

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.53 of 2014

=====

1. The Oriental Insurance Company Limited, Church Road, Delhi-6.
2. The Oriental Insurance Company Limited, Kachhari Road, Begusarai
Appeal and Appellant through the Assistant Managar & Authorized Signatory, the
Oriental Insurance Company Limited, Pirmohani, Kadam Kuan, Patna-1.

.... Appellant/s

Versus

1. Sunaina Devi W/o Lt. Tun Tun Rai @ Zeromile Resident of Village Fatehpur,
P.S. Bhagwanpur, District Begusarai.
2. M/S Dhillon Transport Agency, Road Carrier and Fleet Owners, Sinha Library
Road, Patna-800001.
3. Shri Mahendrapal Singh, Prop. Dhillon Transport Agency, Near Sinha Library
Road, Patna-800001.

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. DURGESH KUMAR SINGH
For the Respondent/s : Mr. Pramod Manbansh

=====

**CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA
JAISWAL**

ORAL JUDGMENT

Date: 08-11-2017

Heard learned counsel for the appellants and learned
counsel for the respondent no. 1 on this miscellaneous appeal.
Respondent nos. 2 and 3 did not turn up despite service of notice.

2. This miscellaneous appeal has been filed against the
judgment and order dated 30.09.2013 passed by the learned
Workmen Compensation-cum-Presiding Officer, Labour Court,
Begusarai in Workmen Compensation Case no. 01 of 2009
whereby the learned Tribunal allowing the claim case, directed the
appellants (Oriental Insurance Company Limited) to deposit
compensation to the tune of Rs. 4,23,580/- and also directed to
respondent no. 2 (M/S Dhillon Transport Agency) to deposit



interest over the aforesaid compensation amount @ 12% per annum from 06.12.2007 to 30.09.2013 amounting Rs. 3,04,978/- before Deputy Labour Commissioner-cum-Workmen Compensation, Munger Division, Begusarai.

3. Factual matrix of the case is that the claimant Sunaina Devi who happens to be respondent no. 1 in this case filed petition on 07.03.2003 before Deputy Labour Commissioner-cum-Workmen Compensation Commissioner, Munger Division, Begusarai for awarding compensation on account of civil death of her husband namely, Tun Tun Rai @ Zeromile, who happened to be driver of the truck bearing registration no. HR-51 GA-1713 of respondent nos. 2 and 3 with the case in succinct that her husband proceeded loading fortune on the said truck from Gaziabad to Motihari (Bihar), but on the way, the truck was found abandoned near Mahkhal Raghubir Hotel P.S. Gamna district-Aligarh and driver Tun Tun Rai @ Zeromile and its khalasi missing. Regarding the said incident, the owner of the truck gave information to the police on 06.12.2000. Thus, her husband has been missing since the said date giving rise presumption of his civil death.

4. The Owner of the vehicle did not put his appearance in the case despite service of notice while the Oriental Insurance Company Ltd. put its appearance in the case and filed its written statement. The claimant also filed ocular and documentary evidence in buttress of her case.



5. After hearing the parties and perusing the record, Deputy Labour Commissioner-cum-Workmen Compensation Commissioner, awarded compensation on 30.08.2005.

6. Being aggrieved and dissatisfied with the aforesaid award, the Oriental Insurance Company Ltd. filed Miscellaneous Appeal no. 496 of 2005 in this Court and after hearing the parties and perusing the record, this Court allowed the aforesaid appeal setting aside the order of the Deputy Labour Commissioner-cum-Workmen Compensation Commissioner on the ground that the contesting case is not maintainable before the Deputy Labour Commissioner rather before the Labour Commissioner and remitted back the matter to the Deputy Labour Commissioner to refer the matter to presiding officer of the concerned court for proper adjudication vide order dated 16.01.2009. In compliance of the aforesaid order of this Court, the Deputy Labour Commissioner referred the matter to Workmen Compensation-cum-Presiding Officer, Labour Court, Munger Division, Begusarai who after perusing the record and hearing the parties passed the impugned judgment and order.

7. Being aggrieved and dissatisfied with the aforesaid judgment and order, the Oriental Insurance Company Ltd. has filed the present miscellaneous appeal.

