

HIGH COURT OF CHHATTISGARH AT BILASPURMAC No. 884 of 2012

1. Smt. Lalmati Jaiswal W/o Late Bhikhu Prasad Jaiswal, aged about 48 years.
2. Ramashankar Jaiswal S/o Late Bhikhu Prasad Jaiswal, aged about 24 years.
3. Umashankar Jaiswal S/o Late Bhikhu Prasad Jaiswal, aged about 16 years.
4. Kumari Sarwati Jaiswal D/o Late Bhikhu Prasad Jaiswal, aged about 16 years.
5. Kumari Rita D/o Late Bhikhu Prasad Jaiswal, aged about 12 years.

Appellant No. 4 & 5 are minor represented through there Mother Smt. Lalmati Jaiswal.

All are R/o Ramnagar, Kumahari, Post and Thana Kumahari, Tahsil Patan, District Durg (C.G.).

---Appellants

Versus

1. Smt. Jamuna Devi Shukla (Since dead) through her legal representative Shri D.P.Shukla S/o Late Raman Shukla, aged about 50 years, Occupation wooden Tal, R/o near Kanji House Road, Tahsil Dhamdha, District Durg (C.G.).
2. Reliance General Insurance Company Ltd., Raipur, Through Branch Manager Office Shop No. 412-413, Fourth Floor, Ravi Bhavan, Jai Stambh Chowk, Raipur (C.G.).

---Respondents

For appellants : Shri Rajesh Jain, Advocate.

For respondents No. 2/ : Shri Sourabh Sharma, Advocate.
Insurance Company.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

12/02/2018

1. Heard on I.A.No.1, which is an application for condonation of delay.

2. Finding the reasons assigned in the said application to be satisfactory, I.A.No.1 is allowed and delay of 122 days in filing the appeal stands condoned.
3. Also Heard on I.A.No.2, which is an application under order 22 Rule 4 CPC for substitution of legal heirs of the respondent No.1.
4. Not opposed.
5. The same is therefore allowed. Let necessary amendments be carried out during the course of the day itself.
6. Present is an appeal filed under Section 30 of the Workmen Compensation Act assailing the award dated 15/03/2012 passed by the Commissioner, Workmen Compensation, Labour Court, Bilaspur in case No. 117/W.C.A./C.O.C.-1-B/08.
7. The appeal is admitted on the following substantial question of law :-

“Whether the Commissioner for Workmen Compensation while passing the impugned award was justified in exonerating the Insurance Company and fastening the liability of payment of compensation upon the employer i.e. the respondent No.1 ?”
8. The facts of the case in brief is that, the deceased – Dayashankar Jaiswal, aged around 26 years was working as a driver on the vehicle belonging to the respondent No.1 – the original owner, Smt. Jamuna Devi Shukla, since expired, hence the legal representative having being substituted. The vehicle which was owned by the respondent No.1 was a Truck bearing registration No. CG-04-ZC-1171 which was duly insured with

the respondent No.2 – Insurance Company. The legal representatives of the deceased filed a claim application before the Labour Court, Bilaspur under the provision of Employees Compensation Act and in the claim application, the Insurance Company as well as the employer both were made respondents. The learned Commissioner had issued notice to the owner as well as to the Insurance Company. In spite of ample opportunity being given to the Insurance Company, they choose not to contest the case in as much as they did not even file reply, nor did they lead any evidence and the learned Commissioner however decided the appeal yet exonerating the Insurance Company fastening the liability upon the owner/respondent No.1.

9. The contention of the counsel for the appellant is that, the appellants/claimants had infact along with there claim application produced the photo copy of the policy which was issued by the Insurance Company. He further submits that, once when the claimants had discharged their duties showing that the vehicle involved was duly insured, the burden automatically shifted upon the Insurance Company to disprove the contention of the claimants. He further submits that, the respondents were given ample opportunity by the learned Labour Court while deciding the issue Nos. 4 & 5, yet the respondents particularly the Insurance Company did not choose to contest the case in as much as they did not file their reply before the learned Commissioner, nor did they adduced any evidence in rebuttal to the evidence led by the claimants. He further submits that, the claimants in the claim application itself had produced the details of the policy including the

policy number with which the Insurance Company could have been easily verify the credentials.

10. In the aforesaid facts, the counsel for the claimants submits that the finding of the learned Commissioner is per se illegal and deserves to be modified suitably.

11. The counsel for the Insurance Company however opposing the appeal submits that, since the claimants could not produced the original of the Insurance Policy covering the risk of the vehicle involved in the accident, the finding of the learned Commissioner is justified and does not warrant any interference and thus prayed for rejection of the appeal.

12. Having heard the contentions put forth on either side and on perusal of record this Court has no hesitation in holding that, the finding of the learned Commissioner for Workmen Compensation to be apparently a perverse finding in as much as the Commissioner has erroneously fastened the liability upon the respondent No.1 – owner in as much as the fact that the claimants having adduced the evidence showing that the vehicle involved in the accident was duly insured at the time of accident. There was no evidence whatsoever available before the learned Commissioner to reach to the conclusion that, the liability of payment of compensation would not be upon the Insurance Company. The award of the Commissioner apparently appears to have been passed with some malafied intention or the learned Commissioner is totally ignorant of the provision of the compensation Act particularly the Employees Compensation Act.

13. Under the given circumstances, the impugned award to the extent of fastening the liability upon the owner is not justified and the same deserves to be and is accordingly modified by maintaining the quantum of compensation as has been awarded including the interest and penalty part holding that, the liability of payment of compensation to the extent of principle amount and the interest part shall be upon the Insurance Company indemnifying the owner and the liability of payment of penalty part would remain that upon the legal representative of the original owner of the vehicle since substituted through her legal representatives.

14. With the aforesaid modification, the appeal stands allowed and disposed off.

Sumit

Sd/-
(P. Sam Koshy)
JUDGE