
(2008) 07 UK CK 0011
In the Uttarakhand High Court

United India Insurance Company Ltd.	APPELLANT
Vs	
Smt. Yashoda Devi and Another	RESPONDENT

Date of Decision : 18-07-2008

Acts Referred:

Employees Compensation Act, 1923 — Section 30

Citation : (2008) 07 UK CK 0011

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.C. Kandpal, J.—This appeal, u/s 30 of the Workmen's Compensation Act, 1923, has been preferred against the judgment and award dated 23.9.2005, passed by Workmen's Compensation Commissioner/District Magistrate, Pithoragarh, in W.C.C. No. 43/2003.

2. Brief facts of the case, as emerged out from the claim petition, are that, Rajeev Kumar Nautiyal, was employed as Engineer in M/s Kajima Daewoo Joint Venture Chhirkila Dharchula, District Pithoragarh. On 1.9.2001 when Rajeev Kumar was coming to Dharchula from Chirkila in company's Truck No. U.A. 05/0037, the said truck met with an accident near Tawaghat and it fell into Kali river. Due to flow of water neither the truck nor the dead body of Rajeev Kumar was recovered. At the time of accident Rajeev Kumar was aged about 29 years and he was getting a monthly salary of Rs. 12,194/. The claimant, mother of the deceased, filed claim petition.

3. The opposite party M/S Kajima Daewoo Joint Venture filed its written statement before the Workmen's Compensation Commissioner and denied the averments made in the petition. It was alleged that the deceased was 2 getting a salary of Rs. 8,000/. per month. The Company also admitted the death of Rajeev Kumar in the accident while he was coming in Truck No. U.A. 05/0037 towards Dharchula. It also alleged that the workmen of the Company were insured with

United India Insurance Company under workmen compensation policy cover note No. 93704 and it was valid with effect from 29.11.2000 to 28.11.2001, therefore, the insurance company is liable to pay compensation.

4. The United India Insurance Company also filed its written statement and denied the averments of the petition for want of knowledge. It alleged that the deceased himself was driving the truck, who was not authorized to drive the said vehicle, therefore, the insurance company is not liable to pay any compensation. The insurance company also alleged that the deceased was driving the vehicle after his duty hours having no connection with his employment and he was in drunken condition. The claim was rejected by the insurance company after holding it as "no claim", hence the petition is not maintainable.

5. The learned Workmen's Compensation Commissioner, on the pleadings of parties, framed relevant issues in the petition. Thereafter, parties adduced evidence in support of their case. The learned Commissioner after considering the material on record and hearing learned Counsel for the parties, awarded a sum of Rs. 4,19,840/. along with interest @ 8% per annum from the date of presentation of petition till the date of actual payment, against the United India Insurance Company. 3 6. Feeling aggrieved, the United Insurance Company has preferred this appeal before this Court.

7. Heard learned Counsel for the parties and perused the record.

8. The learned Counsel for the appellant has raised the submission that the deceased after duty hours without taking permission of the employer took the truck and met with accident. The death of the deceased cannot be said to be arising out of and in the course of his employment, and the learned Commissioner has wrongly come to the conclusion that the deceased has died in an accident arising out of and in the course of his employment. Therefore, the impugned judgment and award is not sustainable in the eyes of law and is liable to be set aside.

9. Learned Counsel for the respondents has opposed the submission of the counsel for the appellant and submitted that the deceased has met with accident during the course of his employment, when he was travelling in the Company's truck to fetch the company's goods, therefore, the learned Commissioner has rightly allowed the petition for compensation.

10. The only point for consideration before me, is as to whether the death of Rajeev Kumar, can said to be arising out of and in the course of his employment or not?.

