

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 899 of 2016**

- Mohd. Asfaque Qureshi S/o Salim Qureshi, Aged About 35 Years R/o Kasaridih, Near Kanhaiyapuri, Tahsil And District- Durg (Chhattisgarh)..... Owner.

---- Appellant**Versus**

1. Smt. Kunti Bai W/o Late Radheshyam Tiwari, R/o Pulgaon, Police Station- Pulgaon, Tahsil And District- Durg (Chhattisgarh)
2. Ishwar Tiwari, S/o Late Radheshyam Tiwari, R/o Pulgaon, Police Station- Pulgaon, Tahsil And District- Durg (Chhattisgarh), Claimants.

---- Respondent

For Appellant : Shri C.K. Sahu, Advocate

Hon'ble Shri Justice P. Sam Koshy
Order On Board

17/01/2017

1. The present appeal has been filed under Section 30 of the Employees Compensation Act, whereby the Commissioner, Employees Workmen's Compensation on 23.4.2016 allowed the application for grant of compensation to the respondents/claimants for an amount of Rs.4,30,560/- to be paid to the respondents within a period of 45 days.

2. Brief facts of the case are that son of the claimant (respondent No.1) was a driver of Mini Bus bearing registration No. CG 07ZA 0410. While driving the said Bus on 19.8.2008, it met with an accident resulting in his death on 2.9.2008. Subsequently, a Claim Case was filed before the Labour Court, Durg i.e. Court of Commissioner for Employees Workmen's Compensation and after recording the evidence of the claimants as well as the respondents the impugned award has been passed. During the course

of evidence it was revealed that the Bus involved in the accident in which the deceased Krishna Kumar Tiwari son of respondent 1 had died was not insured at the relevant point of time. In absence of proper insurance, the entire liability to payment of compensation was saddled upon the present appellant. Thus, the appellant has challenged the award in this case.

3. Learned counsel for the appellant submits that the court below has failed to appreciate the fact and there was a categorical denial on the part of the appellant, owner of the Bus that Krishna Kumar Tiwari of the deceased being an employee of the present appellant. According to the appellant, it was not the deceased Krishna Kumar Tiwari, who was driving the Bus on the said date, but it was one Manoj Kumar who was the actual driver on the fateful day. He submits that the court below ought to have appreciated the fact that the claimant on the contrary has not been able to adduce any cogent evidence to establish the employer – employee relationship between the deceased and the present appellant. In absence of which, the owner could not have saddled the responsibility of payment of compensation.

4. Having considered the submissions and on perusal of the record of the court below it is reflected that there was an FIR lodged vide Ex.P/1 at Police Station Dhumka, District Rajnandgaon in Crime No.136/2008 on 19.8.2008. The FIR was in respect of an accident that took place on the said date by a Mini Bus belonging to Jiya Travels bearing registration No.CG 07 ZA/0410 and in the said accident about 14 persons were injured and the said Bus was being driven by Krishna Kumar Tiwari who had also sustained grievous injuries and had been hospitalized and during the course of treatment the deceased died on 2.9.2008.

5. On behalf of the respondents/claimants, the statement of respondent 1 was recorded wherein she has categorically stated on oath that her son

Krishna Kumar Tiwari was in fact employed with the present appellant as a Driver and he was drawing a salary of Rs.4,000/- per month. She further submits that the report of the incident was lodged immediately at P.S. Dhumka.

6. On behalf of present appellant, his evidence has been recorded wherein he has denied categorically of any accident took place on 19.8.2008 involving the appellant's Bus which met with an accident and for which FIR has been lodged. It was also denied by the appellant in respect of the employment of the deceased with him as a Driver.

7. In addition, the appellant has also said that it was Manoj Kumar, who was the actual driver of his Bus and not the deceased, Krishna Kumar Tiwari. Further, from record and the evidence, it is reflected that said Manoj Kumar who has claimed to be the driver of the appellant was not examined at all. Except that ocular statement made by the appellant in respect of Manoj Kumar being the driver there is no evidence what so ever produced by the present appellant to establish his contention.

8. On the contrary, there is an FIR which has been exhibited as Ex. P/1 by the claimant in respect of the accident that took place on 19.8.2008. However, the FIR has not been lodged at the behest of the claimants, but it was lodged by some other villagers of the place where the accident happened which further strengthens the claim of the claimants in respect of the accident. In the FIR itself it is reflected that the Mini Bus was being driven by Krishna Kumar Tiwari and it was registered against the deceased for the offence under Sections 279, 337 IPC. Thus, it cannot be said that the findings arrived at by the Commissioner for Workmen's Compensation Act to be contrary to the evidence or without any basis.

9. Further, Section 30 of the Employees Workmen's Compensation Act,

enumerates the fact that the appeal can be admitted in case there is substantial question of law involved in the case. In the factual matrix of the case as has been stated in the preceding paragraph and from the evidence which comes on record, there does not seem to have any substantial question of law raised by the appellant. In his pleadings or evidence thus, the appeal for want of substantial question of law is liable to be rejected and the same is accordingly rejected.

Sd/-

(P. Sam Koshy)
Judge