

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO No.251/2005**

% *Judgment Reserved On : 18th October, 2010*
Judgment Delivered On: 26th October, 2010

M/s New India Assurance Co.Ltd. Appellant
Through Mr.D.D. Singh, Advocate
Versus

Nanua & Ors. Respondents
Through None

CORAM:
HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers may be allowed to see the judgment? No.
2. To be referred to Reporter or not? No.
3. Whether the judgment should be reported in the Digest? No.

MOOL CHAND GARG, J

CM No.12429/2005 (condonation of delay)

For the reasons stated in the application, delay is condoned.
Application stands disposed of.

FAO No.251/2005 & CM No.12428/2005 (stay)

1. The appellant has filed this appeal under Section 30 of the Workmen's Compensation Act, 1923 (hereinafter referred to as "the Act") being aggrieved of an order dated 30.06.2004, whereby the Commissioner, Workmen's Compensation has granted compensation to the tune of ₹4,39,900/- plus ₹ 2500/-funeral charges to the claimant on account of the death of one Tek Chand, who was employed as a labourer by respondent No.3 on a Tanker bearing No.HR-47-6408 and on 6.3.2003 received personal injury in an accident when the said tanker was on its journey to Mathura, & at about 10 am the tanker had reached near Ginny factory on National Highway No.2, under Police Station Chhata, Mathura, when all of a sudden, the steering of the vehicle went out of order. As a result of it, the vehicle could not be controlled and it hit a roadside tree and due to the said impact the deceased Tek Chand sustained fatal injuries. He was removed to BPL Nursing Home, Kosi Kalan, Mathura. But there he was referred to Escort Hospital, Faridabad and while he was on the way to Faridabad,

he expired. In connection with the aforesaid incident, an FIR was also registered. The tanker was insured with the appellant vide policy No.361700/31/02/03836 for the period of 21.08.2002 to 20.08.2003. Additional premium under the Workmen's Compensation Act was also charged by the insurance company from respondent No.3. The insurance company despite service of summons failed to file a written statement and therefore, was proceeded ex parte.

2. The Commissioner, Workmen's compensation framed the following issues:-

(i) Whether the death was caused out of and during the course of employment and if so, what amount the applicants are entitled and what directions are necessary in this respect?

(ii) Whether the applicants are entitled for any other relief and if so, what directions are necessary in this respect?

3. After recording the evidence of the parties, the Commissioner taking into consideration the last wages which the deceased was drawing and also taking into consideration his age, granted compensation to tune of ₹4,39,900/- plus ₹ 2500/-funeral charges as provided for under Section 4(4) of the Act. Since an additional premium had been collected by the appellant under the Act they were called upon to indemnify the claimant for the aforesaid amount.

4. It is this award which has been assailed by the appellant primarily on the ground that the deceased Tek Chand was not in the employment of respondent No.3 at the relevant time as a labourer though admitted that the tanker bearing No.HR-47-6408 met with an accident and that the said tanker was duly insured with the appellant and additional premium had also been charged from the insured by the insurance company under the Act.

5. Another ground pressed in service by the appellant is that the award in question was passed ex parte without effecting service of the claim petition upon him.

6. Learned counsel appearing for the respondent has submitted there is no evidence contrary to the claim of the respondent that the deceased Tek Chand was working on the aforesaid tanker which was

used to carry out the duties and responsibility towards the work as instructed by respondent No.3, the owner of the said tanker. It is also Stated that there was no dispute with regard to the accident and the death of the deceased Tek Chand when the tanker was on duty. It was submitted that the tanker was duly insured also with an additional premium for any claim under Workmen Compensation Act. As regards service of summons upon the appellant, it was pleaded that the summons were duly served upon the appellant which not only had the seal of the appellant but also the signatures of the employee of the appellant. It has also been submitted that no cogent evidence was led on behalf of the respondent to prove that it was not a case where service was not effected on the appellant.

7. I have perused the record of the case and find that the summons were duly received by the appellant. The seal on the summons sent to the appellant also bears the signatures of an employee of the appellant. It is a well-settled law that the liability of an insurance company in case of a medical accident is absolute. The said liability is to be discharged on the basis of absolute liability. As such, the appellant had no go but to pay the compensation. Having received an additional premium under the Act, they were liable to indemnify the claimant on account of an award passed by the Workman Commissioner under the Act. As such, I do not find any reason to disturb the award given in this case in favour of the claimant by the Workman Commissioner.

8. I have also gone through the judgments cited by the appellant to the effect that in the absence of any cogent evidence that Tek Chand was an employee of respondent No.3, he would not be entitled to any compensation under the Act. Reference has been made to M/s Shalimar Rope Works Ltd. Vs. M/s. Abdul Hussain H.M. Hasan Bhai Bassiwala and Ors., AIR 1980 SC 1162, Jwali and Ors. Vs. Babu Lal and Anr., AIR 1958 Allahabad 564, Smt.Chhutbai and Anr. Vs. Madanlal and Anr., AIR 1989 Madhya Pradesh 330. However, once the appellant has not been able to controvert the evidence led by the respondent establishing that the deceased Tek Chand was working on the tanker belonging to respondent No.3 and the said tanker was being used for carrying out the activities of that respondent under the

instructions of that respondent and at the time of the accident he was very much sitting on the tanker, this defence as pleaded by the appellant is not available to them.

9. Accordingly, the appeal filed by the appellant is dismissed with no order as to costs. The interim order dated 5.9.2005 stands vacated. CM No.12428/2005 stands disposed of. In case the claim amount has not yet been paid to the claimants, the same shall be paid to the claimants within a period of one month from today. LCR, if any, be sent back forthwith.

MOOL CHAND GARG, J

OCTOBER 26, 2010

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