

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 267 OF 2009

Branch Manager, United India Insurance Company Ltd., Branch Office,
Rajendra Nagar, Bilaspur (C.G.)

... Appellant

Versus

1. Ram Nishad, aged about 25 years, S/o Jhungle Nishad, occupation nothing, R/o Village Lal Khadan, Mahmand Road, Thana Torwa, Tahsil and District Bilaspur (C.G.)

2. Dheluram Nishad, aged about 50 years, S/o Late Bhagbali Nishad, R/o Village Mahmand, Post Lal Khadan, Thana Torwa, Tahsil and District Bilaspur (C.G.)

... Respondents

For Appellant	:	Mr. H.B. Agrawal, Senior Advocate, assisted by Mr. Pankaj Agrawal, Advocate.
For Respondent No.1	:	Mr. A.D. Shrivastava, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

13/09/2017

1. The present appeal has been filed by the Insurance Company under Section 30 of the Workmen's Compensation Act, 1923, assailing the award dated 28.1.2008 passed by the Commissioner, Workmen's Compensation-cum-Labour Court, Bilaspur, in Case No. 209/W.C.A./COC-1-B/05(Non Fatal)Claim. Vide the impugned award, the Commissioner has granted a compensation of Rs.2,18,645/- to Respondent No.1-Claimant.

2. It is a case where the injured-claimant met with an accident on 27.1.2005 when he was working as labour for loading and unloading on the tractor-trolley belonging to Respondent No.2, bearing Registration No. CG10A/6082-6083. The tractor-trolley was insured with the Appellant-Insurance Company under the Krishi Beema policy and the risk covered was for own damage and third-party.

3. The case of the claimant as it was presented before the Commissioner was that he was working as labour on the said tractor-trolley and was assigned the duty of bringing earth from a nearby place

and in the course of taking the earth, a portion of earth subsided upon the claimant and as a result of which he received grievous injuries on his right leg which in the course of treatment had to be amputated from the knee. The claimant moved an application for grant of compensation under the Workmen's Compensation Act before the Commissioner for Workmen's Compensation-cum-Labour Court, Bilaspur.

4. The Commissioner vide the said impugned award, has granted a compensation of an amount of Rs. 2,18,645/- with a condition that in the event if the said amount is not paid within a period of two months the amount shall carry interest at the rate of 10% per annum. It is this award which has been challenged by the Insurance Company in the present appeal.

5. This Court on 1.8.2012 had framed the following substantial question of law:

“Whether the Tribunal has committed an error of law in not appreciating that the policy of the Insurance Company did not cover the risk of labour and therefore the liability would had been shifted upon the owner-respondent no.2?”

6. During the course of argument, learned Senior Counsel appearing for the Appellant-Insurance Company also submits that in addition there are other substantial questions of law involved, like - “The Commissioner has committed an error of law in not appreciating that the tractor-trolley was being used other than that of agriculture purpose” and therefore the Insurance Company cannot be fastened with the liability of payment of compensation. “That the accident did not arise out of the use of tractor-trolley” as at the time of the accident the same was in a stationary condition and unless an accident arises from the use of tractor-trolley the Insurance Company cannot be held liable for payment of compensation.

7. Perusal of the record would show that the Insurance Company has led the evidence of one Abdul Kaleem, an Administrative Officer of the Insurance Company, who has admitted the issuance of the policy but has denied the claim on the ground that the premium paid was towards own damage and third-party and that the tractor-trolley was covered only for agriculture purpose not for any other purpose and also did not cover the risk of a labour. However, on the contrary, the claimant himself has been examined and he has made a categorical statement that he was working as a labour on the said vehicle and was assigned the duty of loading earth on the said tractor-trolley along with other labourers and it was in the course of loading earth on the tractor-trolley that the accident arose. Further, the disability certificate also shows that by virtue of the amputation of his right leg, the District Medical Board has granted him the disability certificate of 70% permanent disability. In addition, what also is evident is the fact that the tractor-trolley at the relevant point of time was duly insured covering the risk of own damage as well as of third-party. Further, there is no evidence to disprove the contention of the claimant so far as the accident not having occurred in the course of employment. It is also not in dispute that the accident has occurred while the claimant was loading earth on the said tractor-trolley which was insured with the Appellant-Insurance Company.

8. In view of the same, so far as the claim of Respondent No.1-Claimant is concerned, it was duly sustainable under the provisions of the Workmen's Compensation Act and since there was a premium covering the own damage and third-party of the tractor-trolley it was the responsibility of the Insurance Company to indemnify the owner for the injuries sustained by the claimant. Thus, this Court does not find any

strong case made out by the Appellant-Insurance Company for interfering with the impugned award.

9. The appeal thus being devoid of merits the same is dismissed. The substantial question of law framed is answered in the negative against the Appellant-Insurance Company. The interim relief earlier granted stands merged with this final order. The amount so awarded by the Commissioner can be released to the concerned workman.

Sd/-
(P. Sam Koshy)
Judge

/sharad/