

GAHC010161642011



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

Case No. : MFA/114/2011

ORIENTAL INSURANCE CO. LTD.
HAVIN ITS REGISTERED OFFICE AT ORIENTAL HOUSE, A-25/27, ASAF ALI
ROAD, NEW DELHI-110002, WITH ONE OF ITS REGIONAL OFFICE AT G.S
ROAD, ULUBARI, GUWAHATI-781007, REPRESENTED BY ITS REGIONAL
MANAGER.

VERSUS

MD. ABDUL MANNAN and 3 ORS
S/O LATE HAZI NAZIR ALI

2:MISS JAHLIA BEGUM

D/O MD. ABDUL MANNAN.

3:MD. JUBEL AHMED

S/O MD. ABDUL MANNAN
ALL ARE RESIDENTS OF DURLOBPUR
GIRISHGANJ
P.O. and P.S. KARIMGANJ
DIST. KARIMGANJ
ASSAM
PRESENTLY RESIDING AT VILL. and P.O. RAMNAGAR
DIST. CACHAR
ASSAM.

4:MR. WEPREPE MERO

S/O PFLUTO MEO
R/O PFUTSERO TOWN
DIST. PHEK NAGALAND

OWNER OF THE VEHICLE NO. NL-01C/384

Advocate for the Petitioner : MR.M CHOUDHURY

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 29-09-2023

Heard Mr. S. Dutta, learned counsel for the appellant. None appears on call for the respondents.

2. This appeal under section 30 of the Employee's Compensation Act formerly Workmen's Compensation Act, 1923 is directed against the judgment and award dated 02.03.2009 passed by the learned Commissioner, Workmen's Compensation, Silchar in WC case no.45/2004.

3. By the said judgment and award, the respondent nos.1, 2 and 3 were held to be entitled to compensation of Rs.3,27,705/- to be paid with interest @ 9% per annum till realization.

4. The appeal was admitted by order dated 15.12.2011 on the following substantial question of law:

1. *Whether in view of the evidence adduced by the Insurance Company, the learned Commissioner was justified in recording the finding that the death of the workman was in course of his employment as driver?*

5. The claim petition was filed by one Md. Abdul Mannan, who was the predecessor-in-interest of the substituted respondent nos.1, 2 and 3. As per the claim petition, the son of the claimant, namely, Late Khalid Ahmed @ Salim @ Jaber Azhar was a driver by profession and he was employed by the respondent no.4 as driver of his Maruti van bearing registration no.NI-01C/3841 and he had a driving license which was valid upto 21.01.2004.

6. In course of employment, the deceased was coming with his vehicle towards Badarpur and on reaching Badarpur, some miscreants forcibly took the vehicle towards Deocherra Beel and after killing the deceased driver, they took the vehicle away. The miscreants were subsequently arrested and in respect of the said incident Badarpur PS case no.7/2004 under sections 147/302/379 IPC was registered. The Post mortem of the dead body was conducted. The appellant as well as the respondent no.4 both filed their written statement while the appellant contested the claim, the respondent no.4 admitted that the deceased was under his employment and at the time of his death he was on duty. However, he had denied the responsibility of paying compensation.

7. In course of trial, the respondent had examined himself as claimant witness no.1 and exhibited the following documents: Post Mortem report (Ext.1), Death Certificate from Panchayat (Ext.2), Doctor certificate showing that the claimant no.1 was a permanent patient of Asthma with Hypertension (Ext.3), FIR, Charge sheet and Seizure list (Ext.4), Copy of Driving license of the deceased (Ext.5) and Final report of GR case no.24/2004 of Kohima Police Station (Ext.6).

8. The Commissioner, Workmen's Compensation had accepted the age of the deceased as 24 years at the time of his death and arrived at a conclusion that he was drawing salary of Rs.4,000/- per month and that the vehicle in question was duly insured with the appellant and on the basis of the documents, it was concluded that the deceased died during the course of his employment and taking into account 50% of the wage, 218.47 as relevant factor, the respondent nos.1, 2 and 3 were found to be entitled to the compensation of Rs.3,27,705/-, which was required to be paid within 30 days from the date of receipt of the award failing which the award would carry interest @9% per annum from the date of award till realization.

