

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****MAC No. 76 of 2013**

1. Lal Mohammad, S/o Zaheer Khan, Musalman aged about 43 years.
2. Smt. Raisa Begam W/o Lal Mohammad, Musalman, aged about 42 years.
3. Minor Afroj Babu, Through his natural guardian Lal Mohammed (wrongly mentioned in the cause title as Through natural guardian father applicant No. 1 ali Hasan R/o gotaiya Kheda, Post Office Bhaisauli, Police Station- Bakewar, District- Fatepur (U. P.)

All Appellant No. 1 to 3 are Resident of- Village Devari Bujurg Badi, Post- Devari, Police Station- Jafarganj, Tehsil- Dendaki, Distt.- Fatehpur (U. P.).

4. Smt. Firoja Khatun, Aged about 30 years W/o Late Feroj Babu, Occupation- House wife.
5. Kumari Saniya Aged about 2 years (Minor) Daughter of Firoj Babu, Through her legal guardian mother Smt. Firoja Khatun,

Both Appellant No. 4 and 5 are Resident of- Village Devari Bujurg Badi, Post- Devari, Police Station- Jafarganj, Tehsil- Dendaki, Distt- Fatehpur (U. P.).

---- Appellants**Versus**

1. Suraj M. Sahu S/o M. Sahu, R/o G. E. Road, Tatibandh, P.S.- Tatibandh Raipur (C.G.) C/o- Plot No. 369, Bharat Nagar, Kalmana Market Road, Nagpur Maharstra.
2. Reliance General Insurance Company Ltd. Through Branch Manager, Local Office Shop No. 412, 413 4th floor, Ravi Bhawan, Jai Stambh Chowk, Raipur (C.G.).

---- Respondents

For Appellants : Shri Pawan Kesharwani, Advocate
For Respondent No. 1 : Ex-parte.
For Respondent No. 2 : Shri Saurabh Sharma, Advocate

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

24.08.2018

1 This appeal has been filed by the appellant/claimant against the judgment dated 18.09.2012 passed by the Commissioner for Workmen's Compensation Act, Labour Court No.2, Raipur, in case No. 63/2011 W.C. Act-F old case No. 177/W.C. Act/2008-F whereby the Labour Court has dismissed the claim application filed by the appellants/claimants, who are parents, wife, brother and daughter of deceased – Feroz Babu, aged about 26 years.

(2) Case of the applicants/claimants, in brief, is that deceased- Firoz Babu, was an employee of respondent No. 1. Upon instruction given by the employer, deceased drove vehicle No. CG04-CR/3909 loaded with iron pipe going to Nagpur (Maharashtra) from Tata, when he reached National Highway road No. 6 - Basna District- Mahasamund, near main road Bansal Kirana Store, the said vehicle truck was unbalanced and uncontrolled and dashed with the tree, due to which driver/deceased Feroz Babu sustained serious injuries and died on the spot. On the date of incident, the deceased was aged about 26 years and was earning Rs.4,500/- per month as salary. Vehicle No. CG04-CR/3909 was insured with respondent No. 2- Reliance General Insurance Company Limited.

(3) Commissioner for Workmen's Compensation Act, Labour Court No.2, Raipur, vide order dated 18.09.2012, has dismissed the claim application filed by claimants/ appellants solely on the ground the driver of offending vehicle i.e. Feroz Babu (since deceased) was not possessing valid and effective driving license at the time of accident. Hence, this miscellaneous appeal has been filed

by the legal representatives of the deceased claiming compensation.

(4) Learned counsel for the appellant argued that deceased- Firoz Babu, who was aged about 26 years at the time of incident, was an employee of respondent No. 1 and earning Rs.- 4,500/- per month by way of salary whereas The Commissioner for Workmen's Compensation, Labour Court No.2, Raipur, on the basis of evidence led before it, has assessed the income of deceased as Rs. 2,994/- per month as a skilled labour notified by the State Government and that this fact has not been disputed by respondent No. 1 –employer and, therefore, the learned Labour Court has erred in dismissing the entire claim application solely on the ground of that the offending vehicle was driven by the deceased without having valid and effective driving license particularly when the relationship of employee & employer between deceased- Feroz Babu and respondent No. 1 is not in dispute and the same has been proved and since during the course of employment deceased- Firoz Babu was died, the employer/respondent No. 1 is duty bound to pay compensation under the provisions contained in Section 3 of Workman Compensation Act. He further submits that cleaner of the said vehicle namely Mohammad Harun has also died in the same incident, and legal representative of the deceased- Mohammad Harun was compensated in case No. 62/2011 in W.C. Act- F, as such, appellants, who are legal representatives of the deceased, are also entitled for compensation. He also submits that respondent No. 1 was ex-parte before Labour Court and learned Commissioner for Workmen's Compensation, Labour Court No.2, Raipur has exonerated the respondent No. 2-Insurance Company from its liability to pay compensation to the claimants as the deceased was not having valid and effective driving licence at the time of incident.