8. It is submitted by the learned counsel for the appellants that provision of Section 108 of the Evidence Act does



not apply in the Workmen Compensation Act. It is further submitted that the respondent no. 1 has failed to establish the death of the Tun Tun Rai @ Zeromile by adducing cogent material and evidence, but learned Tribunal has awarded the compensation relying on the self serving statement of the claimant. The learned counsel for the appellants has relied upon the verdict of the Hon'ble Apex Court given in *Oriental Insurance Company Ltd. Vs. Sorumai Gogoi & Ors. reported in 2008 4 SCC 572* in buttress of its case.

9. On the other hand, it is submitted by the learned counsel for the respondent no. 1 that the owner of the vehicle had informed the police vide Ext-2 dated 06.12.2000 regarding missing of the Tun Tun Rai @ Zeromile during the use of motor vehicle and the respondent has also adduced other evidence in substantiation of the aforesaid case and after considering the evidence and material available on record, learned Tribunal finding civil death of the deceased Tun Tun Rai @ Zeromile has rightly passed the impugned judgment which is liable to be upheld and this appeal has no substance in it and is liable to be dismissed. It is further submitted that the Provision of Section 108 of the Evidence Act is quite maintainable under the Workmen Compensation Act as under the said provision, the death is presumed after expiry of seven years of the date of not being heard about the deceased by the person who would have heard of him and after such death of



the employee, the claim case can be filed under the Workmen Compensation Act.

10. For deciding this case properly and effectively, I hereby formulate following points for my consideration:

- (i) Whether the Provision under Section 108 of the Evidence Act is applicable under the Workmen Compensation Act.
- (ii) Whether the claimant has substantiated the death of Tun Tun Rai @ Zeromile.
- (iii) Whether the claim petition filed by the respondent no. 1 is premature and not maintainable.
- (iv) Whether the Workmen Compensation-cum-Presiding Officer, Labour Court has got jurisdiction to decide the issue of civil death.

11. Point no. 1 Section 108 of the Indian Evidence At, 1872 provides that when the question is whether a man is alive or dead and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it. As per the aforesaid provision, if a person is not heard of for seven years by those who would naturally have heard of him if he had been alive and on proving the said fact by the person who asserts the said case, there will be presentation of civil death. In Workmen Compensation Act, the claim petition for awarding compensation may be filed on account of death of the employee out of and during course of the employment. But if the



person has not actually died rather is missing for seven years and is not heard of by the person who would naturally have heard of him if he had been alive, the civil death of such person is presumed under Section 108 of the Evidence Act, and in my considered opinion, the said civil death also comes under the purview of Workmen Compensation Act and petition under the Workmen Compensation Act can be filed on the ground of the civil death of the employee as well. The finding of the Hon'ble Apex Court given in *Oriental Insurance Company Ltd. Vs. Sorumai Gogoi & Ors.* is not applicable in the case under hand as in the said case driver of the vehicle had absconded and against him FIR was lodged under Sections 420 and 406 of the Indian Penal Code and charge-sheet was also submitted accordingly and learned Magistrate had taken cognizance of the offence and the Hon'ble Apex Court has been pleased to hold that Section 108 of Evidence Act shall not apply in respect of a person who abscond from justice or evade a trial or is otherwise charged for commission of grave offence as in that situation he may not communicate with his relations. Furthermore in case of this nature, it is also difficult to rely upon self serving statements made by the claimants that they had not heard of their son for a period of seven years. But in the case under hand, no such FIR under Sections 420 and 406 have been lodged against said Tun Tun Rai @ Zeromile and police has also not submitted charge sheet against him.



