

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 3059 of 2004

Appellant :- New India Assurance Co Ltd

Respondent :- Smt. Mamta And Others

Counsel for Appellant :- Brijesh Chandra Naik

Counsel for Respondent :- Vivek Dhaka, Bibhuti Narayan Singh

Hon'ble Saral Srivastava, J.

1. Heard learned counsel for the appellant and learned counsel for the respondents.
2. The present appeal has been filed by the appellant-insurance company challenging the award dated 20.09.2004 passed by the Commissioner, Workmen Compensation Act, 1923, Meerut (for short 'Commissioner') in W.C.A. No.111 of 2001.
3. Challenging the award, learned counsel for the appellant has contended that the deceased was not employed as driver on truck No.HR38E/0122. It is further contended that the owner of the truck has denied the employment of the deceased in the accident and therefore, there was no relationship of employer and employee between owner and deceased. The Commissioner has erred in allowing the claim petition.
4. Per contra, learned counsel for the respondents has contended that the employment was proved by the claimant-respondent No.1 who appeared as witness and deposed that the deceased was employed as driver on truck

No.HR38E/0122 and was murdered when he was on duty. The claimant-respondent produced one Sundar Singh who deposed that the deceased was driver on HR38E/0122. It is further contended that no evidence in rebuttal to the testimony of widow of the deceased and Sundar Singh was filed on record and the owner only in his written statement has denied the factum of employment and did not appear before the Commissioner to prove the fact that the deceased was not employed as driver on truck No.HR38E/0122.

5. Be that as it may, the case of the claimant-respondent was that the deceased was employed as driver on truck No.HR38E/0122 and was murdered by some miscreants when he was on duty. The widow of the deceased appeared as a witness and proved the employment of the deceased as driver on truck No.HR38E/0122 by her testimony. The claimant-respondent also produced one Sundar Singh who proved the employment of the deceased. The appellant insurance company did not lead any evidence in rebuttal to the testimony of two witnesses produced by the claimant-respondent to prove the employment of the deceased. Therefore, the finding of the Commissioner on the issue of relationship of employer and employee between owner and the deceased is a finding of fact based upon proper appreciation of facts and evidence on record, is not liable to be interfered with by this Court in its appellate jurisdiction.

6. Since, the appeal under Section 30 of Workmen's Compensation Act would lie only on substantial question of

law and in the instant case, there is no substantial question of law, therefore, the appeal being devoid of merit is **dismissed**.

Order Date :- 31.10.2023

SS