

The New India Assurance Company Limited vs Smt. Rukmani Devi & Another on 4 April, 2022

Author: Sharad Kumar Sharma

Bench: Sharad Kumar Sharma

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL
Appeal from Order No.36 of 2011

The New India Assurance Company Limited ...Appellant

Vs.

Smt. Rukmani Devi & anotherRespondents

Mr. M.K. Goyal, Advocate, for the appellant.
Mr. Pradeep Hairiya, Advocate, for the respondents.

Hon'ble Sharad Kumar Sharma, J (Oral)

The appellant Insurance Company, herein, has put a challenge to the impugned award dated 25th December 2010, as it has been rendered by the Workmen's Compensation Commissioner/Assistant Labour Commissioner, Kumaon Region Haldwani (Nainital), in a Workmen Compensation Application No.26 of 2005, "Smt. Rukmani Devi Vs. Prakash Chandra Pandey & another", whereby the learned Workmen Compensation Commissioner by the impugned award under challenged, has awarded a compensation of Rs.3,02,860/- payable to the dependents of the deceased workman employee, who is said to have met with the sad demise during the course of his employment.

2. The brief facts of the case are that the deceased late Mr. Bisen Singh, who was aged about 34 years, was a Driver of the vehicle bearing Registration No.UP2D 5651. The case of the claimant as taken before the court below was that the aforesaid vehicle, while being plied on 19th August 2004, it was parked by the roadside, and subsequently, later on Mr. Bisen Singh, was found dead in the vehicle. Consequently on the claim being raised by the claimants, it was contended by the claimants that the deceased i.e. Mr. Bisen Singh, who was engaged with the opposite No.1 i.e. Prakash Chandra Pandey. He was engaged as a Driver and was drawing a salary of Rs.4000/- per month, along with it, he was also being paid an additional amount of Rs.50/- per day in order to meet his daily expenses. The claimant has contended that as a consequence of the death of late Mr. Bisen Singh, who was survived by the claimant and three minor children; they have been left without any source of earning for the family and since they were totally dependent upon the income accruing to the deceased, they have claimed for the compensation, to be awarded to them to the tune of Rs.6,50,000/-.

3. After registration of the claim petition, the notices were issued and opposite party No.2, i.e. Insurance Company, appellant herein, had filed a written statement on 12th April 2005, wherein, the fact, that the vehicle was insured on the date of the incident was admitted, but the only distinction which was attempted to be carved out by the Insurance Company, was that since the deceased was found lying dead in the vehicle, when it was parked by the side of the road, they have contended that the claim raised by the claimants will not fall for consideration, as per the provisions of Section 3 of the Workmen Compensation Act, because the interpretation given to Section 3, of the Workmen Compensation Act, by the appellant was that the circumstances, under which late Mr. Bisen Singh, has met with the sad demise it will not be falling within the ambit of the course of employment, as it has been contained under Section 3 of the Workmen Compensation Act, and further he qualifies his argument from the prospective, that the death cannot be said to be the death which was caused during the course of employment, and on that pretext the learned counsel for the appellant submits, that they cannot be made liable to pay the compensation, and the interest, which has been directed to be made payable on it.

4. On the other hand, the owner of the vehicle filed his written statement on 24th July 2006, in which the owner of the vehicle had admitted the fact that the deceased was employed as the driver of the vehicle and a master and servant relationship existed between them. However, the owner submitted that since on the date of the incident, he was not present on the spot, expressed his ignorance, that he doesn't have any personal knowledge, as to what was the reason of the death. He further submitted that on 9th August 2004, since the vehicle was being plied for carrying goods from "Haldwani to Lalkuan" and the death had caused, therein, while the vehicle was being parked by the side of the road. The claimants have contended that since late Mr. Bisen Singh, was earning Rs.4000/- per month, they would be entitled for the compensation from the Insurance Company, for the reason being that the vehicle was validly insured with the Insurance Company bearing Insurance Policy No.420980/31/04/00500, dated 14th May 2004, which was valid till 13th May, 2005.

5. Hence, on the basis of the insurance policy, which was placed on record, the claimants had submitted that on the date of the incident, since the vehicle was being driven under the valid insurance policy, and the deceased was working as a driver of the vehicle, in the capacity of being a workman the claim would fall to be within the parameters of Section 3 of the Workmen's Compensation Act, and rather the insurance company would be liable to pay the compensation. In support of the pleadings raised in the written statement, the owner of the vehicle had placed six documents on record by way of the list on 22nd August 2006, and apart from, the filing of the written statement the oral evidence was also adduced by the claimants, as well as the owner of the vehicle.

6. The learned Workmen Compensation Commissioner on the basis of the evidence, which were placed on record, had observed that late Mr. Bisen Singh, who at the time of the death was of 33 years of age, and as per the statement of the owner of the vehicle, he was being paid with the salary of Rs.4000/- per month, along with an additional amount of Rs.50/- per day to meet the daily expenditures. It was contended that once it is an admitted case of the owner, of the vehicle, they would be entitled for the compensation to be determined, on the basis of the dependency of the

heirs of the deceased late Mr. Bisen Singh.