(5) On the other hand, learned counsel appearing for the respondent No. 2/Insurance Company supported the award impugned and would submit in the facts and circumstances of the case, the Commissioner for Workmen's Compensation Act, Labour Court No.2, Raipur has rightly exonerated the respondent No. 2/insurance company from its liability to pay compensation and the award passed by Commissioner Workmen's Compensation Act, Labour Court No.2, Raipur is just and proper which does not call for any interference.

(6) I have heard the counsel appearing for the parties and perused the award impugned including records of Labour Court.

(7) It is not disputed by any of the parties that the deceased was the employee of respondent No. 1 and during the employment truck No. CG04-CR/3909 near Basana NH-6 unbalanced and dash to the tree and due to the accident, deceased Firoz Babu died.

(8) Now the question for consideration before this Court whether on the basis of exoneration of Insurance Company from its liability to pay compensation due to the reason that deceased was not having valid and effective driving licence at the time of accident, respondent No. 1/ employer is also exonerated from his liability to pay compensation to the claimants?

(9) In the judgment dated 18.09.2012, which was challenged by appellants, issue no. 1 fully proved by appellants/claimants and affirmative findings has been given by Commissioner for Workmen's Compensation Act in favour of the claimants. According to the minimum wages, Rs. 2994/- as a wages of skilled labor is also considered by the Commissioner for Workmen's Compensation for the purpose of computing compensation and the fact that the appellants are

dependents and legal representatives of deceased- Firoz Babu was also considered by Commissioner for Workmen's Compensation Act, Labour Court No.2, Raipur for determination of compensation.

(10) The only question before this appellate Court is why the employer was exonerated from his liability to pay compensation. The Commissioner for Workman's Compensation has not recorded any finding in this regard and the Labour Court has only given the reason for dismissing the claim application that the deceased was not having valid and effective driving license at the time of incident and Insurance Company was exonerated on the breach of policy conditions. But in this case, Section 3 of Workman Compensation Act does not allow respondent No. 1 to escape from his liabilities.

(11) According to Proviso of Section 3 of Workmen Compensation Act, no ingredients were proved by the employer, no circumstance or act of deceased was proved by the employer so why was the employer exonerated from his liability?

(12) Going through the entire evidence produced before the Labour Court and issues No. 1, 2 and 3 are decided in favour of the appellants/claimants, in these facts & circumstances, in the considered opinion of this Court the learned Commissioner for Workman's Compensation has erred in dismissing the claim petition filed by the appellants/claimants.

(13) Considering the entire evidence available on records, miscellaneous appeal of appellant is allowed. As per calculation and finding given by the Labour Court, I agree with the finding recorded by Labour Court that deceased was earning Rs.2,994/- per months as salary and the deceased was aged about 26 years at the time of incident and the appellants are the legal

representatives/dependents of the deceased. I am of the view that the appellants are entitled for compensation from respondent No. 1- employer as per provisions contained in Section 4 of Workmen's Compensation Act from respondent No. 1.

(14) When the matter is examined in the context of above broad features of the case and also in light of fourth schedule appended to Section 4 of the Employee's Compensation Act, 1923, in my opinion, after deducting 50% of the monthly income of the deceased i.e. Rs. 1497, further considering the age of deceased i.e. 26 years, applied multiplier of 215.28 i.e. $1497 \times 215.28 = 3,22,274.16/-$, in round figure amount of compensation payable to the claimants is Rs.3,22,274/-, which shall carry interest @ 10 percent per annum from the date of application till its actual payment from respondent No. 1/employer.

(15) For the reasons mentioned hereinabove, the appeal is allowed. The appellants are entitled for compensation of Rs. 3,22,274/- along with interest @ 10% per annum from the date of filing of claim petition till its actual payment.

(16) The respondent No. 1/ employer is granted two months' time to deposit the amount of compensation of Rs. 3,22,274.00/- along with interest before the concerned Labour Court.

(17) Parties shall bear their own costs.

Sd/-
(Gautam Chourdiya)
Judge

