

GAHC010002762016



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : MFA/18/2018

NATIONAL INSURANCE CO LTD
HAVING ITS HEAD OFFICE AT MIDDLETON STREET, KOLKATA AND ONE
OF THE REGIONAL OFFICES KNOWN AS GUWAHATI REGIONAL OFFICE,
G.S. ROAD, BHANGAGARH, GUWAHATI-5 AND A BRANCH OFFICE AT
BONGAIGAON, P.O. BONGAIGAON, ASSAM.

VERSUS

JAHANARA KHATUN and 3 ORS
W/O LATE AKBAR KHAN

2:MOSLEM KHAN
SON OF LATE JUBBAR KHAN

3:RUPBHANU NESSA
W/O OF MOSLEM KHAN
ALL 1-3 ARE RESIDENT OF VILLAGE -BANGLAPARA
P.O. GOALPARA
P.S. ABHAYPURI
DIST. GOALPARA
ASSAM

4:ANOWAR HUSSAIN KHAN
S/O MOSLEM KHAN
R/O P.O. GOALPARA
P.S. ABHAYAPURI
DIST. GOALPARA
ASSAM

Advocate for the Petitioner : MR R K BHATRA

Advocate for the Respondent : MR B J MUKHERJEE

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

JUDGMENT

Date : 02.04.2024

This appeal is directed under Section 30 of the Employees Compensation Act, 1923 (henceforth 'EC Act') against the Judgment and order dated 16.11.2015 passed by the Workmen's (Employees), Commissioner (hereinafter 'Commissioner), Abhayapuri, Bongaigaon in WC Case No.193/2013 awarding compensation amounting to Rs.7,34,372/- in favour of the claimant/ respondent from the date of receipt of judgment and order to disburse within 30 days in default to pay additional 50 % as penalty along with further interest @ 12 % on the ordered amount.

2. The factual matrix leading to this case is that one Akbar Khan, a resident of Village-Bangalpara under Abhayapuri P.S. was a driver by profession and was engaged by the opposite party No.2 i.e. owner of the vehicle, bearing no. AS-19E-2112 as driver of his vehicle. On 27.07.2013, the opposite party No.2 directed his driver to go to Barnihat from Hatigaon, Guwahati to bring his relatives but on the way to Barnihat, some unknown miscreants had kidnapped the driver along with the vehicle and killed the driver and took away the vehicle. Subsequently, the dead body of Akbar Khan was recovered from a place under Barnihat P.S. but the vehicle could not be traced out.

3. In connection with the alleged incident, a case was registered vide Hatigaon PS Case No. 285/2013 under Section 302/379 of the IPC. The claim petition reveals that at the relevant time of incident , the vehicle No. AS-19E-2112 was duly insured with the National Insurance Company Ltd. i.e. opposite

party No. 1 and the Opposite Party No. 2 was the owner of the said vehicle. The claim petition further reveals that the deceased earned an amount of Rs.7000/- per month for his employment under opposite party No. 2.

4. By filing written statement, the opposite party No. 1 has raised a specific plea that the opposite party No. 2 has violated the policy condition by plying the vehicle on hire or reward as such prays to absorb from liability for payment of compensation by the opposite party No. 1 to the claimant/ respondent Nos. 1 , 2 and 3.

5. On the basis of the pleadings, three issues were framed and after hearing both sides, the Commissioner had examined the parties and permitted them to mark the documents vide Exhibit-1 to 5. The issues have been answered in favour of the claimants and the compensation has been awarded as aforesaid. Hence, this appeal.

6. The substantial questions of law as taken up by the appellant in this appeal are:-

1. Whether the learned Commissioner had committed manifest error in failing to appreciate that there was violation of the policy condition , thereby relieving the insurer from any liability in this case?

2. Whether the learned Commissioner was legally justified in awarding 50% penalty over and above 12% interest on the amount of compensation?

7. It was urged by the learned counsel for the appellant that the Commissioner, Abhayapuri has no jurisdiction to try the case as the accident occurred at Barnihat in the State of Meghalaya and notice under Section 21 is required for prior information to the jurisdictional commissioner. It is also submitted that the penalty imposed is unsustainable as the insurance company

is not liable to pay any such penalty.

