

MAMTA DEVI & ORS.

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v.

THE RELIANCE GENERAL INSURANCE COMPANY LIMITED
& ANR.

(Civil Appeal No. 3904 of 2023)

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MAY 19, 2023

[J. K. MAHESHWARI AND ARAVIND KUMAR, JJ.]

Workmen's Compensation Act, 1923 – s.20 – Notification issued under – “Contested claim” – When not – Deceased who was employed by the second respondent as truck driver met with a road accident and succumbed to the injuries – Compensation sought by appellants-his wife, son and parents – Deputy Labour Commissioner-cum-Commissioner for Workmen Compensation awarded Rs.4,31,671/- and with interest @ 6% p.a – Challenged by appellants – High Court held that the award itself was without jurisdiction on the ground that it was a contested matter on account of the written statement filed by the insurer and there being a embargo as per notification issued u/s. 20(1) & (2) – Held: Employer had clearly admitted the averments made in the claim petition filed by the appellants – There was no contest– Insurer of the offending vehicle-first respondent having filed the written statement did not cross examine the appellants and their witnesses – Thus, the claim lodged by them seeking compensation would not partake the character of a “contested claim” as stipulated under the notification issued by the appropriate Govt. u/s.20 (1) and (2), where under clause (a), the presiding officers of the Labour Court were entrusted with adjudication of claims of all contested cases arising under the Act – Therefore, the High Court erred in holding that the claim petition was not maintainable before the Deputy Labour Commissioner-cum-Commissioner and appellants had to pursue their grievance before the jurisdictional Labour Court – Impugned judgment set aside – Further, unchallenged statement of the wife of the deceased that he was earning Rs.6,000/- per month, accepted – Appellants entitled to compensation of Rs.6,64,110/- with interest @ 12% p.a. from one month from the date of accident till date of payment excluding the amount already paid/deposited by the first respondent – Compensation – Maxims – Coram-non-judice.

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A CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3904 of 2023.

From the Judgment and Order dated 01.10.2018 of the High Court of Judicature at Patna in MA No. 777 of 2014.

B Harsh Parashar, Adv. for the Appellants.

Ms. Sakshi Mittal, Vishnu Mehra, Advs. for the Respondents.

The Judgment of the Court was delivered by

ARAVIND KUMAR, J.

C Leave granted.

1. A challenge is laid to the correctness and legality of the judgment dated 01.10.2018 passed in Miscellaneous Appeal No. 777 of 2014 by the High Court of Judicature at Patna, whereunder, the appeal filed by the claimants assailing the order dated 10.10.2014 passed by the Deputy Labour Commissioner-cum-Commissioner for Workmen Compensation, in CWC No. 24 of 2011 allowing the claim petition in part, directing the opposite party No. 1 - Reliance General Insurance Company Limited (first respondent herein) to pay compensation to the tune of Rs.4,31,671/- has been set aside, on the ground that the dispute raised was a contested case and it is *coram-non-judice*.

2. We have heard the arguments of Mr. Atil Inam, learned counsel appearing for the appellants, as also Mr. Vishnu Mehra, learned counsel appearing for respondent No. 1, and perused the case papers.

3. Appellants/Claimants are wife, son and parents of late Sri Vakil Choudhary who had been employed by the second respondent as truck driver and had met with a road accident in the night of 21.04.2011 at 10.30 p.m. and as a result of the accidental injuries sustained, succumbed to the same. Hence, seeking compensation on account of death occurring during the course of employment and contending *inter alia* that he used to earn Rs.6,000/- p.m. as wages from his employer, claim petition was lodged before the Deputy Labour Commissioner-cum-Commissioner for Workmen Compensation. On notice being issued, the insurer of the offending vehicle appeared and filed written statement but, thereafter, the matter was not pursued further by the respondents. On the basis of the material evidence that came to be

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placed by the claimants, the Deputy Labour Commissioner-cum-Commissioner for Workmen Compensation adjudicated the claim and awarded a sum of Rs.4,31,671/- and ordered for payment of interest @ 6 per cent per annum from the date of the accident till the amount is deposited. To award said compensation, Tribunal considered the income of the deceased at Rs.150/- per day and computed the total monthly income for 26 working days at Rs.3,900/- p.m. and half of the same, at Rs.1,950/- as loss of income to the claimants and adopting the relevant multiplier/factor as stipulated under the The Workmen's Compensation Act, 1923 (VIII of 1923)(hereinafter referred to as 'W.C. Act' for brevity) at 221.37, determined the total compensation accordingly.

4. This Award was challenged by the claimants as being abysmally on the lower side has resulted in a worsened scenario viz., the Award itself was held to be one without jurisdiction viz., Deputy Labour Commissioner-cum-Commissioner for Workmen Compensation had no jurisdiction on the premise that it was a contested matter on account of the written statement having been filed by the insurer and there being a embargo as per notification issued under Section 20(1) and (2) of the W.C. Act.

5. By virtue of the power vested under sub-Section (1) and (2) of Section 20 of the Act, the appropriate Government had issued notification whereunder under clause (a), the presiding officers of the Labour Court were entrusted with adjudication of claims of all contested cases arising under the Act.

