

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 2512 of 2005

Appellant :- Oriental Insurance Co Ltd

Respondent :- Smt. Sonwati Devi And Others

Counsel for Appellant :- Arun Kumar Shukla

Counsel for Respondent :- Shyam Narain, Alok Kumar Srivastava, Dev Raj Vind, Sudhanshu Narain

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 30.08.2005 passed by Workmen Compensation Commissioner/Assistant Labour Commissioner, Agra in Workmen Compensation Case No.107 of 2002.
3. Challenging the award, learned counsel for the appellant has contended that the Commissioner has erred in law in deciding the case without framing any issue under Rule 28 of Workmen Compensation Rules. It is further contended that the finding of the Commissioner that the deceased was employed as driver on truck No.H.R.-38D/9150 is perverse and illegal inasmuch as the owner of the truck had stated that the deceased had left job on 08.09.2001 and one Phool Singh was employed as driver on 09.09.2001. Thus, it is submitted that there is no relationship of employer and employee between the owner and the deceased. It is further submitted that the Commissioner has erred in law in entertaining the claim petition and awarding the compensation.
4. Per contra, learned counsel for the respondents would contend that the fact that the deceased was employed as driver on truck was not denied by the owner of the truck, and he has stated that the

deceased left the job on 08.09.2021 and on the date of accident, he was not employed. It is further submitted that there was ample evidence on record which proved the employment of the deceased as driver on the truck and the finding of the Tribunal on the issue of relationship of employer and employee is based upon proper appreciation of evidence.

5. Be that as it may, so far as the contention of learned counsel for the appellant in respect to non framing of issue under Rule 28 of the Workmen Compensation Rules are concerned, it has not caused any prejudice to the appellant inasmuch as the Commissioner, on the basis of evidence on record, found that the deceased was employed as driver on truck and further, the deceased died during the course of employment. In such view of the fact, the aforesaid contention is misconceived and is rejected.

6. So far as the issue with regard to the employment of deceased is concerned, the Commissioner in detail considered the evidence on record and found that the deceased had taken the truck on 05.09.2001 and handed over the truck to the other driver on 09.09.2001. Accordingly, the Commissioner found that the deceased on the date of accident was employed as driver on truck. The finding of the Commissioner being a finding of fact does not call for any interference by this Court.

7. Since the appeal under Section 30 of Workmen Compensation Act would lie 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