8. It is also the submission of learned counsel for the appellant that the insurance company is not liable to pay any compensation as the owner of the vehicle has violated the policy condition as the alleged vehicle was plying on that day on hire and the learned Commissioner misread the evidence on record and came to an erroneous finding by holding that the vehicle was not put on hire or reward.

9. In support of his submission, learned counsel has placed reliance on the following case laws:

1. 2006 Vol 5 SCC 200 (P.J. Narayan –vs- Union of India & Ors)

2. 1997 Vol 8 SCC 1 (Ved Prakash Garg-vs- Premi Devi & Ors)

3. 2023 SCC Online SC 674 (Managing Director, Kunnel Engineers & Contractors Pvt. Ltd. –vs- Divisional Manager, New India Assurance Company Ltd.)

4. 2007 Vol. 11 SCC 616 (Morgina Begum –vs- M.D. Hanuman Plantation Ltd.)

5. 2017 Vol. 5 GLR 52 (National Insurance Company Ltd. –vs- Adori Debnath & Ors).

10. In response to the submission of learned counsel for the appellant, the learned counsel for the claimant/ respondent has contended that the husband of the claimant died during the course of his employment. The murder is also an accidental injury for the purpose of claiming compensation and the relationship between the employer and employee also has been established by producing relevant documents.

11. It is also submitted that the 1923 Act is a social welfare legislation and therefore, it must be given a beneficial construction. The object of enacting the Act was to ameliorate the hardship of economically poor employees who were exposed to risk in work of occupational hazards. According to learned counsel for the claimant, the matters are therefore to be adjudicated with due process of law and also with a keen awareness of the scope and intent of the Act.

12. Learned counsel for the claimant has also contended that though the plea of breach of condition of policy was raised before this Court, yet neither any issue was framed nor was any evidence led to prove the same. In absence of any such evidence, it cannot be presumed that there was breach of conditions of the policy.

13. In support of the fact, the learned counsel for the claimant has referred the following judgments :

1. 2023 Live Law (SC) 746 (Fulmati Dharamdev Yadav & anr. –vs- New India Assurance Company Ltd & anr.)

2. 2014 Vol. 14 SCC 148 (Fahim Ahmed & Ors. –vs- United India Insurance Company Ltd. & Ors.)

14. The facts are not in dispute. There are no evidence and materials placed by the appellant by disputing the death of the deceased driver of the vehicle No. AS-19E-2112 and further the relationship between the employer and employee has not been proved. Under these circumstances, the question that requires to be answered is whether the murder of any employee took place during the course and arising out of employment, is an 'accident' for claiming compensation or not. The Act is silent on this aspect and in defining the term

'accident' with reference to the employment.

15. In ***National Insurance Co. Ltd. –vs- Presiding Officer, Labour Court and other*** reported in AIR 2000 ACJ 343, it has been held that the word 'accident' includes murder as it was an accidental happening so far as the workman is concerned. It is relevant to extract the para- 11 of the said judgment which is as follows-

“ 11. Considering the facts and circumstances of the case and the principle in law discussed herein above, I am of the definite opinion that the death caused to the deceased by the act of the criminals is nothing but an accident within the meaning of Section 3 of the Workmen’s Compensation Act. The employer Insurance company therefore shall be held liable for the payment of compensation for such an accident caused to the deceased if it arose out of and in the course of his employment.”

16. In the case of ***Salama Begum –vs- District Branch Manager, Maharashtra State Co-operative Land Development*** reported in 1989 ACJ 1104 wherein it has been held that the driver appointed by the owner of the taxi was murdered when he was driving the taxi and carrying the passenger, the death so caused was in the course of his employment.

