liability fastened on the appellant-Insurance Company. He, therefore, submitted that the liability of the Company is only

to the extent of payment of such compensation as would become payable by taking the monthly wages of the deceased as Rs.1200/- per month and

rest of the award is required to be satisfied by the owner.

6. Considered the submissions made by learned counsel for the appellant on this aspect. It is noticed that the appellant-Company had not filed any

objection/statement of fact before the Commissioner and it had chosen not to contest the claim. The relevant Clause in the Insurance Policy providing

for the limited liability of the Insurance Company, as projected by the learned counsel for the appellant, was neither pleaded nor proved and was not

even brought to the notice of the Commissioner. Except the cover note which is part of the appeal, nothing more has been brought to my notice. I tried

to find out as to whether there is any such condition in the Insurance Policy which restricts the liability of the Insurance Company in the manner it is

argued by the learned counsel for the appellant, I found none.

7. The argument of the learned counsel for the appellant is that since the Appellant-Insurance Company had charged premium on the basis of annual

wages of each workman, as such, its liability cannot be beyond what is workable in reference to the wages disclosed by the insured. The argument is

seemingly attractive but does not find support from any terms and conditions of the Insurance Policy and atleast none was brought to notice of this

Court. Needless to say that the Commissioner is the final authority on facts and the appeal lies only, if there is substantial question of law involved. For

determination of such substantial question of law, Court is supposed to rely on the material on record.

8. In view of the aforesaid, I do not find that having regard to the material on record any substantial question of law arises for determination in this

case. The abstract questions of law divorced from supporting material on record are not required to be determined only to satisfy the academic

hunger. The appeal, therefore, fails and hence dismissed. The Commissioner is directed to release the awarded amount in favour of respondent Nos. 1

to 7.