

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 2753 of 2005

Appellant :- United India Insurance Company Limited

Respondent :- Navi Jaan And Others

Counsel for Appellant :- ,Amit Singh

Counsel for Respondent :- Kamesh Kumar Arya,Sharve Singh

Hon'ble Saral Srivastava,J.

1. Heard learned counsel for the appellant and Sri Vidyakant Shukla, Advocate, holding brief of Sharve Singh, learned counsel for the respondents.

2. The present appeal has been filed by the appellant against the award dated 30.09.2005 passed by Workmen's Compensation Commissioner/Assistant Labour Commissioner, Rampur in Workmen Compensation Case No.07/WCA/04.

3. The claimants who are mother, father and sister of the deceased Athar instituted a claim petition before the Commissioner, Workmen praying compensation for the death of one Athar who died in an accident with Truck No. U.P.-02C-9107.

4. The claim petition was instituted by the claimants/respondents contenting inter-alia that the deceased, namely, Athar, aged about 21 years was employed as Cleaner at a salary of Rs.4,000/- per month by respondent no.1-Irfan, who was real brother of the deceased, on his truck bearing registration No.U.P.-02C-9107. The further case of the claimants is that on 30/31.05.2002 the deceased Athar was on outstation duty and the truck was loaded and respondent no.1 Irfan was driving the offending truck from Bilaspur to Delhi, which hit the truck No.U.P.21-D-9174 from

behind, and in the said accident Cleaner Athar received injuries and died during the course of employment.

5. The appellant Insurance Company filed written statement contending inter-alia that the deceased Athar was real brother of respondent no.1 Irfan who was owner of Truck No. U.P.-02C-9107, and therefore, there was no relationship of employer and employee of between the deceased and respondent no.1. The owner of the truck in question could not lay any claim being one of the party to the contract of insurance, inasmuch as under the contract of insurance, the Insurance Company indemnify the owner, thus, the appellant Insurance Company cannot be saddled with the liability to pay compensation.

6. Challenging the award, learned counsel for the appellant has contended that the Commissioner has erred in law in entertaining the claim petition, inasmuch as it is not disputed that the respondent no.1-Irfan who is owner of the offending truck is the real brother of the deceased Athar, therefore, it is unbelievable that the real brother could employ his brother as Cleaner on the truck. It is further contended that under the contract of insurance, the Insurance Company indemnifies the liability of the owner, and in the instant case, the owner is in collusion with the claimants who are his mother, father and real sister, and the claim petition has been filed only to get the compensation under the Workmen Compensation Act from the appellant Insurance Company/insurer of the truck, and therefore, the Insurance Company is not liable to indemnify any claim to the owner. In support of his contention, learned counsel for the appellant has placed reliance upon the judgement of the Apex Court in the case of **Gottumukkala Appala Narasimha Vs. National Insurance Company Ltd. and**

Another (2007) 13 SCC 446.

7. Per contra, learned counsel for the respondents would contend that claim petition has been filed for the death of Athar. It is submitted that the deceased was Cleaner on the truck in question and there was ample evidence on record which proved that the deceased was engaged as cleaner on the truck, therefore, the Insurance Company is liable to pay compensation for the death of Cleaner of the truck. Accordingly, it is submitted that in such view of the fact, the submissions advanced by the learned counsel for the appellant are misconceived.

8. Be that as it may, the prime question that arises in the instant case is whether there was any relationship of employer and employee between the respondent no.1-owner of the truck and the deceased, and whether the Insurance Company can be made liable to indemnify the award, even if there was no liability of the owner under the award.

9. In the case of **Gottumukkala Appala Narasimha (supra)**, the Apex Court has held as under:

"Thus, if the vehicle is covered by an insurance, the insurer may be made a party and it may be liable to indemnify the owner, but the situation in this case is entirely different, as would appear from the discussions made hereinafter.

In our considered opinion, it is wholly absurd to suggest that the husband would be a "workman" of his wife in absence of any specific contract. We have no doubt in our mind that for the purpose of proceeding under the 1923 Act, only the appellants have concocted the story of husband and wife living separately. If they have been living separately in view of certain disputes, the question of husband being a "workman" under her appears to be a far-fetched one.

Technically, it may be possible that the husband is employed under the wife, but, while arriving at a conclusion that when a dispute has been raised by other side, the overall situation should have been taken into consideration. The fact, which speaks for itself shows that the owner of the tractor joined

hands with the claimant for laying a claim only against the insurer. The claim was not bona fide.

No documentary proof to establish the contract of employment was produced. No independent witness was examined. Even as to for what purpose the tractor was being used had not been disclosed. How the accident had taken place is also known (sic not) borne out from the records of the case. If the deceased, with all intent and purport, was the owner of the tractor, the claim petition under the 1988 Act might not have been maintainable. A petition under the 1923 Act certainly would not lie. Only because Sections 143 and 167 of the 1988 Act refer to the provisions of the 1923 Act, the same by itself would not mean that the provisions of the 1988 Act, proprio vigore would apply in regard to a proceeding for payment under the 1923 Act. The limited applicability of the provisions of the 1988 Act, in relation to the proceedings under the 1923 Act has been discussed by this Court in the aforementioned judgments. It is, thus, not possible to extend the scope and ambit of the provisions of the 1988 Act to the provisions of the 1923 Act save and except to the extent noticed hereinbefore.

The ingredients for maintaining a proceeding under the 1988 Act and the 1923 Act are different. The purpose for which a contract of insurance is entered into may be different, whereas under the 1988 Act, it will bear repetition to state, a contract of insurance would be mandatory; for the purpose of applicability of the 1923 Act, it will be optional and as indicated hereinbefore, in *Harshadbhai Amrutbhai Modhiya (supra)*, even contracting out is permissible, as under the 1923 Act, the liability of the insurer is limited to the claim of the workman. The liability under Section 147 (2) (b) of the 1988 Act, on the other hand, extends to third party.

Our attention has been drawn to some decisions of the High Courts which have taken different views in regard to the liability of the insurer to be joined as a party in a proceeding under the 1923 Act. It is not necessary for us (sic look) into the correctness or otherwise of the said decisions, as in our opinion, there does not exist any bar in the 1923 Act in this behalf. Section 19 (1) of the 1923 Act specifically provides that any question in regard to the liability of a person who is required to indemnify the employer must be determined in the proceeding under the said Act and not by way of a separate suit. Thus, a question of this nature should be gone into the proceeding under the 1923 Act."

10. Since, the facts of the present case are identical to the case of **Gottumukkala Appala Narasimha (supra)**, and there is no documentary evidence on record showing that there was any contract of employment between the owner of the truck i.e. respondent no.1 and the deceased, therefore, this Court finds substance in the submissions of learned counsel for the appellant and holds that the Commissioner has erred in law in holding that

there was a relationship of employer and employee between the owner of the truck and the deceased.

11. Further in the instant case, it is not disputed that the respondent no.1 who is real brother of the deceased, is the owner of the truck in question and it is settled in law under the contract of insurance that the Insurance Company indemnifies the liability of the owner, and as in the instant case, there is no liability of the owner to pay compensation, therefore, the Insurance Company cannot be saddled with any liability to pay compensation.

12. Thus for the reasons given above, the award dated 30.09.2005 passed by the Workmen's Compensation Commissioner/Assistant Labour Commissioner, Rampur is set aside. Consequently, the appeal is **allowed**.

Order Date :- 16.10.2023
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