17. The Hon'ble Supreme Court in the case of ***Rita Devi & Ors –vs- New India Assurance Co. Ltd. & anr.*** reported in AIR 2000 SC 1930, has referred to various cases namely, ***Shankaracharya –vs- United India Insurance Co. Ltd.*** reported in AIR 1998 SC 2968, ***Shivaji Dayanu Patel –vs- Smti Vatschala More*** reported in AIR 1991 SC 1769, ***Board of Management of***

Trim Joint District School –vs- Kelly reported in 1994 (AC) 667, ***Nisbet –vs- Rayane & Burn*** reported in (1910) 2 KB 689 and ***Challis –vs- London and South Western Rly Co.*** reported in (1905) 2 KB 154. It has been held that the deceased auto rickshaw driver employed to drive an auto rickshaw for carrying passengers on hire, committed the act of felony of stealing auto rickshaw and murdered the auto rickshaw driver. Death of auto rickshaw driver has been held as an 'accident' within the meaning of Motor Vehicles Act. It was further held that wife and children of auto rickshaw driver were entitled for compensation under the Act and the death has been interpreted as an act of 'accident'.

18. In the light of the aforesaid judgments, it gives ample material to deal with the situation of 'murder' occurred during the course of employment. The facts of the case, which is squarely covered for the purpose of bringing this case under the definition of accidental injury because the case of the claimant is as her husband died while he was engaged by the owner of the vehicle and he died on account of 'murder' and the murder was an 'accident' for the purpose of claiming compensation and his death has taken place during the course of his employment. Since, these facts are not in dispute and in the light of the judgments referred above, it has to be held that the death of husband of the claimant is an accidental death for the purpose of claiming compensation.

19. Now, coming to the question of hire or reward, though the plea of breach of conditions of policy was raised by the appellant before this court, it was mandatory for the appellant insurance company not only to plead the said breach but also substantiate the same by adducing positive evidence in respect of the same. Admittedly, in the case in hand, the insurance company has not

adduced any evidence to prove the fact that the alleged vehicle was plying on the date of accident on hire or reward.

20. The decisions relied upon by the learned counsel for the appellant is of no assistance for the reason that these judgments have to be read along with the proviso to Section 147 of the Motor Vehicle Act which makes it very clear that unless the relationship of employer and employee is established, the claimants are not entitled for any compensation. The insurance company though raised a dispute with regard to existence of employer and employee relationship, has not examined the author of the complaint nor produced any document to show that the offending vehicle was given on hire on the relevant date of accident. Hence, it has utterly failed to prove its case. The Commissioner on the basis of the materials available on record, honoured the claim of the claimants and awarded just and reasonable compensation.

21. Regarding the question of jurisdiction, the contention raised by the learned counsel for the appellant that the Commissioner of Abhayapuri has no territorial jurisdiction to try the case, as the accident took place in the State of Meghalaya, cannot be accepted. As it appears that the claimants made an application before the Commissioner, Abhayapuri under Bongaigaon district for compensation and the respondents without raising any objection participated in the said enquiry, may not be entitled to raise the same at this appellate stage. In similar circumstances, in the case of ***Oriental Insurance Co. Ltd. –vs- Waheed Khan*** reported in 1999 ACJ 831, the court took the view that the territorial jurisdiction under Section 21 prior to its amendment which provided for filing an application for compensation before the Commissioner, having jurisdiction over the place of accident is not mandatory but only directory. In

view of that, the contention of the appellant that the Commissioner, Abhayapuri has no jurisdiction to try the case is rejected.

22. Lastly, the submission of the learned counsel that the insurance company cannot be burdened with penalty is a question, which is no more res-integra. In the case of ***New India Assurance Co. Ltd.-vs. Shiv Singh*** reported in 2000 (5) Supreme 137, Hon'ble Supreme Court laid down that it is only the employer who is liable to pay the penalty and the insurance company cannot be fastened with penalty unless additional premium was paid to fasten such liability to the insured. The onus lies on the owner to prove that he pays the additional premium. In the present case, there is no evidence to show that the owner has paid an additional premium and therefore, the submission of the appellant is accepted and to that extent, the order of the Commissioner under appeal is set aside.

23. In the result, the appeal is partly allowed, confirming the findings and award of the commissioner under the EC Act, 1923 except the award of penalty payable by the insurance company. However, the workman is at liberty to recover the penalty from the employer. There shall be no order as to cost.

22. The trial court records be returned back.

JUDGE

Comparing Assistant