

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 871 of 2001

Appellant :- The Oriental Insurance Co. Ltd. Agra

Respondent :- Smt. Javitri And Others

Counsel for Appellant :- Arvind Kumar

Counsel for Respondent :- D.K.Tripathi

Hon'ble Saral Srivastava,J.

1. Heard learned counsel for the appellant.
2. The present appeal has been filed by the appellant- insurance company challenging the award dated 19.04.2001 passed by Workmen Compensation Commissioner/Assistant Labour Commissioner, Agra in Case No.31 of 1998.
3. Challenging the award, learned counsel for the appellant has contended that in the instant case, the relationship of the employer and employee has not been proved between deceased and owner of the jeep. It is submitted that the owner of the jeep appeared before the Commissioner and categorically deposed that one Rakesh Chaudhary was a driver and the deceased was not employed with him. It is submitted that in view of the categorical testimony of the owner of the vehicle denying the employment of the deceased, the Tribunal has erred in law in disbelieving the testimony of owner in concluding that the deceased was employed as driver of jeep. Accordingly, it is submitted that the finding of the Commissioner on the issue of relationship of employer and employee between owner of jeep and deceased is based upon misreading of evidence and is not sustainable in law.
4. Be that as it may, in the instant case, the claimants/respondents

appeared before the Commissioner and stated that the deceased was employed as driver on the offending jeep. Considering the nature of employment of the deceased, it was not possible for the claimants/respondents to lead any documentary evidence in respect of employment of the deceased except proving the relationship of employer and employee by testimony which has been done by the claimants/respondents in the instant case. The Tribunal further noticed the FIR in the instant case and found that the FIR appears to have been lodged by the other driver and in the FIR, it has been mentioned that the deceased was also driver with him in the jeep. Consequently, the Tribunal found that the testimony of owner of jeep was not credible and disbelieved the same. This Court finds that the Tribunal has rightly disbelieved the testimony of the owner considering the fact that the testimony of respondent is also supported by the contents of the FIR which appears to have been lodged by the other driver employed on the jeep. Thus, the finding of the Commissioner is a finding of fact and does not call for interference

5. Since the appeal would lie under Section 30 of Workmen Compensation Act on substantial question of law and no substantial question of law is involved in the present appeal, therefore, the appeal lacks merit and is accordingly **dismissed** without any order as to costs.

Order Date :- 30.10.2023
R.S. Tiwari