
(2012) 01 RAJ CK 0089

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 3813 of 2007

United India Insurance Company Ltd.

APPELLANT

Vs

Shankar Lal and Another

RESPONDENT

Date of Decision : 04-01-2012

Acts Referred:

Workmens Compensation Act, 1923 — Section 2(1)(n), 30

Citation : (2013) 1 ACC 308 : (2013) ACJ 1878

Hon'ble Judges : Prashant Kumar Agarwal, J

Bench : Single Bench

Advocate : Virendra Agarwal and Mr. Prateek Sharma, for the Appellant;
Praveen Jain, Advocate for the Respondent No. 1 and Mr. Prakash Kaushik,
Advocate for the Respondent No. 2, for the Respondent

Final Decision : Dismissed

Judgement

Prashant Kumar Agarwal, J.—Heard learned Counsel for the parties. The appellant-Insurance Company has preferred this civil misc. appeal u/s 30 of the Workmen's Compensation Act, 1923 (hereinafter referred to as "the Act") against the judgment and award dated 19th July, 2007 passed by Workmen's Compensation Commissioner, Ajmer District, Ajmer in Claim Case No. W.C.C./N.F./30/2005 whereby an award for Rs. 3,12,350 along with interest has been passed in favour of the claimant-respondent Shri Shankar Lal and against the appellant-Insurance Company.

2. The brief relevant facts for the disposal of this appeal are that the claimant-respondent Mr. Shankar Lal filed a claim petition on 17th June, 2005 against the appellant and respondent No. 2 Shri Vijay Kumar claiming compensation on account of loss suffered by him due to the injuries caused in an accident allegedly occurred on 1st April, 2005 when he was working under the instructions of respondent No. 2 Shri Vijay Kumar on a thresher which was attached with the tractor bearing Registration No. RJ-01-R-1411 and which at the time of alleged accident was being used to cut the crops in the field of Mangal Ram Koli.

According to the claimant, when he was working on the thresher attached with the above tractor, his right hand came in touch with it and as a result of that he lost his right hand above elbow.

3. The appellant as well as respondent-Vijay Kumar filed their respective reply to the claim petition and it was averred by them that there was no relationship of employer and employee between the respondents. The appellant-Insurance Company also averred that the thresher in question is not a motor vehicle and it was neither registered nor insured with the appellant-Insurance Company at the time of alleged accident. It was further pleaded that by way of insurance policy only the risk of the driver of the tractor was covered under the provisions of the Act and as the claimant was not a driver of the said tractor and no premium was charged by the appellant to cover the risk of any other person including the claimant, the appellant is not liable to pay compensation.

4. On the basis of pleadings, necessary issues were framed by the learned Commissioner. Oral as well as documentary evidence was produced and after hearing the respective parties, the learned Commissioner passed the impugned order and awarded an amount of Rs. 3,12,350 as compensation along with interest and it was ordered that the appellant-Insurance Company is also liable to pay the amount. Feeling aggrieved and dissatisfied by the impugned judgment and award, the appellant-Insurance Company is before this Court by way of this appeal.

5. I have heard the learned Counsel for the respective parties and also gone through the record made available for my perusal as well as the relevant legal provisions and the case law relied upon by the parties.

6. Section 30 of the Act provides that an appeal can be filed only on substantial question of law. In my view, looking to the facts and circumstances of the case, following substantial questions of law have arisen requiring consideration of this Court:

(1) Whether the claimant was a casual worker at the time of accident and as such not a "workman" within the meaning of provisions of the Act?

(2) Whether thresher is not a part of a tractor and as at the time of accident it was not separately insured with the appellant, the appellant-Insurance Company is not liable to pay compensation?

(3) Whether the tractor was insured only for the driver and not for a person working on the thresher and, (therefore, the appellant-Insurance Company is not liable to pay compensation?

