

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 1024 of 2015

- Shrenik Raja Jain, son of Shri P.C. Jain, aged about 40 years, resident of 1st Floor, Anuradha Apartment, Geeta Nagar, Choubey Colony, Raipur, Tahsil & District Raipur (CG)

(Owner of vehicle)

---- Appellant/Non-applicant No.1

Versus

1. Smt. Rashmi Devi, widow of Late Kamlesh Mahto, aged about 29 years
2. Kumari Suman, daughter of Late Kamlesh Mahto, aged about 06 years
3. Sumit Kumar son of Late Kamlesh Mahto, aged about 04 years
No. 2 & 3 are minors through their natural guardian mother- respondent No.1
4. Smt. Jamni Devi, widow of Late Ramesh Mahto, aged about 61 years
No. 1 to 4 are residents of village Barwadih (Hisimdag), Post Sosokala, District Ramgarh (Jharkhand), presently at Mahavir Industries, Urla, Raipur, Tahsil & District Raipur (CG)

(Claimants)

5. United India Insurance Company Limited, through the Divisional Manager, Divisional Office, Amar Complex, Jivan Bima Marg, Pandari (Railway Crossing), Raipur, Tahsil & District Raipur (C.G.)

(Insurer)/Non-applicant No.2

---- Respondents

For Appellant	:	Shri B.P. Sharma and Shri M.L. Saket, Advocates
For Respondents 1 to 4	:	Shri H.S. Patel, Advocate
For Respondent No.5	:	Shri Dashrath Gupta, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

28.02.2019

I.A. No. 02 of 2016:

1. This is an application for taking documents i.e. copy of driving licence of deceased- Kamlesh Mahto on record.
2. Learned counsel for the Appellant also produced the original licence of the deceased before this Court which is verified by the learned counsel for the Insurance Company/non-applicant No.2 and he has no objection because that original licence is true and accepted by the counsel for the Insurance Company.

3. Therefore, in view of the above, the application is allowed and documents i.e. copy of driving licence of the deceased along with original licence which is produced before this Court are taken on record.

4. This appeal has been preferred by the Appellant/non-applicant No.1 under 30 of the Workmen Compensation Act, 1923 (hereinafter referred to as the 'Act') against the award dated 29.06.2015 passed by the Commissioner, Workmen Compensation-cum-Labour Court No.1, Raipur (C.G.) in Case No. 17/EC Act/2014/Fatal.

5. Appeal has been admitted for hearing on the following substantial questions of law:

- “(i) Whether in a parked vehicle if a person carries out the work of repairing the vehicle and during the course of repairing if the vehicle starts and run over the person carrying out the work of repairs, whether it can be said that the vehicle was being driven by the person not having valid driving licence or the question of having valid driving licence is immaterial ?
- (ii) Whether sole liability can be imposed on the owner of the insured vehicle by the tribunal below in the facts and circumstances of the case ?”

6. As per claim petition filed by the Claimants who are wife, son, daughter and mother of deceased Kamlesh Mahto, the deceased was under the employment of Appellant/non-applicant No.1 as a driver of vehicle- Truck bearing registration No. CG-04/6088, Appellant/non-applicant No.1 is registered owner of the said vehicle which was duly insured with Insurance Company/non-applicant No.2. On 18.10.2013 the deceased during the course of his employment under non-applicant No.1 was himself repairing the vehicle in question by use of an instrument as there was some mechanical fault in the ignition. However, the engine suddenly started and as the vehicle parked in gear, it started moving and the deceased was run over by vehicle. The deceased sustained grievous injuries and succumbed to the same. The Claimants filed a claim petition stating that the deceased was at the time of

accident 35 years of age, earning Rs.8,500/- per month along with Rs.60/- per day as allowance.

7. The Commissioner Workmen Compensation Act after considering the evidences which have come on record vide its impugned judgment dated 29.06.2015 allowed the claim application and ordered for payment of Rs.7,88,240/- as compensation to the Claimants, fastening the liability on the Appellant/non-applicant No.1 and directing the Appellant/non-applicant No.1 to pay compensation within a period of two months from the date of judgment with simple interest @ 12% per annum from 19.11.2013.

8. As per finding of the Commissioner, in para-18, on issue no.6 that at the time of accident, the deceased was not having valid and effective licence of the vehicle, the Commissioner has exonerated the Insurance Company to pay compensation.

9. Learned counsel for the Appellant submits that no any evidence is adduced by the Insurance Company that the deceased was not having valid and effective licence on the date of accident. Therefore, the Tribunal without any evidence exonerated the Insurance Company from its liability and has fastened liability upon the owner/Appellant which is absolutely against the settled principle of law.

10. Learned counsel for the Insurance Company submits that the deceased was not under the employment of non-applicant No.1 as driver.

11. Claimant- Rashmi Devi examined herself as AW-1 and one Narsingh Rao, Manager of non-applicant No.1 as AW-2. As per evidence of AW-2- Narsingh Rao, he has proved this fact that the deceased was driver of Truck No. CG-04/6088 and was engaged for driving the said Truck on payment of Rs.8,500/- per month including allowance. Therefore, the contention of the Insurance Company the deceased was not under the employment of non-applicant No.1 is not acceptable.

12. So far as liability under the insurance policy is concerned, from perusal of the same, it is seen that it has been specifically mentioned in the policy that compensation shall be payable as per Workmen's Compensation Act, 1923, Indian Fatal Accident Act, 1885 and their subsequent amendments and the policy was

Workmen's Compensation Insurance Policy. Therefore, this Court finds illegality in the finding recorded by the Commissioner fastening liability on the owner/non-applicant No.1 to satisfy the award. As per driving licence of the deceased filed by the Appellant before this Court, verified by counsel for the Insurance Company and with their consent, taken on record, it is evident that the driving licence bearing No. 3150/2000LOHSL374/07JH-0820000027817 was issued in the name of the deceased for transport vehicle which was valid till 10.06.2016. Therefore, it is clear that on the date of accident, deceased- Kamlesh Mahto had a valid and effective licence for driving the vehicle in question.

13. For the reasons mentioned hereinabove, the appeal is allowed. Substantial question of law No. (i) is decided accordingly and it is held that on the date of accident, deceased- Kamlesh Mahto have a valid and effective licence for driving the vehicle in question. Substantial question of law No. (ii) is decided in negative and it is held that Insurance Company/non-applicant No.2 is liable to make payment of compensation to the Claimants jointly and severally alongwith Appellant/non-applicant No.1- owner of the vehicle. The judgment is modified to the above extent. Rest of the conditions of the judgment shall remain intact.

14. Non-applicant No.2/The United India Insurance Company Limited shall deposit the amount of compensation with simple interest @ 12% per annum as awarded by the Commissioner within a period of two months from today.

15. If any amount has been deposited by the Appellant/non-applicant No.1 and disbursed to the Claimants, the Appellant is entitled to recover the same from Insurance Company/non-applicant No.2.

16. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge