

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 1034 OF 2009

1. Sumit Tamrakar, S/o P. Tamrakar, aged about 24 years, Director Sumit Travels, Bus Stand, Durg, District Durg (C.G.)
2. Rajesh Tamrakar, S/o Shri Amar Singh Tamrakar, R/o Village and Post Gandai, District Rajnandgaon (C.G.)
Both R/o Village Nehra Nagar, Police Station Supela, Bhilai, District Durg (C.G.)

... Appellants

Versus

1. Smt. Nafis Hussain, Wd/o Late Shri Imtiyaz Hussain, aged about 41 years
2. Ku. Hina, D/o Late Shri Imtiaz Hussain, aged about 19 years
3. Ku. Zeba Hussain, D/o Late Shri Imtiyaz Hussain, aged about 15 years
4. Ku. Kajol Muskan Hussain, aged about 12 years
No.3 and 4 minor, through Natural Guardian mother Nafis Hussain, Wd/o Late Imtiyaz Hussain @ Intsar Hussain, All R/o Station Para, Ward No.08, Rajnandgaon (C.G.)
5. The Oriental Insurance Company Limited, Branch Office Kamthi Line, Rajnandgaon, Tahsil and District Rajnandgaon (C.G.)

... Respondents

For Appellants	:	Mr. Avinash Chand Sahu, Advocate.
For Respondents 1 to 4	:	Mr. Manish Upadhyay, Advocate.
For Respondent 5	:	Mr. Sudhir Agrawal, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

11/09/2017

1. The present is an owner's appeal under Section 30 of the Workmen's Compensation Act, 1923, ('the Act of 1923' for short) challenging the award dated 25.6.2009 passed by the Commissioner for Workmen's Compensation, Labour Court, Rajnandgaon ('the Commissioner' for short), in Case No. 88/W.C.Act/2007(Fatal).
2. Vide the impugned award dated 25.6.2009, the Commissioner has allowed the claim of the claimants (respondents no. 1 to 4 herein) granting them a compensation of Rs. 1,69,470/-, with penal interest of 10% per annum from the date of death of deceased-Imtiyaz Hussain, in case the payment of compensation, is not made within a period of one month. While

passing the award, the Commissioner had exonerated the insurance company (respondent no.5 herein) of its liability and fastened the liability of payment of compensation upon the present appellants who are the owners of the offending vehicle involved in the accident.

3. Facts of the case in nutshell are that the deceased-Imtiyaz Hussain, aged around 59 years, was working as a driver of Bus No. CG08-ZA/0112. The registered owner of the said bus was the appellant no.2-Rajesh Tamrakar and the bus was in possession of appellant no.1-Sumit Tamrakar. On 2.7.2005 while the deceased-Imtiyaz Hussain was driving the said bus, an accident occurred where a girl who was riding a bicycle was dashed with the bus causing some injuries to her. As a result of which, the villagers caught hold the deceased-Imtiyaz Hussain and assaulted him in group which caused grievous injuries to him and as a result of injuries sustained he died after two months, i.e., on 2.9.2005.

4. The claimants (the widow and three daughters including two minor) of the deceased filed a claim case before the Commissioner, under the Act of 1923, seeking for compensation. The Commissioner, after taking into consideration the evidence which have been led on behalf of the parties, vide the impugned award, has allowed the claim of the claimants and awarded a compensation of Rs. 1,69,470/-, after exonerating the insurance company of its liability and fastening the same upon the owner of the offending bus to pay compensation.

5. It is this fastening of the liability upon the owner of the offending bus which has been challenged by the appellants in the present appeal.

6. The contention of the learned counsel for the appellants is that the ground on which the insurance company has been exonerated of its liability is not sustainable and the impugned award is bad in law to this extent. According to him, the only ground of exonerating the insurance

company was that the registered owner of the offending bus, i.e., appellant no.2-Rajesh Tamrakar, had passed on the vehicle to be operated and possessed by a different person, i.e., appellant no.1-Sumit Tamrakar, and therefore the Commissioner had treated it to be a breach of policy condition and thus exonerated the insurance company, which is not sustainable and the same deserves to be set aside. Learned counsel for the appellants submits that it is a case where undisputedly from the evidence which have come on record it clearly reflects that the accident occurred while the deceased was working as a driver on the offending bus. Undisputedly, the appellant no.2-Rajesh Tamrakar is the registered owner of the said bus. There is no dispute also to the fact that appellant no.2-Rajesh Tamrakar had got the bus duly insured. Further, what is also an admitted fact is the fact that the deceased was assaulted by a group of villagers which resulted in grievous injuries to which he later succumbed.

7. Given the aforesaid position, learned counsel for the appellants submits that it is a clear case where the accident arose arising out of and in the course of employment and for which the insurance company is entitled for payment of compensation under the Act of 1923. It was also the contention of the learned counsel for the appellants that when admittedly there is no dispute so far as who the registered owner of the offending bus was, as also the fact that the bus was attached with appellant no.1-Sumit Tamrakar and he had engaged the deceased as a driver of the said bus, cannot be said to be any breach of policy conditions for the simple reason that it is nobody's case that appellant no.2-Rajesh Tamrakar had sold the bus to appellant no.1-Sumit Tamrakar. It was therefore in fact the insurance company which was to be made liable to pay the compensation.

8. Learned counsel for respondent no.5-insurance company however opposes the appeal on the following grounds:

- (i) That the appeal is not maintainable for the reason that the entire amount awarded has not been deposited, as it is a pre-condition required in an appeal under the Act of 1923 to be filed.
- (ii) That there is a default on the part of the appellants in not depositing the awarded amount by cash or by demand draft before the Commissioner, rather deposited it by cheque which is not permissible under the rules.
- (iii) That the offending bus was not in possession of the registered owner and on this ground also the insurance company cannot be saddled with the liability for an act or an incident which occurred while the offending bus was in possession and use other than that of the registered owner.
- (iv) That the deceased was not the actual employee of the registered owner and therefore there is no employer-employee relationship based upon which the liability can be fastened upon the insurer.
- (v) That since it was the Liability Only policy which was issued, the insurance company would not be liable to pay compensation.
- (vi) That the accident and the resultant death of the deceased was not arising out of a motor accident on which ground also the insurance company could not have been saddled with the liability.

9. So far as the first ground of the insurance company as regards the appeal not being maintainable, this Court is of the opinion that the said ground is not sustainable for the simple reason that the operative part of the award clearly reflects that the actual amount awarded is Rs. 1,69,470/-. No interest has been awarded by the Commissioner on the compensation. It is only the penal interest which has been awarded by the Commissioner stating that in the event if the compensation awarded is not deposited

within a period of one month then the same shall carry interest at the rate of 10% per annum from the date of death of deceased-Imtiyaz Hussain.

10. So far as the second ground in respect of depositing of the amount by cheque and not by cash is concerned, proviso to Section 30 of the Act of 1923 only reflects the pre-deposit of the amount awarded. In the instant case, it clearly reflects that the actual amount awarded has been deposited by way of a cheque which has been duly accepted by the Commissioner without any objection and for which a certificate also has been duly issued which has been brought on record by the appellants. Thus, this ground also stands negated.

11. So far as the third ground raised by the insurance company inasmuch as there being a breach of policy condition of the registered owner transferring the vehicle to some other person who was operating the vehicle at the relevant point of time, the evidence which have come on record particularly that of the claimants and appellant no.1 are concerned it does not in any manner reflect that the actual registered owner, i.e., appellant no.2-Rajesh Tamrakar, had sold the vehicle or transferred the same to appellant no.1-Sumit Tamrakar. The evidence of appellant no.1-Sumit Tamrakar reflects that the registered owner continued to be the appellant no.2-Rajesh Tamrakar who was his brother and whose vehicle was being operated by the appellant no.1-Sumit Tamrakar as he (Sumit Tamrakar) was in the business of running a travel agency. Since there is no claim of a transfer of vehicle by the registered owner to a different person nor is there any evidence in this regard led by the insurance company, further the appellant no.1-Sumit Tamrakar also admitting the fact that the registered owner continued to be the appellant no.2-Rajesh Tamrakar, who again is a family member, the ground so raised by the insurance company

does not have much force or strength with which it could be said that there was a breach of policy condition.

12. As regards the fourth objection raised by the insurance company pertaining to the deceased not being the employee of appellant no.2-Rajesh Tamrakar, the same cannot be of much relevance while considering the claim case under the provisions of the Act of 1923 as the definition of workman as it stood then under Section 2(n) of the Act of 1923 clearly included an employee engaged on contract basis or directly or indirectly related to the employer including an apprentice. Further, the evidence in the instant case clearly reflect that the vehicle involved in the accident was that of appellant no.2-Rajesh Tamrakar who had entrusted the same to be operated by his brother, i.e., appellant no.1-Sumit Tamrakar, who was having a travel agency. In view of the same, this ground raised by the insurance company also is not sustainable.

