
(2009) 07 UK CK 0037

In the Uttarakhand High Court

Case No : Appeal from Order No. 231 of 2007

United India Insurance Company Ltd.

APPELLANT

Vs

Smt. Prakash Devi and Another

RESPONDENT

Date of Decision : 28-07-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 143, 149, 149(2)
Workmen's Compensation Act, 1923 — Section 30

Citation : (2009) 3 UC 1769

Hon'ble Judges : B.C. Kandpal, J

Bench : Single Bench

Advocate : Pankaj Purohit, for the Appellant; B.P. Nautiyal, for Respondent No. 1, V.K. Kohli assisted by I.P. Kohli, for the Respondent

Final Decision : Dismissed

Judgement

B.C. Kandpal, J.—This appeal, u/s 30 of Workmen's Compensation Act, 1923, has been preferred by the United India Insurance Company Ltd. i.e. insurer of offending vehicle No. U.P. 07A/9487, against the judgment and order dated 18-04-2007 passed by Workmen's Compensation Commissioner / District Magistrate, Tehri Garhwal, in W.C. Case No. 16/2006, Smt. Prakash Devi v. Sri Ramesh Sethi and Anr.

2. The claimant- Smt. Prakash Devi filed a claim petition before the Workmen's Compensation Commissioner for grant of compensation in lieu of death of her son in a motor vehicle accident alleging therein that her son Vinod Kumar was employed as a driver in the offending vehicle Truck No. UP. 07A-9487 owned by opposite party No. 1 and he died in an accident arising out of and in the course of his employment on 27-02-2003. It has also been alleged that deceased was 28 years of age at the time of his death and was getting a salary of Rs. 3000/- per month.

3. Opposite party No. 1 owner of vehicle contested the claim petition by filing his written statement. He has admitted the factum of death of deceased in the

accident on 27-02-2003 in vehicle No. U.P. 07A-9487. He has also admitted the fact that he used to give a sum of Rs. 3000/- per month to the deceased as salary; driver of vehicle in question was having valid driving licence and vehicle was insured on the date of accident. He has denied the fact that deceased was 28 years of age at the time of his death.

4. Opposite party No. 2 United India Insurance Company Ltd. filed its written statement and alleged that claimant was living with her two sons Ravi Dutt Dheeman and Dev Dutt Dhiman. It has been alleged that accident had taken place within the jurisdiction of village Maroda P.S. Chamba, District Tehri Garhwal, therefore the court at Dehradun has no jurisdiction to hear the case. It has also been alleged that amount of compensation claimed is excessive. It has further been alleged that at the time of accident deceased Vinod Kumar was not the workman of opposite party No. 1 and he was not having valid driving licence and vehicle was not having valid permit, therefore the answering Respondent is not liable to pay the compensation.

5. On the basis of pleadings of the parties, the Learned Workmen's Compensation Commissioner framed necessary issues. Parties led evidence in support of their case.

6. The Workmen's Compensation Commissioner having considered the entire material evidence available on record and hearing Learned Counsel for the parties directed that the insurance company shall pay a sum of Rs. 3,11,970/- to the claimant, vide judgment and order dated 18-04-2007.

7. Feeling aggrieved by the aforesaid impugned judgment and award, the insurer of vehicle has preferred the present appeal before this Court.

8. Heard Sri Pankaj Purohit, Learned Counsel for the Appellant, Sri BP. Nautiyal, Learned Counsel for Respondent No. 1, Sri V.K. Kohli, Learned Senior Advocate assisted by Sri IP. Kohli, Learned Counsel for Respondent No. 2 and perused the record.

9. Learned Counsel for the Appellant/insurance company has argued that Learned Workmen's Compensation Commissioner has erred in fastening the liability to pay the compensation upon the Appellant despite the fact that offending vehicle was being plied on the road without permit. Therefore, he has submitted that the insurance company cannot be held liable to pay the compensation to the claimant under the contract of insurance.

10. I fail to appreciate the argument advanced by Learned Counsel for the insurance company. It was the duty of the insurance company to verify the fact that permit of vehicle was valid or not, at the time of insurance of vehicle. Here, since the insurance company has insured the vehicle despite the fact that permit was not valid at the time of accident; therefore the insurance company cannot escape its liability to pay the compensation on this ground.

