

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 1306 of 2006

Appellant :- The New India Assurance Co. Ltd.

Respondent :- Smt. Rekha Devi And Another

Counsel for Appellant :- Saurabh Srivastava

Counsel for Respondent :- Ashutosh Upadhyay

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 10.03.2006 passed by Workmen Compensation Commissioner/Assistant Labour Commissioner, Moradabad in W.C.A. No.1 of 2004.
3. Challenging the award, learned counsel for the appellant has contended that the Commissioner has erred in law in holding that the deceased was employed as driver on truck No.U.P.15-F-6949. It is submitted that the owner of the vehicle has denied the factum of employment of the deceased. It is further contended that the appellant has also produced the investigator of the company as DW-1 who proved that the deceased did not die in the accident of truck No.U.P.15-F-6949. Accordingly, it is submitted that the Commissioner has erred in law in entertaining the claim petition.
4. Be that as it may, the employment of the deceased as driver on the truck No.U.P.15-F-6949 was proved by the claimant/respondent who appeared before the Commissioner and deposed that the deceased was employed as driver on truck No.U.P.15-F-6949. The owner has filed a written statement wherein he denied the factum of employment but did not appear

before the Commissioner to prove the fact of denial of employment of deceased on truck. Even the surveyor of insurance company has not denied the factum of the employment of the deceased on truck rather he has stated in testimony that the deceased did not die in the accident of truck No.U.P.15-F-6949. In such view of the fact, the finding of the Commissioner on the issue of employment of the deceased as driver on truck No.U.P.15-F-6949 is a finding of fact based upon proper appreciation of evidence on record and does not warrant any interference by this Court.

5. So far as the contention of learned counsel for the appellant that the cause of death of the deceased had no connection with the nature of employment inasmuch as the deceased did not die in accident of truck No.U.P.15-F-6949 is concerned, this Court may note that the only evidence on record in this regard is the testimony of surveyor of the insurance company. The Tribunal disbelieved the testimony of surveyor on the ground that the surveyor did not meet the cleaner of the truck Tanveer Yadav to verify aforesaid fact. The finding of the Commissioner on the issue that the deceased had died in the accident on truck No.U.P.15-F-6949 is a finding of fact based upon the evidence on record and being a finding of fact is not liable to be interfered with by this Court.

6. 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