

HIGH COURT OF DELHI : NEW DELHI

FAO No.370 of 2008 & CM No. 15900 of 2008

% Judgment reserved on: 27TH August, 2009

Judgment delivered on: 15TH September, 2009

New India Assurance Co. Ltd.
Through its Divisional Manager,
DO 323500, 2/2A, Universal Building,
Asaf Ali Road,
New Delhi.

....Appellant

Through: Mr. S .L. Gupta, Adv.

Versus

- (1) Smt. Sushila
Widow of Late Subhash Chander Sharma
- (2) Master Sachin
S/o Late Subhash Chander Sharma.
- (3) Master Rahul
S/o Late Subhash Chander Sharma.
Respondents no. 2 & 3 minors represented
Through their Mother (natural Guardian)
Respondent no.1
All respondents no.1 to 3
R/o Village Dipalpur, Teshil & District Sonipat,
Haryana.
- (4) Pushplata Dixit
W/o Sh. G. S., Dixit,
House No. C-144,
Gali No. 6, Dashrathpuri,

Palam Road,
New Delhi-45 .

....Respondents.

Through: Ms .Pratima Nain
Chauhan, Adv. for
respondents no.1 to 3.
None for respondent
no.4.

Coram:

HON'BLE MR. JUSTICE V.B. GUPTA

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

V.B.Gupta, J.

New India Assurance Company, the appellant has filed present appeal under Section 30 of Workmen's Compensation Act, 1923 (for short as 'Act') against order dated 13th August, 2008, passed by Commissioner Workmen Compensation (for short as 'Commissioner'), vide which claim filed by respondents no. 1 to 3, legal heirs of

deceased, Subhash Chander Sharma, was allowed and they were awarded a compensation of Rs.4,28,376/-.

2. Brief facts are that, deceased-Subhash Chander Sharma was employed as driver on the vehicle of respondent no. 4. On 9th September, 2003, while on duty, deceased was going from Peera Garhi to Palam Gaon. On way, there was some defect in the vehicle and deceased was trying to lookout it. All of sudden, another vehicle hit him from behind, with the result he sustained grievous injuries on his body. Due to impact, his chest and backbone was fractured. He was rushed to Sanjay Gandhi Hospital and thereafter remained in other hospitals. FIR was registered on 10th September, 2003 and deceased died on 17th July, 2005.

3. Appellant in its reply took the plea that, deceased did not died of alleged accidental injuries. There is no nexus between accident and cause of death. None of the medical record provided by claimants suggest patient died due to accidental injuries. That is why they did not file postmortem report of deceased, which would have conclusively established as to for what reason death has

taken place; whether it was due to accidental injuries or some other disease that deceased was already suffering.

4. Respondent no. 4, in written statement took the plea, that accident took place on 9th September, 2003 while, deceased died in 2006 i.e. after lapse of about four years. Thus, there is no nexus between incident and death of deceased.

5. Other plea is that, it is a Motor Accident Case and accident took due to rash and negligent driving of driver. Claimants concealed material facts from the Court, since they had already filed a case before Motor Accident Claim Tribunal (for short as 'Tribunal').

6. Learned counsel for appellant argued that compensation awarded by Commissioner for injuries is illegal and unjustified in absence of proof of nexus between death of deceased and accidental injuries.

7. It is also contended that no compensation is payable as death has been caused due to cancer which was diagnosed on 4th October, 2004 by Doctor who was treating the deceased and not due to injuries sustained in accident.

This petition is also not maintainable as petition for same cause has already been dismissed by Tribunal.

8. Lastly, it is contended that Commissioner wrongly granted compensation for disability in absence of any disability certificate.

9. On the other hand, learned counsel for claimants contended that claim petition filed before Tribunal was not pursued. Accordingly, present petition is maintainable.

10. Other contention is that, as per opinion given by Dr.V.K. Jain on 15th January, 2004, the workman was fit for “desk work”. Later on, cancer was diagnosed on 14th October, 2004. As per opinion of Dr. V. K. Jain, deceased was fit for desk job and was not fit for driving. When a person is not capable of doing the same work for which he was capable, he is entitled to compensation. On this point, learned counsel for claimants referred to ***Pratap Narain Singh Deo Vs. Shrinivas Subata and Anr.***, 1976, ACJ, 1941, in which it was observed.

“It has not been disputed before us that the injury was of such nature as to cause permanent disablement to the respondent, and the question for consideration is that whether the disablement incapacitated the respondent for all work which he was

capable of performing at the time of the accident. The Commissioner has examined the question and recorded in finding as follows:

“The injured workman in this case is carpenter by profession ... By loss of the left hand above the elbow, he has evidently been rendered unfit for the work of carpenter as the work of carpentry cannot be done by one hand only”.