7. My findings with the reasons on each of the questions raised aforesaid are as below:

(1) Although from the evidence available on record, it appears that the claimant was engaged by the respondent Shri Vijay Kumar on the date of accident on

daily basis to work on the thresher, but only by that reason it cannot be held that the claimant was a casual worker and, therefore, is not covered under the provisions of the Act. According to the definition the word "workman" as given in Section 2(1)(n) of the Act (as was applicable at the relevant time) "workman" also means any person who is employed in any such capacity as is specified in Schedule-II. According to this provision if the employment is of a casual nature but it is covered under any of the items specified in Schedule-II, even then such person shall be a "workman" within the meaning of the Act and provisions of the Act would be applicable. Schedule-II of the Act provides list of those persons who are included in the definition of "workman". According to Item No. (xiv) of the Schedule-II, a person employed in mechanized harvesting and threshing operations is a workman. In the present case also as the claimant was working on the thresher of the respondent Shri Vijay Kumar at the time of accident, therefore, even if the claimant was engaged for that day only, even then he shall be considered to be a workman within the meaning of word "workman" as provided in Section (2)(1)(n) of the Act. Therefore, the appellant-Insurance Company cannot escape from its liability to compensate on the ground that the claimant was a casual worker.

(2) Although, a thresher independently cannot be a motor vehicle within the meaning of Motor Vehicles Act, 1988 and at the time of accident it was neither registered nor insured separately, but only by that reason it cannot be said that the appellant-Insurance Company is not liable to pay compensation as it is an admitted fact that tractor concerned was insured for agriculture purpose with the appellant company and there is no provision for registration or insurance of a thresher. The learned Single Bench of this Court in the case of National Insurance Company v. Meera, reported in I (2010) ACC 333=2010 (1) T.A.C. 254 (Raj.), in similar circumstances has held that "the tractor includes equipments used for the purpose of propulsion. Thresher which was being propelled/operated by the tractor is very much an equipment used for the purpose of propulsion by the tractor and is contemplated to be carried by tractor and it cannot be said like trailer or semi trailer, so as to fall within the meaning of any vehicle, so as to require any separate registration, or separate insurance cover." In that case also, the claimant got injured while working on a thresher attached with a tractor. Negating the submissions made on behalf of the Insurance Company, the learned Single Bench came to a conclusion that thresher attached with a tractor does not require separate and independent registration and insurance and if the tractor to which the thresher was attached is insured, then Insurance Company is liable to pay compensation. In the present case also as the aforesaid tractor was comprehensively insured with the appellant-Insurance Company, therefore, it is liable to pay compensation.

(3) The contention of the appellant is that the tractor was insured only for one person i.e. for the driver only and not for any other person either working on the tractor or on the thresher attached to it and, therefore, the Insurance Company is not liable to pay compensation for the injuries received by the claimant who

was admittedly working on the thresher. It was also submitted that although the tractor was comprehensively insured, but it does not mean that it would cover the risk of such employee who has not been specified in the insurance policy. In support of his submissions, the learned Counsel for the appellant relied upon the case of Oriental Insurance Company Ltd. Vs. Birbal and Another, .

I am of the view that looking to the facts of the case the contention made on behalf of the appellant-Insurance Company is not tenable. The insurance policy (Ext. N.A./1) available on record shows that Rs. 25 were received as premium by the appellant for one employee under the provisions of the Act. In the policy it is not mentioned that this amount has been received only for a driver of the tractor and not for any other employee, therefore, it cannot be said that only driver of the tractor was covered by the policy. In similar circumstances, the Hon''ble Single Bench of this Court in the case of United India Insurance Co. Ltd., Jaipur v. Roshan, reported in 2010 R.A.R. 474 (Raj.), has held that as the cover note had not specified or limited its liability only for driver, the Insurance Company is liable to pay the compensation. In the present case, as the insurance policy does not specifically cover only the driver of the tractor, therefore, it should be held that any employee working on the tractor or on the thresher attached to the tractor is covered under the policy and the appellant-Insurance Company is liable to pay compensation. The decision relied upon by the learned Counsel for the appellant is of no help as in that case the insurance policy specifically provided that only driver is covered under the provisions of the Act.

8. It was also contended on behalf of the appellant that in the present matter the F.I.R. has been lodged with a delay of seven days and no explanation for such delay has come on record and, therefore, the claim petition was liable to be dismissed on that ground itself.

9. In this regard, the well settled position of law is that mere delay in lodging FIR cannot be a ground to doubt the claimant's case. In the present case, the point regarding delay in lodging FIR has been considered by the learned Commissioner and the same has rightly been rejected looking to the facts and evidence on record. Apart from that, this contention cannot be said to be a substantial question of law as it depends on facts of the case.

10. No other substantial question of law can be said to have arisen in the present case. As discussed above, none of the contentions made on behalf of the appellant-Insurance Company can be said to be tenable, therefore, the appeal is liable to be dismissed. Consequently, the appeal being devoid of any merit is, hereby, dismissed. No order as to costs.