9. The learned counsel for the appellant has referred to the stand taken in the written statement filed by the appellant who was the respondent no.2 in the claim petition, and has submitted that the plea was to the effect that the vehicle which the deceased was driving was a stolen vehicle and that the claim was denied on the ground that the driver's license was not filed in the claim petition and there was no document to submit that the deceased was murdered and there was no medical document or report of the government hospital of the death of the deceased or that any case was registered in connection with the said murder.

10. It is submitted that the appellant had denied the liability to pay any compensation to the respondent nos.1, 2 and 3 on account of the death of the son of the respondent no.1.

11. From the evidence available on record, as already indicated above, the respondent nos.1 and 2 as claimants had proved the FIR, Charge sheet, Post mortem report and a copy of the FIR in connection with Kohima PS case no.12/2004 which was filed by the respondent no.4 to report the car being carjacked and the death of his driver.

12. In the LCR, there is a copy of the order passed by the Addl. Deputy Commissioner (Judicial)-cum-Motor Accident Claims Tribunal, Kohima, order dated 09.09.22 is observed to be marked as Ext.6 which is in reference to Kohima (North) PS case no.0012/04 corresponding to GR case no.24/2004 referring to the vehicle which was carjacked by miscreants on 21.01.2004 and that on completion of investigation, charge sheet no.47/04 dated 12.08.2004 was filed to the effect that the recovery of the said lost vehicle was remote and also referred to the driver of the vehicle being murdered by the said miscreants.

13. As per the documents which are marked as exhibits in the LCR are as follows:- Doctor Certificate (Ext.2), Gaon Panchayat Certificate (Ext.3), Seizure list (Ext.4), Charge Sheet (Ext.4), Post Mortem Report (Ext.4), Motor Accident Claims Tribunal (Ext.6).

14. It is seen that the evidence of the PW-1 could not be demolished during the cross-examination.

15. It is observed that although the appellant had taken a plea that the car was not allegedly carjacked but it was a stolen car which the deceased was

driving but except for the oral evidence of Prasanta Bhattacharjee, who was Assistant (C) of the appellant, Silchar Division Office, no document was exhibited to show that the vehicle of the respondent no.4 was stolen by the deceased son of the respondent no.1.

16. The learned counsel for the appellant had submitted that the dead body was not identified by the respondent no.1. The said submission would have no cause to the effect that it appears from the deposition of PW-1 that the deceased son of respondent no.1 had died and the dead body was preserved till 72 hours at hospital Morgue as nobody claimed the dead body, the police had disposed off the dead body on expiry of the 72 hours period. A mere fact that the dead body was not identified by the father after being exhumed but it was identified by one Abdul Gani would not negate the fact that the son of the respondent no.1 had died, the Court finds that as per the medical certificate proved by the respondent no.1 that he was a patient suffering from Bronchial Asthma with hypertension, and it was quite possible that owing to shock resulting from the death of his son he did not go to identify the dead body exhumed. The police report as well as the death certificate and the post mortem report concludes that the son of the respondent no.1 had died. That fact would not be negated by the evidence of DW-1. However, the plea of the vehicle of the respondent no.4 being stolen is negated by the written statement of the respondent no.4 and that the appellant did not summon the respondent no.4 to give evidence that his vehicle was stolen by the deceased.

17. Under such circumstances, the Court is of the considered opinion that in the trial, the respondent nos.1. 2 and 3 have successfully proved that the

deceased was an employer of the respondent no.4 and he had died in course of his employment. Therefore, the substantial question of law is answered in the affirmative and against the appellant by holding that the learned Commissioner, Workmen's Compensation was justified in recording the finding that the death of the deceased was in course of his employment and that the evidence adduced by PW-1 on behalf of the appellant. The stand taken by the appellant that the vehicle was stolen and that the deceased was not in employment of the respondent no.4 stands disproved.

18. Accordingly, the Court is inclined to dismiss this appeal.

19. The appellant is directed to pay the balance unpaid compensation along with interest due before the Commissioner, Workmen's Compensation, Cachar, Silchar.

20. As the respondent nos.1, 2 and 3 (i.e. claimants) are absent on call, on receipt of the LCR the Commissioner, Workmen's Compensation shall serve notice on the claimants.

21. For the same reason, the Registry shall also transmit a copy of the order to the respondent nos.1, 2 and 3.

22. The LCR be returned back.

23. No order as to cost.

JUDGE

Comparing Assistant