7. The claimant in support of their case on 5th September, 2006, has produced another witness Mr. Gopal Singh Bohra, who was the resident of Purvi Ghodanala, Bindukhatta, Lalkuan, District Nainital, who in his affidavit has submitted, that he personally knew late Mr. Bisen Singh, for last 3 to 4 years prior to his death, and had also established the fact that on the date of incident i.e. 19th August 2004 since the vehicle was being plied during the night hours, the same was parked by the side of the road near VIP Gate, and later on he was found dead. The witnesses, which were adduced before the court below, they were cross-examined, and postmortem was also conducted on the deceased. The parking of vehicle by the side of the road during the night hours, or early hours of the day, after arduous drive is quite a natural phenomenon, normally adopted during course of employment.

8. The learned Labour Court/ Workmen Compensation Commissioner, after appreciating the evidence, and recording its finding pertaining to the report, which was submitted on 8th October 2006, by the Divisional Manager of the Insurance Company, had come to the conclusion that according to the postmortem report, though it was observed that the cause of the death was due to poisoning and viscera was preserved, but there was no other supporting additional evidence adduced by the parties to show that the death was caused due to poisoning, which was the cause of death nor judicially the said evidence, which was adduced by way of the postmortem report has been considered by the criminal courts to arrive at a plausible conclusion, as to what was the cause of death of late Mr. Bisen Singh.

9. Accordingly, the Workmen Compensation Commissioner, after appreciating the stand taken by the dependants in their written statement, had rightly arrived to the conclusion, that the cause of death of late Mr. Bisen Singh, was due to the cardiac arrest, and it was observed that as per the documents, which was placed on record by the claimant, who were the dependants, the employee was the driver of the vehicle, had died on account of the heart ailment and thus on the basis of the wages, which was being derived by late Mr. Bisen Singh, the learned Workmen Compensation Commissioner, had determined the dependency of Rs.3033/- per month, and had directed, the remittance of the compensation, considering the age of the deceased as 34 year, has to be made payable by the Insurance Company to the tune of Rs.3,02,860/-.

10. Learned counsel for the appellant had pressed the Appeal from Order, under Section 30 of the Workmen Compensation Act, 1923, on the three substantial question of law, which is extracted hereunder:-

"2. Whether the Workmen's Compensation Commissioner, can award compensation without proof of the nexus of death, with that of employment?

3. Whether there was any casual connection between death of driver and his employment when the driver after parking the truck went to sleep and in the morning his dead body was recorded?

4. Whether the employer or insurer of the vehicle can be held liable to pay compensation when there was no casual connection between death of driver and his employment?"

11. In fact, what he intended to argue was that there is no proof of nexus of death of late Mr. Bisen Singh, which could be related to his employment, in the vehicle as a Driver, hence he argues that death had not arisen out of employment, or during the course of employment.

12. To answer this question as raised by the learned counsel for the appellant, this Court is of the view that, when the Insurance Company admits the fact that the workman was employed as a driver of the insured vehicle, when it is an admitted case, that due to the vehicle being driven during the night hours, it was parked in the front of the VIP Gate, and ultimately later on, the driver of the vehicle i.e. late Mr. Bisen Singh, was found dead in the vehicle, it would be deemed that parking the vehicle and taking rest in the night hours by an employee of the vehicle, it would be deemed that it was the death caused during the course of the employment.

13. It has been argued by the learned counsel for the appellant, that there has had to be a connection between the death of the driver and his employment. In such type of circumstances, where the death is caused of an employee, and under a very peculiar circumstances, where there cannot be, any eye witness to the accident or the incident, which has chanced, resulting to the death of the employee, and the death has chanced during the course of employment, when he had gone to sleep and in the morning he was found dead in the vehicle, it would be deemed that the death was caused during the course of employment, when the deceased was discharging his professional responsibilities, on the instructions of the employer, and thus, in that eventuality, particularly when, the fact of the vehicle being validly insured, as would be apparent from the insurance policy itself, which was on record before the court below, the determination of the compensation depending upon the quantification of the dependency of Rs.3033/-, and considering the age of the deceased at the time of death i.e. 34 year of age, this Court is of the view that the amount of compensation, as it has been determined by the court below after recording the finding that it was during the course of the employment, because there was no cessation of relationship of master and servant, between the deceased and the owner of the vehicle, and since it was validly insured with the insurance company, the finding recorded by the Workmen Compensation Commissioner, was inconsonance with the evidence on record, and inconsonance with the other surroundings circumstances, during which the workman has met with the sad demise, while he was resting in the vehicle itself, after parking it by the roadside.

14. Hence, the question sought to be pressed by the learned counsel for the appellant is answered in negative against him. The compensation as determined by the Workmen Compensation Commissioner, is held to be just and valid, which does not suffer from any apparent error, calling for any interference by this Court.

15. Consequently the Appeal from Order lacks merit, and the same is accordingly dismissed.

(Sharad Kumar Sharma, J.) 04.04.2022 NR/