

(2019) 10 RAJ CK 0061

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 1512 Of 2006

United India Insurance Co.ltd.

APPELLANT

Vs

Udai Singh And Anr

RESPONDENT

Date of Decision : 17-10-2019

Acts Referred:

Workmen's Compensation Act, 1923 — Section 4, 4(1)(a), 4(1)(b), 4(1)(c), 23, 30

Citation : (2019) 10 RAJ CK 0061

Hon'ble Judges : Dr. Pushpendra Singh Bhati, J

Bench : Single Bench

Advocate : Jagdish Vyas, Arun Dadhich

Final Decision : Disposed Of

Judgement

1. This misc. appeal under Section 30 of the Workmen's Compensation Act has been preferred by the appellant-Insurance Company claiming the following reliefs:

"It is, therefore, most respectfully prayed that this appeal may kindly be allowed with costs and the impugned judgment and award dated 10.1.06 passed by the learned Commissioner, Workmen's Compensation, Udaipur in W.C. Case No.44/2004 may kindly be quashed and set aside and claim petition may kindly be dismissed as against the appellant company. Any other order which is deemed just and proper in the facts and circumstances of the case may kindly be passed in favour of the appellant-company."

2. The unfortunate accident had happened on 28.12.2002 when the claimant was driving a Jeep bearing registration No.RJ06 C 2640 in connection with his engagement of the Jeep owner/non-claimant No.1 and the same met with an accident with Truck bearing registration No.RJ32 G 1319.

3. The substantial question of law as raised by learned counsel for the appellant-Insurance Company is two-fold; firstly whether husband can be under employment of his wife, and secondly, whether doctor's opinion can be

substituted by the opinion of the learned Authority below, and that too for no good reason.

4. Learned counsel for the appellant-Insurance Company submits that if the vehicle is owned by the wife and driven by her husband, does not necessarily mean that the husband was under employment of his wife.

5. Learned counsel for the appellant-Insurance Company has relied upon the precedent law laid down by the Hon'ble Apex Court in Gottumukkala Appala Narasimha Raju & Ors. Vs. National Insurance Co. Ltd. & Anr. reported in MACD 2007(1)(SC) 463, relevant portion whereof reads as follows:

"5. The owner of the tractor, being wife of the deceased, raised a contention that she and her husband had been living separately prior to the date of accident and the tractor in question being insured with the 1st respondent herein, she was not liable to pay any amount to the claimant by way of compensation. She, however, examined herself as PW-1. Although, no such case was made out in the objection filed by the owner of the tractor, it was alleged that her brother had engaged the deceased on a monthly salary of Rs.3,000/- per month and Bata of Rs.25/- per day."

6. Learned counsel for the appellant-Insurance Company further submits that on a bare perusal of the medical certificate, the disability is 12% whereas benefit has been extended while taking the disability as 50%. Learned counsel for the appellant-Insurance Company has further demonstrated from the medical report that the injury in question was only on a finger, and would barely put an impediment for driving.

7. Learned counsel for the respondents has however, shown to this Court the statement rendered by the claimant, in which, he has categorically stated that he was under employment of his wife and was driving the vehicle in question while discharging the duties for her.

8. Learned counsel for the respondents has further demonstrated that there was no such rebuttal by the owner of the vehicle, which could effectively deny the employer and employee relationship.

9. Learned counsel for the respondents has relied upon the judgment rendered by Karnataka High Court in New India Assurance Co. Ltd. Vs. G.D. Dengi & another. reported in 2009 ACJ 168, relevant portion whereof reproduced hereunder:

"10. No doubt, respondent No. 1 is none other than the father and respondent No. 2 is the mother of the deceased Umesh. Respondent No. 1 is the owner of Maruti van which was involved in the accident. Respondent No. 1 admitted the relationship of employer and the employee with himself and the deceased. It is seen that respondent No. 2 has claimed that she is the resident of Bijapur whereas respondent No. 1 who is the owner of the vehicle, is the resident of Solapur. In view of the law laid down by this Court in Oriental Insurance Co. Ltd.

v. Hanumant, 2006 ACJ 251 (Karnataka), it has to be held that the fact that parties are father and son is not a ground to infer the absence of relationship of employer and employee under the Act. In the instant case, respondent Nos. 1 and 2 are living separately and according to the claimant-respondent No. 2, she was dependent on the income of her son, deceased Umesh. Merely because there was no divorce between the respondent Nos. 1 and 2, is not a ground to disentitle the respondent No. 2 from claiming compensation. She has deposed before the court that she is residing separately from her husband since last three to four years. So also it may not be possible for claimant-respondent No. 2, to produce documentary proof to establish contract of employment. In view of peculiar family relationship, as rightly held by the co-ordinate Bench of this Court in case of Oriental Insurance Co. Ltd. v. Hanumant, 2006 ACJ 251 (Karnataka), merely because respondent No. 1 and the deceased were father and son, is not a ground in law to infer absence of relationship of employer and employee under the Workmen's Compensation Act. Therefore, the Commissioner has rightly held that there exists the relationship of employer and employee between the deceased and the respondent No.1."

10. Heard learned counsel for the parties and perused the record of the case along with the precedent law cited at the Bar.

11. This Court takes note of the fact that 12 years ago, a sum of Rs.50,000/- has been disbursed to the respondent No.1. It cannot be a broader principle that if a person is a spouse, then he/she cannot be said to be under an employment of the other spouse, and therefore, at this belated stage, this Court does not deem it appropriate to make any interference in the impugned order on this count, more particularly, looking into the overall circumstances including the evidence rendered.

12. However, on a perusal of the record, including the injury report, this Court finds that enhanced consideration of disability to the extent of 50%, when the disability certificate itself revealed 12% disability cannot be justified, in the given facts and circumstances. Further on a perusal of the injury report as well as considering the circumstances, in which such disability certificate has been not taken into account as it is, this Court is inclined to interfere to this extent in the impugned order. Thus, the respondent-claimant shall be entitled to the compensation while taking the disability as 12%. The amount in question would be about Rs.50,000/- instead of Rs.1,88,928/- along with interest @ 12% per annum, and therefore, the appeal is disposed of while directing that the amount of compensation of Rs.50,000/- already paid stands to cover the compensation demanded by the respondents-claimant. No other compensation shall be payable except for Rs.50,000/- already paid. Further, any other amount in excess to the amount already paid to the claimant shall be returned back to the Insurance Company accrued interest. All pending applications also stand disposed of.