11. It is admitted fact that deceased Rajeev Kumar Nautiyal, was employed as an Engineer in Firm Kajima Daewoo Joint Venture. According to the claim petition the deceased at the time of accident was coming from 4 Chirkila site to Dharchula by the Company's Truck U.P. 05.0037 for some work and he died during the course of his employment. The opposite party No. 1, M/S Kajima

Daewoo Joint Venture, filed written statement and admitted that the deceased was travelling in the company's truck towards Dharchula. The opposite party No. 1, nowhere has asserted in its W.S. that the death was not caused during the course of his employment. Rather the Company has alleged that the compensation is payable by United India Insurance Company as the workmen were insured with it under Workmen Compensation Policy. Although the United India Insurance Company in its written statement has alleged that the deceased himself was driving the truck and he had carried the said truck after duty hours without the permission of the Company, and he had no casual connection with the employment, but no reliable and cogent evidence in this respect has been produced.

12. On behalf of claimant, Dharam Singh P.W.2, has been produced. Dharam Singh is the person, who was travelling in the said truck along with deceased Rajeev Kumar Nautiyal. This witness has specifically deposed that at the time of accident they both were going Dharchula to fetch goods of the company. He has explicitly denied the suggestion that the deceased at the time of accident was in drunken state. This witness also alleged that the deceased did not carry the vehicle on his own wish towards Dharchula. No effort was made from the side of opposite party/ insurance company to prove this fact that the deceased was not having valid driving license and he was not authorized to drive the vehicle.

13. D.W.2, Mahesh Singh, Administrator (personal) was produced by the opposite parties, who 5 has specifically stated in his deposition before the Workmen's Compensation Commissioner that the deceased Rajeev Kumar Nautiyal, was under employment of M/s Kajima Daewoo Joint Venture Chhirkila Dharchula, at the time of his death. This witness in his cross.examination has stated that the person working on tunnel has the duty of 12 hours and there is no half day. He has also stated in his cross.examination that Rajeev Kumar Nautiyal, died during the course of his employment. Again in his cross.examination by the Insurance Company, this witness has deposed that the day of accident was Saturday and it was half day for the office but not for the employees working on tunnel. He has specifically denied this suggestion that the deceased was driving the vehicle involved in the accident in an unauthorized manner. This witness is a responsible person of the Company and his statement cannot be taken lightly. It is quite clear on the basis of the statement of this witness that the deceased died during the course of his employment.

14. Learned Counsel for the Insurance Company has put the great stress on the written statement filed by the company before the Motor Accident Claim Tribunal and he has pointed out that in this written statement the Company has stated that when the deceased died he was not in the course of employment as he took the vehicle on his own wish and not under the orders by any of the authority.

15. I do not find any force in this argument. This written statement filed by the company before the Motor Accident Claim Tribunal has neither been put before the aforesaid witness D.W.2, nor any question with regard to the aforesaid

paragraph.24 of the written statement filed 6 by the company before the Motor Accident Claims Tribunal, has been asked to this witness. On the other hand nothing has been stated by the Company in the written statement filed by it before the Workmen's Compensation Commissioner. Even this pleading has not been adduced that the deceased died during the hours when he was not under the employment. Therefore, the argument advanced by the learned Counsel for the Insurance Company is of no avail.

16. Therefore, on the basis of material available on record, the learned Commissioner was justified in coming to the conclusion that the death of deceased Rajeev Kumar Nautiyal has occurred during the course of his employment. I do not find any error in the above finding of the learned Commissioner.

17. So far as the quantum of compensation is concerned, the Opposite Party No. 1, employer has admitted that the deceased was getting a monthly salary of Rs. 8,000/.. This fact has not been disputed by the insurance company. The Tribunal has awarded a compensation of Rs. 4,19,840/. after adopting the formula given under the provision of Workmen's Compensation Act. I do not find any error in the method adopted by the Tribunal while assessing the compensation.

18. For the reasons given above, the appeal lacks merit and is liable to be dismissed.

19. Accordingly, the appeal is dismissed. The impugned judgment and award dated 23.9.2005 is hereby confirmed.