

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

+ FAO 94/2005

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Date of Decision: 17.08.2012

BAJAJ ALLIANZ GENERAL INSURANCE Appellant
Through: Mr P.K. Seth, Adv.

versus

RAJINDER & ORS Respondent
Through: Ms Aruna Mehta, Adv.

CORAM:
HON'BLE MS. JUSTICE VEENA BIRBAL

VEENA BIRBAL, J.

1. This appeal under Section 30 of the Workmen's Compensation Act, 1923 (hereinafter referred to as 'the Act') has been filed against the impugned order dated 03.03.2005 passed by the Commissioner, Workmen's Compensation, Delhi, wherein a sum of Rs. 3,34,065/- as compensation has been awarded in favour of the respondents/claimants.

2. The facts relevant for the disposal of present appeal are as under:-

The respondent no.1 and 2 had filed an application before the Commissioner, for grant of compensation under the Act alleging therein that the deceased Dinesh Kumar was employed as a driver on a maruti van no. DL3CR 3308 owned by respondent no.3 on a monthly salary of Rs.3000/-.

Besides salary he was also being paid Rs.30/- per day towards diet money. On 21.06.2002, on the instructions of the respondent no.3, the deceased had left for Balaji. At about 1.30 pm, when the deceased had reached in the jurisdiction of P.S. Faridabad, a bullock-cart came in front of the van and struck against it, as a result of which, the deceased sustained serious injuries and was taken to government hospital where he succumbed to injuries. Subsequently, post mortem was conducted on his body and it was opined that he had died due to accidental injuries. The respondent no.1 and 2 being the legal heirs of deceased had filed a claim application under the Workmen's Compensation Act stating therein that they were entitled to receive compensation of Rs. 4 lakhs under the Act from the owner of the vehicle i.e. the respondent no.3 and the appellant being the insurer of the said vehicle.

The respondent no.3/employer had filed reply to the statement of claim, admitting that the deceased was her employee. The salary was also admitted. The employer also admitted that deceased had died in the accident as is stated in the statement of claim, during the course of employment. In the said reply, it was also stated that intimation was given by them to the insurance company in time and the vehicle was insured at the time of accident, as such, if there was any liability, the same was of the appellant.

The appellant i.e. Insurance company had also filed reply wherein it had admitted that the vehicle in question was insured at the time of accident. However, the appellant had denied its liability to pay any compensation as no intimation was given to them about the alleged accident.

3. The issues were framed by the Commissioner on 02.12.2004. Thereafter, the evidence of respondent no.1/Rajinder (father of deceased)

was recorded who was cross-examined on behalf of the appellant. The employer i.e. respondent no. 3 did not lead any evidence. The appellant/insurance company had also not led any evidence. Thereafter, on hearing the parties, impugned award dated 03.03.2005 was passed awarding compensation of Rs.3,34,065/- in favour of respondent nos.1 and 2 and direction was issued to the appellant to make the payment within one month from the date of order.

4. Aggrieved with the aforesaid order, the present appeal is filed.

5. Ld. counsel for the appellant has contended that the compensation is not awarded as provided under Section 4 of the Act. It is contended that the Commissioner ought to have given finding based on evidence on record and the method as to how the compensation has been calculated. It is further contended that the Commissioner did not grant any opportunity to the appellant to lead its evidence though the liability has been fastened on the appellant. It is further contended that the Commissioner had no jurisdiction to entertain the application as requisite notice as prescribed under Section 10 of the Act before filing application for the grant of compensation was not given.

6. On the other hand, the ld. counsel for respondent no.1 and 2 has contended that the relationship of employer and the employee and the salary of Rs.3000/- being given to the deceased was admitted by his employer i.e. respondent no.3 before the Commissioner. It is further submitted that the death of the deceased having occurred during the course of employment in an accident was also admitted. It is further contended that father of the deceased respondent no.1 had appeared in the witness box as PW-1 and had categorically deposed about the details of averments given in the statement

of claim. The appellant was given full opportunity to cross-examine him and his material evidence could not be demolished in cross-examination. The driving licence No. P-12014 GB Nagar, of the deceased was also proved on record by Sh. Surajpal Singh, a witness from the transport authority. There are other documents on record i.e. post mortem report Ex. PW 1/3, showing cause of death as well as the date of death of deceased. There is also FIR Ex.PW1/2 proving the accident. There is death certificate of deceased Ex. PW1/4. There is ample evidence on record which the appellant company could not demolish in cross-examination. It is further contended that the appellant was given three opportunities to lead evidence. Despite that it did not lead any evidence. All the necessary ingredients for the grant of compensation in favour of claimants were established before the Commissioner. It is contended that the impugned award granting compensation is not perverse as is contended. It is also contended that the full opportunity was given to the insurance company to substantiate its defence but it did not avail the same.