11. My attention has been drawn towards the decision of the Hon''ble Apex Court

rendered in the case of National Insurance Co. Ltd. Vs. Mastan and Another, , in which the Hon''ble Apex Court has held that defence available to insurance company under the Workmen's Compensation Act are limited to those envisaged u/s 149(2) of Motor Vehicles Act. The Hon''ble Apex Court is of the view that applicability of provisions of Motor Vehicles Act in a proceeding under the Workmen's Compensation Act, is confined to a matter coming within the purview of Chapter X only.

12. Further, the Full Bench of High Court of Orissa at Cuttack, by relying the aforesaid decision, in the case of National Insurance Co. Ltd. Vs. Panibudi Chulia and Others, , has held as under:

7. Learned Counsel appearing for the parties at the time of hearing fairly submitted that the decision rendered by the Apex Court in the case of New India Assurance Co., Shimla Vs. Kamla and Others etc. etc., , is based on Section 149 of the Motor Vehicles Act, 1988. Learned Counsel for Appellant Mr. Mishra, could not place any similar provision in the Workmen's Compensation Act exhaustively and did not find any similar provision as that of Section 149 of Motor Vehicles Act, 1988. Learned Counsel for Appellant Mr. Mishra relied upon a decision of the Apex Court in the case of Smt. Rita Devi and Others Vs. New India Assurance Co. Ltd. and Another, . The dispute in the said case was as to whether death was due to the motor accident or due to murder. After perusal of the entire judgment we do not find anything contained therein which is relevant for the purpose of answering the reference. Rather in this connection another decision of the Apex Court in the case of National Insurance Co. Ltd. Vs. Mastan and Another, , is relevant, in the said case, the claimant was working as cleaner in a lorry and the said lorry was involved in an accident resulting in sufferance of injuries by the claimant which led to disability to the extent of 45 per cent to 50 percent. He initiated a proceeding under Workmen's Compensation Act, 1923 and claimed compensation. The Commissioner, Workmen's Compensation awarded a sum of Rs. 2,70,264/- by way of a compensation apart from interest to the tune of Rs. 33,230. The insurance company preferred an appeal before the High Court u/s 30 of the Act and the same was dismissed on the premise that Appellant was not entitled to argue any ground which was not available to it under the relevant provisions of law. The matter was thereafter referred to a Larger Bench and the reference was "whether the restrictions on the defences available to an insurance company in terms of Section 149(2) of the Motor Vehicles Act have any application to the proceedings under Workmen's Compensation Act". The Larger Bench held that under Workmen's Compensation Act, the insurance company can only agitate violation of any condition of the policy to make substantial question of law and, therefore, the question of raising defences available in terms of Section 149(2) of the Motor Vehicles Act does not arise. The Supreme Court under such circumstances observed and held as follows:

(18) Section 143 of the 1988 Act limits its applicability to the 1923 Act in a case whether the liability arises despite the fact that the accident might have taken

place without any fault on the part of the driver of the vehicle or others in control thereof. Under the 1923 Act also, as noticed hereinbefore, a workman is entitled to compensation even if no negligence is proved against the owner or any other person in charge of the vehicle. It is, thus, not possible to extend the applicability of Section 143 of the 1988 Act to include Chapter XI thereof to a claim under the 1923 Act.

13. Learned Counsel for the Appellant/insurance company has further submitted that amount of compensation awarded by the Workmen's Compensation Commissioner is on higher side and deserves to be interfered with by this Court.

14. I do not find any substance in the argument advanced by Learned Counsel for the Appellant. The Workmen's Compensation Commissioner keeping in view the income of the deceased has rightly assessed the compensation of Rs. 3,11,970/- after adopting relevant factors given in the Workmen's Compensation Act. The finding recorded by the Workmen's Compensation Commissioner in this regard appears to be based on evidence and the same does not require any interference by this Court.

15. For the reasons stated above and after perusal of the evidence available on record as well as impugned judgment passed by the Workmen's Compensation Commissioner, I am of the view that the appeal is devoid of, any merit.

16. Accordingly, the appeal is dismissed. The impugned judgment and award passed by the Workmen's Compensation Commissioner, is hereby confirmed.