13. As far as the fifth ground raised by the insurance company regarding the death of deceased-Imtiyaz Hussain not arising out of a motor vehicle accident is concerned, this Court is of the opinion that Section 147 of Motor Vehicles Act, 1988, clearly envisages the requirements of policies and limits of liability. Proviso to sub-section (1) of Section 147 reads as under:

“147. Requirements of policies and limits of liability. –

(1) xxx xxx xxx

Provided that a policy shall not be required–

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 in respect of the death of, or bodily injury to, any such employee–

- (a) engaged in driving the vehicle, or
- (b) if it is a public service vehicle engaged as conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the
vehicle, or
xxx xxx xxx”

The aforesaid provision clearly would reflect that the claim of the claimants would be duly maintainable to be considered as a claim arising from an accident which arose arising out of and in the course of employment.

14. Now the only issue that remains to be adjudicated upon is, as to whether the death of the deceased-Imtiyaz Hussain was arising out of and in the course of employment. Undisputedly, the deceased at the relevant point of time was working as a driver of the offending bus. The injuries sustained by the deceased were as a result of an assault made by a group of villagers when the deceased was in the course of driving the said bus belonging to the appellants. Whether the assault made by the villagers could be brought within the ambit of an accidental death or not is immaterial for the moment, for the reason that the claim raised by the claimants was under the provisions of the Act of 1923 where the requirement for payment of compensation is envisaged under sub-section (1) of Section 3 which says that if personal injury is caused to a workman by “accident arising out of and in the course of employment”, the employer shall be liable to pay compensation.

15. At this juncture, it would be relevant to refer the decisions rendered in the case of **United India Insurance Co. Ltd. v. Nirmal Kaur & Others, 2006 (1) CLR 1034 (J&K)** as also in the case of **Smt. Jayamma v. C. Munikrishnappa & Others, 1998 (1) CLR 1146 (Kar.)=1998 (2) LLJ 523 (Kant)**. In both these cases the driver of the offending vehicle died because of a firing which was made by third persons while the deceased persons were driving the vehicles and the two High Courts have clearly

accepted the same to be an accident arising out of and in the course of employment.

16. In view of the aforesaid decisions, this Court also has no hesitation in reaching to the conclusion that the deceased-Imtiyaz Hussain had sustained grievous injuries as a result of the assault made by the villagers in the course of his driving the offending bus belonging to the appellants and it was the injury which caused his death later on.

17. Learned Counsel for the insurance company has also submitted that the insurance company cannot be held liable for the payment of compensation in the light of the decision of the Hon'ble Supreme Court in the case of **National Insurance Co. Ltd. v. Deepa Devi & Others, 2008 (1) SCC 414**. The said judgment is quite distinguishable on its facts itself for the reason that in the said case the vehicle was seized by the collector for election purpose when the accident occurred and that there was a claim under the provisions of the Motor Vehicles Act. Whereas, in the instant case, the claim was under the Workmen's Compensation Act and hence the said judgment is distinguishable and would not be applicable to the facts of the present case.

18. So far as the cross-objection of the insurance company is concerned, this Court has no hesitation in reaching to the conclusion that the cross-objection of the insurance company is not maintainable for the reason that Rule 41 of the Workmen's Compensation Act envisages the provisions of the Code of Civil Procedure which alone would be applicable in a proceeding under the provisions of the Workmen's Compensation Act and Rule 41 of the Workmen's Compensation Act does not include Rule XLI Order 22 of the Code of Civil Procedure of being applicable and therefore the cross-objection of the insurance company is not

maintainable. Thus, the cross-objection of the insurance company not being maintainable deserves to be and is accordingly rejected.

19. Thus, for all the aforesaid reasons, this Court has no hesitation in holding that the Commissioner was justified in holding the accident to be arising out of and in the course of employment. The grounds so raised by the insurance company also stand negated.

20. This Court is however of the opinion that the finding of the Commissioner of exonerating the insurance company only on the ground that the vehicle at the time of accident was in possession of appellant no.1-Sumit Tamrakar though the appellant no.2-Rajesh Tamrakar was the registered owner, is not sufficient enough to bring it within the ambit of breach of policy conditions and the insurance company under the given circumstances was duly required to indemnify the owner for any claim arising out of the Act of 1923.

21. Accordingly, the impugned award stands modified to the extent that the insurance company shall be liable to pay compensation jointly and severally. Since the amount has already been deposited by the appellants, they shall be entitled for refund of the amount from the insurance company. The appeal stands allowed.

Sd/-
(P. Sam Koshy)
Judge