7. I have heard counsel for parties.

8. The claim was filed before the Commissioner by the parents of the deceased on 23.04.2003 whereas the date of accident is 21.06.2002. The mother of the deceased i.e. respondent no.2 has already died and her LRs have been brought on record. The respondent no.1 is the father of the deceased who is a blind person. Perusal of record shows that in response to the statement of claim, the insurance company as well as employer i.e. respondent no. 3 had filed separate written statement thereto. Thereafter, the replication was filed and issues were framed. In support of the claim, the respondent no.1 had examined himself as PW-1 and had deposed that

deceased was his son and was of 21 years of age at the time of accident. He was working with respondent no.3 as driver on vehicle i.e. van and was getting Rs.3000/- per month. He was also getting Rs.1000/- p.m. as money towards diet. On the day of occurrence, he was taking the relatives and friends of respondent no.3 to Balaji when the maruti van met with an accident. In the accident, his son had died. He has deposed that the case was registered at P.S. Ballabhgarh. The post mortem of deceased was conducted in Civil Hospital, Faridabad vide report Ex.PW1/3. He had further deposed that he and his wife were dependent upon the deceased. He had placed on record the death certificate Ex.PW1/4 of the deceased, ration card, Ex. PW1/1. He had also proved on record copy of FIR Ex.PW1/2. The PE was closed on 06.12.2004. The respondent no.3 i.e. the employer, in his evidence, had produced one witness from the transport authority who had proved driving licence of the deceased as Ex. R1W1/1. The appellant i.e. respondent no.2 before the Commissioner did not lead any evidence despite opportunities given.

9. It may be noticed that the employer had admitted that the deceased was their employee on the relevant date. The salary of deceased was also admitted. The factum of accident and that the death having occurred during the course of employment was also admitted. Apart from above admission, there was also evidence of the father of the deceased before the Commissioner substantiating the necessary requirement for the grant of compensation. The appellant had cross-examined the said witness at length but nothing relevant had come out in the cross-examination which could be of any help to the appellant.

10. In written statement the appellant had admitted the factum of insurance of vehicle vide policy no. G-02-1101-1801-00122662 being valid from 02.05.2002 to 01.05.2003. The other averments made in the claim petition had been denied by the appellant for want of knowledge and it was averred that the respondent no. 1 and 2/claimants be put to strict proof of the same. The claimants had proved their case in the evidence as is discussed above. The appellant was given opportunities to lead its evidence but it had failed to do so. Under these circumstances, it cannot be said that no reasonable opportunity was given to the appellant or that the finding of the Commissioner is perverse as is contended.

11. In the impugned order, the calculations have not been shown as to how the amount of Rs. 3,34,065/- has been awarded to the respondent no.1 and 2/claimants. However, ld. counsel for respondent has pointed out that the amount of compensation has been rightly awarded as per the provisions of Section 4 of the Act which is as under:-

“4. Amount of compensation – (1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely:-

(a)Where death results from the injury	an amount equal to fifty per cent of the monthly wages of the deceased workman multiplied by the relevant factor; or an amount of fifty thousand rupees whichever is more”
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12. It is stated that ‘relevant factor’ is provided under Schedule IV of the Act is 222.71 for the persons of age of 21 years. The salary of deceased was Rs.3000/- per month. The amount of compensation awarded is $\text{Rs.}1500 \times 222.71 = \text{Rs.}3,34,065$, which is rightly awarded. Accordingly, no fault is

there in the quantum of compensation awarded.

13. The other contention of the appellant is that notice under Section 10 of the Act was not given to the employer as such no claim could have been entertained by the Commissioner. As regards this contention, it is relevant to note Section 10 of the Act which reads as under:-

“10. Notice and claim.-[\(1\)](#) No claim for compensation shall be entertained by a Commissioner unless notice of the accident has been given in the manner hereinafter provided as soon as practicable after the happening thereof and unless the claim is preferred before him within 2[two years] of the occurrence of the accident or, in case of death, within 2[two years] from the date of death:

Provided that, where the accident is the contracting of a disease in respect of which the provisions of sub- section (2) of section 3 are applicable, the accident shall be deemed to have occurred on the first of the days during which the workman was continuously absent from work in consequence of the disablement caused by the disease