Point no. 2 To substantiate the civil death of a person, the person who asserts it is required to prove it by cogent and convincing evidence such as by filing public notice given regarding the death in the local news paper etc., by filing petition given regarding missing of the person in the local P.S. and also by examining all the persons who would have naturally heard of him if he had been alive. But in the case under hand, the respondent no. 1 has not filed any document regarding giving any such information of missing at the local P.S. rather information of missing of deceased Tun Tun Rai @ Zeromile was given by the owner of the vehicle in the police station located in district Aligarh as evident from Ext-2. The respondent no. 1 has also not filed any public notice given regarding missing of her husband in the newspapers and report submitted by police regarding missing of Tun Tun Rai @ Zeromile. The record further indicates that respondent no. 1 is the wife of the deceased Tun Tun Rai @ Zeromile who examined herself and her father who happens to be the father-in-law of the deceased Tun Tun Rai @ Zeromile for proving the aforesaid case, but she has not examined the parents or other relations of Tun Tun Rai @ Zeromile and person of his locality who happen to be natural person and would have heard of him had been alive. Thus the claimant has failed to substantiate the civil death of Tun Tun Rai @ Zeromile and learned Tribunal relying upon the self serving statement of respondent no. 1 has presumed civil death of Tun Tun



Rai @ Zeromile which in my considered opinion is wrong and illegal and not sustainable.

Point no. 3 As per the case of respondent no. 1, Tun Tun Rai @ Zeromile is missing from 06.12.2000 on the basis of information given by the employer of the vehicle (respondent nos. 2 and 3) to the P.S. Gamna, district-Aligarh. Even presuming the missing of Tun Tun Rai @ Zeromile from 06.12.2000, the seven years which is required to be completed for presuming civil death has expired on 06.12.2007. But, the respondent no. 1 has filed the claim petition before the Deputy Labour Commissioner on 07.03.2003 i.e. within the aforesaid stipulated period of seven years required for presuming civil death. For filing claim petition under the Workmen Compensation Act, the condition precedent is that the employee must be dead. But as the civil death can be presumed after seven years i.e. 07.12.2007, the aforesaid petition filed by the claimant earlier to that date, in my considered opinion, is premature and not maintainable.

12. It is submitted by the learned counsel for the respondent no. 1 that Workmen Compensation-cum-Presiding Officer, Labour Court, Munger Division, Begusarai has finally decided the case on 30.09.2013 and by that time seven years had already been completed, so the petition filed by the respondent no. 1 is well within time and is quite maintainable. But the said argument of learned counsel for the respondent no. 1 does not



appears to be convincing, plausible and acceptable as actually the claim was filed before the Deputy Labour Commissioner on 07.03.2003 and the same was adjudicated by the said incumbent on 30.08.2005. Assailing the said order, the appellants had filed Miscellaneous appeal no. 496 of 2005 before this Court and the said appeal was allowed by this Court setting aside the aforesaid order of the Deputy Labour Commissioner, directing the said incumbent to refer the matter to the Presiding Officer Labour Court, Munger Division, Begusarai finding the said contested claim case not maintainable before the Deputy Labour Commissioner and accordingly, the Deputy Labour Commissioner referred the matter to the Presiding Officer, Labour Court, Munger Division, Begusarai who ultimately decided the case on 30.09.2013. But, the aforesaid step taken by the Tribunal or by the court, in my considered opinion, is not going to change the date of filing of application by the respondent no. 1 and the said date remains intact.

Point no. 4 The civil death under Section 108 of the Evidence Act can be ascertained by the competent Civil Court and not by the Presiding Officer, Labour Court under the Workmen Compensation Act as the Presiding Officer, Labour Court, under the Workmen Compensation Act has limited jurisdiction to decide the compensation on making claim therefor subsequent to civil death of the employee and is not required to decide the issue of civil death of the employee itself. The civil death is required to be



decided by competent Civil Court and after such decision, the claimant can file claim for awarding compensation under the Workmen Compensation Act. This Court in *Sunita Roy Choudhary and Ors. Vs. Jageshwar Choudhary and Ors. reported in AIR 2006 Patna 127* has been pleased to hold that the death prior to filing of the application is an uncertain event and it cannot be adjudicated or declared by the district Judge in proceedings under the Succession Act. District Judge exercising jurisdiction under the said Act cannot strike issue as to whether a person is dead or not, if dead when dead as the District Judge exercises limited jurisdiction based upon death already having taken place and ascertained. The death can be ascertained by civil court.

13. In view of the aforesaid circumstances of the case, I find and hold that the impugned judgment and order passed by the learned Tribunal is wrong, illegal and is set aside. Accordingly, this appeal is allowed.

(Prakash Chandra Jaiswal, J)

rohit/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	15.11.2017
Transmission Date	N.A.

