

HIGH COURT OF UTTARAKHAND AT NAINITAL

Appeal From Order No.01 of 2014

National Insurance Company Ltd.

--Appellant

Versus

Israr Ahmad & another

--Respondents

Presence:-

Mr. Bindesh Kumar Gupta, learned counsel for the appellant
through V.C.

Mr. Arvind Kr. Sharma, learned counsel for respondents
through V.C.

Hon'ble Pankaj Purohit, J.

This is an appeal under section 30 of the Workmen's compensation Act, 1923, against the judgment and order dated 09.10.2013, passed by workmen's Compensation Commissioner, District Haridwar, in Workmen Compensation Case No.19 of 2007, "Smt Akhtari Begum & ors. Vs Dilshad Ahmed & ors"

2. As per the claim petition, the case of the respondent no.1-claimant as unfolded is that his son deceased Zrar Ahmed was working as a driver with respondent no.2 and on 02.06.2006, when he was under the directions of respondent no.2 carrying cattles from Punjab to Saharanpur he collided with a bus which resulted in fracture to both of his legs. He was rushed to Radix Hospital, Ambala, Haryana by the bystanders. Thereafter, he was shifted to Orthopedic & Fracture Clinic, Saharanpur and he ultimately succumbed to the said injury in Mahipal Nursing Home, Roorkee.

3. It has been stated in the claim petition by respondent no.1-claimant that at the time of death the

age of his son was around 21 years and he was getting a salary of Rs.5,000/- per month from his employer. He stated that the death of his son was caused during and in the course of his employment with respondent no.2. He further alleged that even though, the information regarding the accident was in knowledge of the respondents, no compensation was paid to him, by the respondent-employer. With these averments, he filed the claim petition before the Workmen Compensation Commissioner, Haridwar and prayed for a sum of Rs.5,56,775/- as compensation with 12% per annum interest.

4. The claim was contested by the appellant-Insurance Company and ex-parte proceedings were initiated against the employer i.e. the owner of the truck. The Insurance Company by filing its written statement denied the employment of the deceased with the respondent no.2 i.e. the Insured and denied the claim petition in toto.

5. It was further contended by learned counsel of appellant-Insurance Company that the deceased was neither an employee of the respondent no.2 i.e. the Insured neither was he receiving monthly remuneration of Rs.5,000/-. It was also contended that the deceased did not die during the course of employment neither was he having a valid driving license nor was in possession of valid requisite documents of vehicle at the time of accident.

6. In order to prove its case before learned Workmen's Compensation Commissioner, the claimant got himself examined on oath and substantiated the facts enumerated in the claim petition that his son deceased Zrar Ahmad was working with respondent no.2 as driver and on 02.06.2006, while he was transporting cattles

under the instructions of his employer i.e. respondent no.2 met with an accident which resulted in fracture to both of his legs which ultimately resulted in his demise. He on oath also deposed that age of his son at the time of accident was around 21 years and he was getting Rs.5,000/- per month from respondent no.2. To prove the death of his son, death certificate was also submitted by him. He also submitted photocopies of registered notices dated 31.07.2007 & 27.08.2007 sent to respondent no.2 and also certified FIR Copy, original registration certificate of vehicle, insurance policy, permit to ply the vehicle, Form-H of the concerned vehicle, along with certified copies of Medical Certificates.

7. Claimant also in order to prove his claim got examined one Mr. Istkar Ahmad who on oath deposed that he was the neighbor of deceased and was aware of the fact that the deceased was in employment of respondent no.2.

8. No documentary or oral evidences were submitted by the appellant-Insurance Company to prove that the deceased was not an employee of respondent no.2 or that the said death did not occur during the course of employment or had no nexus to the accident occurred in course of employment.

9. The learned Workmen Compensation Commissioner after hearing the counsel for the parties awarded the compensation to the tune of Rs.3,73,230/- payable by the appellant-Insurance Company within thirty days from the date of order. The judgment further enabled the Insurance Company to recover the said amount from respondent no.2.

10. It is feeling aggrieved by the aforesaid judgment and award dated 09.10.2013, the appellant-Insurance Company is before this Court, by filing the

present appeal as stated above.

11. This Court on 28.04.2023 framed the following substantial question of law “*whether the insurance company is liable to pay the compensation while it is well proved that the deceased/driver of the vehicle was not having a valid and effective driving licence at the time of accident?*”

12. It is vehemently contended by the learned counsel for the appellant-Insurance Company that the Company should not be held liable to pay the compensation as it is proved that the deceased/driver of the vehicle was not having a valid & effective driving license at the time of accident.

13. I do not find any merit in the argument advanced by the counsel on behalf of the learned counsel for the appellant as it has been held by Hon’ble the Supreme Court in multiple cases that insurer could be ordered to pay the compensation and he is free to recover it from the insured i.e. the owner of the vehicle in present case. The judgments of the Hon’ble Apex Court relied upon by the learned counsel for the appellant are as follows:

- (a) Oriental Insurance Company Ltd. vs. Sorumai Gogoi and others; reported in 2008 (2) T.A.C. 5 (SC);
- (b) Balu Krishna Chavan vs. The Reliance General Insurance Company Ltd. & others; SLP(C) No.33638 of 2017 decided on 03.11.2022.

14. In the opinion of this Court, the judgments relied upon are not applicable in the present set of facts of this case and therefore, is of no help to the appellant-Insurance Company.

15. In the case of Shamanna & others vs. The Divisional Manager, the Oriental Insurance Co. Ltd. & others, (2018) 9 SCC 650, the Hon’ble Supreme Court

held that if the driver of the offending vehicle does not possess a valid driving license, the principle of pay and recover can be ordered to direct the insurance company to pay the victim and then recover the amount from the owner of the offending vehicle.

16. It is strenuously submitted by the learned counsel for the appellant that there was no relationship between the deceased and the owner of vehicle i.e. the Insured of Workmen and Employer, no evidence was submitted by the appellant-Insurance Company regarding this fact in the learned Tribunal below and the learned Tribunal discussed this issue in great details, so I don't find any merits in this argument as well.

17. It is further submitted by learned counsel for the appellant that the concerned vehicle was plying against terms and conditions of Insurance policy as he was driving the vehicle without a valid driving license but this point has been already dealt with in para 13 of this judgment.

18. In this view of the matter, the substantial question of law as quoted hereinabove is answered in favour of the respondents and against the appellant-Insurance Company. Resultantly, the appeal is dismissed.

19. Let a copy of this judgment and order along with TCR be transmitted to the court concerned for compliance.

20. Pending application, if any, stands disposed of.

(Pankaj Purohit, J.)
21.02.2025

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