This is obviously a reasonable and correct finding. Counsel for the appellant has not been able to assail it on any ground and it does not require to be corrected in this appeal. There is also no justification for the other argument which has been advanced with reference to item 3 of Part II of Schedule I, because it was not the appellant's case before the Commissioner that amputation of the arm was from 8" from tip of acromion to less than 4½ " below the tip of olecranon. A new case cannot therefore be allowed to be set up on facts which have not been admitted or established.”

11. It is an admitted fact that, respondents earlier filed claim petition before Tribunal, which was dismissed for non prosecution. Copy of order dated 26th October, 2006, of Tribunal reads as under:-

“Suit no. 50/06

26.10.2006

Present: None for the claimant.
Sh. D. K. Sharma, Adv. for R-3

None has appeared for the claimant since morning. The claimant has expired and the claim was filed in respect of certain bodily injuries sustained by the claimant and the cause of action died with the death of the deceased. His legal heirs moved an application under Order XXII rule 3 CPC, but in the proposed amended application, they have made certain averments without seeking permission of the court. No steps are being taken by the legal heirs/claimants to pursue the claim petition, and therefore, claim petition is dismissed for non prosecution.

File be consigned to Record Room.

MACT:DELHI.”

12. Question to be seen is, as to whether respondents could file claim petition in both forums i.e. ‘Tribunal’ as well as before ‘Commissioner’.

13. It is apparent from order of Tribunal that, no compensation was awarded to the claimants and there was no decision on merits. As claimants did not receive any compensation from Tribunal, present claim before Commissioner is perfectly maintainable.

14. Coming to the merit of case, appellant denied the factum of accident. However, respondent no. 4, owner did not deny the accident, nor denied that deceased was not employed with him.

15. Smt. Sushila (PW-1), widow of deceased, in her statement stated about accident. Also as per FIR Ext. AW 1/1 to AW 1/3 factum of accident and involvement of vehicle is there. Deceased sustained grievous injuries which have been proved vide MLC Ex. AW 1/9. As per Ex. AW1/9, patient was admitted with history of 'Alleged Road Accident'. Doctor opined nature of injury as 'Grievous'. So, it stand established that deceased sustained grievous injuries in the accident.

16. Main ground of attack of appellant's counsel is that accident took on 10th September, 2003, while deceased died on 17th July, 2005, i.e. after about two years. There is no nexus between accident and cause of death. As per medical record, death has occurred due to cancer, thus impugned order cannot be sustained.

17. Thus it is to seen as to whether there is direct connection between the cause of death and nature of duties. Deceased was a driver and as per MLC Ex. AW 1/9, he sustained grievous injuries. There is no rebuttal to this evidence.

18. Commissioner admittedly, did not award any compensation on account of death but awarded compensation for injury. Relevant portion of impugned order read as under:

“Hence, I hold that the applicants are not entitled to death compensation and they are entitled for injury compensation. But as the case-Pratap Narain’s-workman’s entitlement was crystallized the day of accident and his compensation has become the property of the estate after his demise. Hence, the LRs of the workman are entitled to compensation as per law.”

19. In ***Divisional Personal Officer , Western Rly. & Anr. Vs. Ashiya Begam, 1995 ACJ 435***, it is observed:

“It is not necessary that there should be a direct connection between the cause of death and the nature of duties. Even if a casual connection between the two can be shown then the dependents of the deceased would be entitled to claim compensation from the employer. In the matters like the present one it is not for the Courts to look to the minute details of the pleadings and the evidence which has been produced in the court but it is to be seen whether on a broad analysis of the material before the Court it can be said that the accident which resulted in any injury was in the course of employment or out of the employment”.

20. In another case, ***Kalavati Sakharam Ingular Vs. Mahindra Ugine Steel Co. Ltd;*** (1993)III LLJ 768 (Bom) it was observed;

“Death need not be a direct result of the injury. Even if it has contributed to accelerate the death, it is enough for the case to fall within Section 3 of the Act.”

21. Since deceased sustained injuries in an accident during course of his employment, the Commissioner rightly awarded compensation only for injuries to his legal heirs. Thus, there is no infirmity or ambiguity in the impugned order.

22. Present appeal therefore is not maintainable and same is hereby dismissed.

23. Pending application stand disposed of.

24. Parties shall bear their own costs.

25. Trial court record be sent back.

15TH September, 2009
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V.B.GUPTA, J.