

GAHC010117102022



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

Case No. : MFA/23/2023

NATIONAL INSURANCE COMPANY LTD.
HAVING ITS REGISTERED OFFICE AND HEAD OFFICE AT 3, MIDDLETON
STREET KOLKATA AND ITS REGIONAL OFFICE AT G.S. ROAD,
BHANGAGARH, GUWAHATI.

VERSUS

MALEKA BEGUM AND ANR. B
W/O- MD. ISAMUL ALI, R/O- VILL.- PANDU, 5 NO. COLONY, P.O. PANDU, P.S.
JALUKBARI, DIST. KAMRUP(M), ASSAM, PIN- 781013.

Advocate for the Petitioner : MR. R GOSWAMI

Advocate for the Respondent : MR A HAWARI

BEFORE
THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY
O R D E R

24. 03. 2023

Heard Mr. R Goswami, learned counsel for the appellant. Also heard Mr. K

Bhattacharjee, learned counsel for the respondent No. 1 and Mr. S Islam, learned counsel representing owner/ employer.

2. This is an appeal under Section 30 of the Employee's Compensation Act, 1923 against the judgment and order dated 25.03.2022 passed by the learned Commissioner, Employee's Compensation, Kamrup in WC case No. 116/2012.

3. As agreed to by the learned counsel, this matter is taken up for final disposal at the admission stage itself.

4. After hearing the parties the following substantial question of law is framed:

“Whether the decision of the learned Commissioner is perverse in granting the award against a Burglary policy without any exhibit and proof of any insurance policy covering the liability of the employer?”

5. The claim was preferred under Section 3 and 4 of the Employee's Compensation Act, 1923 by the claimant, Maleka Begum on the death of her son.

6. It is the case of the claimant that her son was an employee under M/s Hi-Speed Bikes, a firm dealing with Hero motorcycle sales and service. The son of the claimant was a trained and skilled motorcycle/ scooter mechanic with a certificate from the IGNOU, New Delhi. He was also having a valid driving licence.

7. It is the case of the claimant that while her son was taking a bike from the godown of the respondent No. 1 to the showroom, he met with an accident and hit one divider of the road, sustained grievous injuries and subsequently died at Guwahati Medical College Hospital, Guwahati on 10.09.2012 at about 10 p.m. The claimant claimed his salary to be Rs.

8,000/- per month. The respondent No. 1 employer did not contest the claim. The learned Commissioner thereafter passed the impugned judgment by passing an award of Rs. 8,36,920/-.

8. The ground for challenge of such award by the Insurance Company is that the Insurance policy on the basis of which the insurance appellant was fastened with the liability is a policy against Burglary of the showroom and the same nowhere relates to an insurance policy under Employee's Compensation Act, 1923. Such insurance policy was exhibited as Ext. A.

9. A copy of such exhibit is produced before this court, which discloses that the Ext. A policy is a policy Burglary Against Business Premises Policy. The description and premises is also given and stocks of motorcycle etc. which were insured also disclosed in the policy. Therefore, by no trace of imagination such Burglary policy can cover the employee under the provision of Employee's Compensation Act, 1923.

10. Mr. Bhattacharjee, learned counsel for the claimant/ respondent No. 1 after going through the Ext. 1 in his usual fairness also submits that the policy was for Burglary against Business Premises.

11. In the aforesaid backdrop, this court is of the view that the decision of the learned Commissioner is perverse in granting the award against a Burglary policy without any exhibit and proof of any insurance policy covering the liability of the employer for compensation to the deceased.

12. In that view of the matter, the present appeal stands allowed at this stage itself and the matter is remanded back to the learned Commissioner for a fresh adjudication. It is also made clear that the claimant, appellant and respondent No. 2, employer of the deceased be allowed to file fresh pleading and lead fresh evidence.

13. In the aforesaid terms, this appeal stands allowed. Parties to bear their own cost.

JUDGE

Comparing Assistant