6. As could be seen from the impugned order, the only reasoning adopted for arriving at a conclusion that the Deputy Labour Commissioner-cum-Commissioner for Workmen Compensation Commissioner had no jurisdiction or the fact which weighed in the mind of the High Court to non-suit the claim was on account of the written statement having been filed by respondent Nos. 1 and 2 herein, who were also respondent Nos. 1 and 2 before the Deputy Labour Commissioner-cum-Commissioner for Workmen Compensation.

7. The records on hand would disclose that there was no further contest of the claim petition by them. On the other hand, the employer had clearly admitted the averments made in the claim petition filed by the claimants. In other words, there was no contest. The insurer of the

A offending vehicle having filed the written statement seems to have not cross examined the claimants and their witnesses. Thus, the claim lodged by the claimants seeking for compensation would not partake the character of a “*contested claim*” as stipulated under the notification issued by the appropriate Government under Section 20 (1) and (2) of the W.C. Act. On this count itself, it has to be held that High Court fell in error in arriving at a conclusion that claim petition was not maintainable before the Deputy Labour Commissioner-cum-Commissioner for Workmen Compensation and claimants had to pursue their grievance before the jurisdictional Labour Court.

C 8. In the normal course, we would have remitted the matter back to the High Court for adjudicating the appeal on merits. However, we desist from doing so for the simple reason that the first claimant being a widow, the second claimant being the son and the third and the fourth claimants being the parents of the deceased are still awaiting for a reasonable compensation to be awarded.

D 9. Hence, we have heard the learned Advocates appearing for the parties on the issue of quantum of just compensation which requires to be awarded to the claimants.

E 10. At this juncture itself, it would be apt and appropriate to note that the insurer viz., the first respondent herein pursuant to the Award passed by the Deputy Labour Commissioner-cum-Commissioner for Workmen Compensation has deposited the award amount as submitted before this Court by the learned counsel. The insurer also did not assail the Award passed by the Deputy Labour Commissioner-cum-Commissioner for Workmen Compensation dated 10.10.2014. In other words, it accepted its liability and is stated to have satisfied the Award passed. When this being the factual position, we would have to necessarily examine as to whether compensation awarded in favour of claimants is in terms of the statutory mandate.

G 11. Having regard to the object of the Act which envisages dispensation of social justice, we are of the considered view that the Deputy Labour Commissioner-cum-Commissioner for Workmen Compensation fell in error in arriving at a conclusion that claimants’ income is to be construed at Rs.3,900/- p.m. or the minimum wage to be computed should be at Rs.150/- per day in the absence of any proof of

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income. The written statement filed by the employer would be a complete answer to this, inasmuch as it is categorically admitted by the employer that deceased was drawing Rs.6,000/- per month as wages. The deceased was a truck driver and had four mouths to feed at the time of his demise in the year 2011. By no stretch of imagination, it can be construed that income which he was earning as claimed by his wife in her statement made on oath can be construed as excessive or not commensurate with the wages earned by a truck driver in the year 2011.

12. Thus, the irresistible conclusion which we have to draw is, the unchallenged statement of the wife of the deceased who had deposed that her husband was earning Rs.6,000/- per month deserves to be accepted as gospel truth. We see no reason for disbelieving her statement.

13. In the light of the aforesaid discussion, the quantification of the compensation will have to be redetermined by construing the income of the deceased at Rs.6,000/- and after deducting 50 per cent of the same loss of income to the claimants will have to be held at Rs.3,000/- per month and adopting the appropriate factor having regard to the fact that the deceased was 22 years at the time of his accidental death, the appropriate multiplier would be 221.37. Thus, the compensation that the claimants would be entitled to would be Rs.3,000 X 221.37 which is equal to Rs.6,64,110/- (Rupees Six Lakhs Sixty Four Thousand One Hundred and Ten only).

14. The mandate of the Act insofar as payment of interest is concerned is clear and unambiguous viz., the claimants would be entitled to interest @ 12 per cent per annum from one month after the date of accident till date of payment. Thus, claimants would be entitled to the interest accordingly, excluding the amount which is said to have been paid or deposited by the first respondent-insurer.

15. For the reasons aforesaid, we allow this appeal in part and set aside the impugned judgment dated 01.10.2018 passed in Miscellaneous Application No. 777 of 2014 by the High Court of Judicature at Patna and award a compensation of Rs.6,64,110/-(Rupees Six Lakhs Sixty Four Thousand One Hundred and Ten only) with interest @ 12% p.a. from one month from the date of accident till date of payment excluding the amount already paid or deposited by the first respondent-insurer.

A 16. The balance amount shall be deposited by the first respondent-insurer before the Deputy Labour Commissioner-cum-Commissioner for Workmen Compensation, Magadh Division, Gaya, in C.W.C. Case No.24 of 2011 expeditiously and at any rate, within six weeks from the date of receipt of the copy of this order.

B 17. Costs made easy.

Divya Pandey
(Assisted by : Roopanshi Virang, LCRA)

Appeal partly allowed.