Provided further that in case of partial disablement due to the contracting of any such disease and which does not force the workman to absent himself from work, the period of two years shall be counted from the day the workman gives notice of the disablement to his employer

Provided further that if a workman who, having been employed in an employment for a continuous period, specified under sub-section (2) of section 3 in respect of that employment, ceases to be so employed and develops symptoms of an occupational disease peculiar to that employment within two years of the cessation of employment, the accident shall be deemed to have occurred on the day on which the symptoms were first detected

Provided further that the want of or any defect or irregularity in a notice shall not be a bar to the entertainment of a claim-

(a) if the claim is preferred in respect of the death of a workman resulting from an accident which occurred on the premises of the employer, or at any place where the workman at the time of the accident was working under the control of the employer or of any person employed by him, and the workman died on such premises or at such place, or on any premises belonging to the employer, or died without having left the vicinity of the premises or place where the accident occurred, or

(b) if the employer or any one of several employers or any person responsible to the employer for the management of any branch of the trade or business in which the injured workman was employed had knowledge of the accident from any other source at or about the time when it occurred:

Provided further, that the Commissioner may entertain and decide any claim to compensation in any case notwithstanding that the notice has not been given, or the claim has not been preferred, in due time as provided in this subsection, if he is satisfied that the failure so to give the notice or prefer the claim, as the case may be, was due to sufficient cause.

(2) Every such notice shall give the name and address of the person injured and shall state in ordinary language the cause of the injury and the date on which the accident happened, and shall be served on the employer or upon any one of several employers, or upon any person responsible to the employer for the management of any branch of the trade or business in which the injured workman was employed.

(3) The State Government may require that any prescribed class of employers shall maintain at their premises at which workmen are employed a notice- book, in the prescribed form, which shall be readily accessible at all reasonable times to any injured workman employed on the premises and to any person acting bona fide on his behalf.

(4) A notice under this section may be served by delivering it at, or sending it by registered post addressed to, the residence or any office or place of business of the person on whom it is to be served, or, where a notice- book is maintained, by entry in the notice- book.”

14. A reading of Section 10(1) together with clause (b) of the fourth proviso of the Act makes it clear that the failure of the injured workman or dependents of the deceased workman as the case may be, to serve notice of accident on the employer is not fatal to the claim of compensation preferred by the workman or its dependents if the employer had the knowledge of factum of accident. Reference in this regard is made to judgment of this Court in FAO 268/2004 titled as *The New India Assurance Co. Ltd v. Smt. Momina Khatum and Ors* decided on 19.03.2008.

15. In **Pradesh Mining Corporation vs. Munde Kol: II(1990)ACC 127**, one of the contentions raised was that claim was not maintainable in the absence of notice required to be given by the employee under section 10 of the Act, as such the impugned order was liable to be set aside. The Madhya Pradesh High Court considered the aforesaid contention and observed as under:-

“Section 10 of the Act obliges a claimant to give notice of the accident to the employer as soon as practicable after the accident. This section has been interpreted to mean that what is required is a mere notice of the accident and does not mean notice of details of the accident. [See *Ali Mohammed v. Shankar* MANU/MH/0035/1945: AIR 1946 Bom 169]. The 4th proviso to this section indicates that want of or any defect or irregularity in a notice shall not be a bar to the entertaining of the claim if the employer or any person responsible to the employer for the management of business in which the injured workman was employed, had knowledge of the accident from any other source at or about the time when it occurred. Relying on this proviso it has been held that where the injured workman was removed to the hospital from the factory and thereafter he approached the employer several times for compensation and employment, the requirement of this

proviso will be satisfied and absence of a written notice would not be a bar to entertaining the claim [See Jaichand vs. Vithal AIR 1983 Bom 109 and fakiragram Rice Mills v. Ramu AIR 1950 Ass 188]”.
(underlining added)

16. In the present case, in the claim petition it has been stated that last rites of the deceased were attended by the employer i.e. respondent no.3 Smt. Shanti Chauhan. Therefore, there was no need to give her separate notice before filing of the claim petition. Further, the employer had not denied that the last rites of the deceased were attended by her. Under these circumstances, the Commissioner was justified in entertaining the claim.

17. No illegality or perversity is seen in the impugned award which calls for interference of this court. The impugned award is therefore, upheld.

CM No 5388/2005

In view of above order, no further orders are required on this application. The same stands disposed of accordingly.

VEENA BIRBAL, J

AUGUST 17, 2012

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