

HIGH COURT OF UTTARAKHAND AT NAINITAL

Appeal from Order No.22 of 2021

New India Assurance Company Ltd. Appellant

Versus

Jayendra Singh Rawat and Others Respondents

With

Appeal from Order No.23 of 2021

New India Assurance Company Ltd. Appellant

Versus

Kamal Chand Ramola and Others Respondents

Present:-

Mr. P.C. Maulekhi, Advocate for the appellant.

Mr. Niranjan Bhatt, Advocate for respondent nos.1 and 2.

Mr. Devesh Ghildiyal, Advocate for respondent no.3.

Hon'ble Sharad Kumar Sharma, J. (Oral)

Though these Appeals from Order under Section 30 of the Employees Compensation Act, 1923 are listed under the head of orders for consideration of the Money Withdrawal Application, which has been filed by the claimant respondent nos.1 and 2, but all the parties since have jointly agreed that if the Appeal from Orders are decided finally, they may not be having any grievance.

2. As such, legally under Section 30 of the Employees Compensation Act, the jurisdiction of the Appellate Court is limited, to the substantial question of

law which is involved for consideration, therein. When these Appeals from Order were taken before the Coordinate Bench, the same were admitted by an order of 01.03.2021 and the solitary question which was pressed by the appellant, herein, was to the following effect:-

“What is disputed is, as to who shall pay the awarded amount. And according to the appellant, the appellant contends that he is not liable to pay.”

3. Based on this question of law, the counsel for the appellant presses the instant Appeals from Order, while questioning, the decision taken by the Employees Compensation Commissioner, on 23.12.2020 in E.C.P. Case No.48 of 2017, Jayendra Singh Vs. Jayvir Singh Aswal and another, whereby, the Employees Compensation Commissioner has awarded a compensation to the claimants to the tune of Rs.6,75,660/- with an interest payable on it @ 9% per annum.

4. The facts as it engaged consideration are that a claim petition was preferred by the claimants before the Employees Compensation Commissioner under Section 22 to be read with Rule 20 of the Rules framed under the Act, contending thereof that late Mr. Manish Rawat who was employed in the firm of Mr. Jayvir Singh, who during

the course of his employment, he met with an accident on 16.05.2017 and consequently, he met with the sad demise. As a result to the sad demise and the income accruing to the deceased, which was alleged to be Rs.10,000/- per month, the claim was raised by the dependents Jayendra Singh Rawat and Amita Devi before the Employees Compensation Commissioner for the payment of compensation, because there persisted of master and servant relationship between the deceased and the owner. It was found by evidence that at the time of death, the deceased was of 19 years of age and in accordance to the Appendix 4 to the Employees Compensation Act, the employees, who is of 19 years of age, his dependants would be entitled for adequate compensation, as per the parameters prescribed therein. Apart from it, an additional amount would be payable towards the consortium, as well as for meeting out the cremation expenses, was also to be borne by the employer. The respondent employer before the Workman Compensation Commissioner has come up with the case by filing the written statement being paper no.63 (Kha), wherein he admits that there existed relationship of master and servant, between the deceased and the employer respondent. But he contends that since, on the date of the accident, the vehicle as it was insured with the insurance company, hence, if any, liability of

determination of compensation was to be fastened, it was to be fastened on the insurer of the vehicle.

5. The appellant, herein, too had filed a written statement being paper no.27(Kha). In the written statement thus filed, an additional plea was taken with regards to admitting the fact of an accident having chanced on 16.05.2017 and also admitting the fact that the vehicle was insured with the insurance company.

6. What is important and as argued by the learned counsel for the appellant at this stage which is alleged to be based upon the substantial question, as it was framed by the Coordinate Bench, was as to the effect, as to who would be actual liable to pay the awarded amount, as the insurer appellant herein submits that they will not be liable to pay the amount. The question of liability being fastened upon the appellant, it would always be depending upon the determination of facts, which were required to be substantiated by adducing evidences only before the proceedings of the Employees Compensation Commissioner and its only there upon that the determination of evidence, that the conclusion could be arise that as to whom the liability of payment of compensation could be shifted. But what is important in the instant case, is that the question as argued by the counsel for the appellant before this Court, in fact, the

appellant has, despite of alleged pleading, never got an issue framed to that effect before the Employees Compensation Commissioner nor any finding has been recorded in that regard as such by the Employees Compensation Commissioner, with regard to the fixation of liability, except for the fact, that based on the evidence as it was adduced by the claimant, pertaining to the existence of the Master-Servant relationship with the employer and also evidence with regard to the insurance documents Paper Nos.65 and 66 (Ga), it proves that the same was insured with the appellant.

7. The learned Employees Compensation Commissioner, while determining and quantification of compensation while deciding Issue No.3, had taken into consideration the evidence which was placed on record, that the deceased was admittedly proved to be an employee under the employer opposite party no.1 and was earning a sum of Rs.6,000/- per month and on the date of accident, when he met with the sad demise it had chanced during the course of employment, as the offending vehicle had sunk into the soil because of the landslide.

8. In order to prove the age of the decesaed, the High School Certificate of the deceased was placed on record which proved the fact, that on the date of the

accident, he was of 19 years of age. Based on the aforesaid principles, the learned Motor Accident Claims Tribunal after taking the income accruing to the deceased as to be Rs.6,000/- and the factum multiplier of Rs.226.38 as per Appendix 4, had determined the total compensation as Rs.6,75,660/- and accordingly, the claim petition was allowed on 23.12.2020.

9. In order to meet out the argument as it has been extended by the learned counsel for the appellant with regard to attempting to shift upon the liability of payment of compensation upon the owner of the vehicle and the employer of the deceased, in fact, this Court is of the view that this could not be a substantial question of law would at all be involved requiring to be decided by this Court, particularly when, such nature of substantial question of law required a prior determination of facts and once the insurance company was conscious of the fact with regards to the pleading raised in the written statement paper no.27(Kha), then it was rather the responsibility of the insurance company to have got an appropriate issue framed before the Employees Compensation Commissioner and get the finding returned based on evidence, rather than pressing upon the said issue for the first time, in the absence of any evidence by virtue of an issue got being formulated, at an appropriate

stage under Section 30. Since no finding was recorded by the Motor Accident Claims Tribunal, nor was attempted was ever made to get the findings returned by the appellant, they cannot agitate it for the first time before the Appellate Court under Section 30, which was confined to be considered based upon the substantial question, which is actually involved and at this stage, they cannot be re-appreciation of evidence to determine the liability of payment of the awarded amount whether it is to be paid by the employer of the deceased or by the insurance company.

10. In view of the admitted fact that the accident did chance and there was an admitted existing relationship of master and servant coupled with the fact, that the vehicle was insured with the insurance company, the liability which has been fastened upon, the insurance company by the impugned award under challenge does not suffer from any apparent error of law, nor it involves any substantial question of law as it was framed by the Coordinate Bench at the time of admission of appeal to be answered by this Court.

11. Thus the appeal lacks merit and the same is accordingly dismissed.

(Sharad Kumar Sharma, J.)
12.12.2023