

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 719 of 2014***{Arising out of order dated 24.04.2014 passed by the Employees Compensation Act Labour Court, Jagdalpur in Employment Compensation Claim No. 78/2011}*

- Sri Ram General Insurance Company Ltd. E-8 EPIP, RIICO Industrial Area, Sitapura, Jaipur, Rajasthan - 302022

---- Appellant**Versus**

1. Bhagwat Mehto, S/o Laxmi Mehto, aged about 55 years.
2. Smt. Gulachie Mehto, W/o Bhagwat Mehto, aged about 53 years.
3. Anil, S/o Bhagwat Mehto, aged about 18 years.
4. Ram Pravesh, S/o Bhagwat Mehto, aged about 20 years.

No. 1 to 4 All Resident Parpa Naka, Thana Bodhghat, Jagdalpur, District Bastar (C.G.)

5. Smt. Jasbir Kaur, W/o Shukdev Singh, aged about 45 years, Resident Hikime para Jagdalpur, District Baster (C.G.)

---- Respondents

For Appellant	:	Shri Deepak Gupta, Advocate.
For Respondents	:	None.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Justice Parth Prateem Sahu, Judge

Judgment on Board**Per P. R. Ramachandra Menon, Chief Justice****19.11.2020**

1. The appeal is at the instance of Insurer of the vehicle bearing No. CG/17H/1038 owned by the 5th Respondent and the challenge is against fixation of liability to the tune of Rs.8,67,640/- as compensation in respect of the death of driver of the vehicle owned by the 5th Respondent as above, under the Workmen's Compensation Act, 1923 (now renamed as The Employee's Compensation Act, 1923).

2. The impugned verdict was passed by the Commissioner under the Employees Compensation Act, Labour Court, Jagadapur (for short, 'Commissioner') in Employment Compensation Claim No. 78 of 2011. Since there was a delay of 11 days in filing the appeal, it has been sought to be condoned by filing a separate petition and as per order dated 31.07.2014 passed by this Court, the I.A. seeking to condone the delay has been ordered to be considered at the time of admission. The appeal has not been admitted so far and hence, we heard Shri Deepak Gupta, the learned counsel appearing for the Appellant elaborately on the question of delay and also as to the merits of case.
3. The sequence of events shows that the claim is in respect of the accident occurred on 29.09.2011 when the deceased Ramu Mehto sustained fatal injuries when he was driving the Truck bearing No. CG/17H/1038 belonging to the 5th Respondent. Because of 'head-on-collision' with another Truck bearing No. CG-17-GA-1509, Ramu Mehto, the driver of the Truck owned by the 5th Respondent succumbed to the injuries; which led to the claim petition preferred by the parents and siblings of the deceased before the Commissioner.
4. It was contended that the accident had arisen out of and in the course of employment under the 5th Respondent; that the deceased was aged about 25 years and that he was having an income of Rs. 8,000/- per month. The claim was sought to be resisted from the part of the Respondents concerned, disputing the accident and also as to the income of the deceased. The vehicle was stated as insured with the Appellant.
5. The 1st Applicant *i.e.* the father of the deceased was examined before the Commissioner who deposed in tune with the pleadings raised as to the

occurrence of the accident, the age and employment of the deceased and as to the monthly income, though he conceded in the cross-examination that there was no documentary evidence to prove the monthly income. No evidence was adduced to the contrary from the part of the Respondents. Based on the available materials, the Commissioner held that there was no reason to disbelieve the version of the Claimant, which accordingly led to the inference that the deceased was aged 25 years and was having a monthly income Rs. 8,000/- as put forth from the part of the Claimants. It was accordingly, that the compensation was fixed under Section 4 of Workmen's Compensation Act, 1923 reckoning 216.91 as the relevant factor and taking 50% of the monthly income, leading to fixation of the compensation as Rs.8,67,640/-. This was directed to be satisfied by the Appellant/Insurance Company on the strength of the policy issued by them within 45 days; making clear that in case of any failure, it would attract interest @ 12% per annum; correctness of which is put to challenge in this appeal preferred by the Insurer.

6. The learned counsel for the Appellant submits that the only ground pressed before this Court is with regard to the fixation of income reckoning the same as Rs. 8,000/- per month which is absolutely without any basis. Though, no specific grounds have been raised after narration of the facts of the case, the Appellant has apparently suggested the 'grounds' as 'A', 'B' and 'C' under the head 'Substantial Questions of Law' which are to the following effect:

“A. Whether the Commissioner for employee's compensation was correct in holding income of the deceased at Rs. 8000/- per month particularly when there was no evidence and proved for proving the same.

B. That the impugned award is shocking on higher side.

C. Whether the Commissioner in appreciating facts and circumstance of the case. The deceased was not holding valid and effective driving license at the time of Accident. Therefore the liability is fastening up on the Insurance Company.”

7. As mentioned already, the Commissioner has noted in the award that evidence was tendered by the 1st Claimant (father of the deceased) that the deceased was of the age of 25 years and was obtaining Rs.8,000/- towards monthly income by virtue of his engagement as Driver in the Truck bearing No. CG/17H/1038 belong to the 5th Respondent herein (who was 1st Respondent in the claim petition). Though the said witness has conceded that there was no 'documentary evidence' to prove the monthly income, the fact remains that no evidence was adduced from the part of the Appellant to controvert the oral version of the Claimant's as above, which led to the inference made by the Commissioner fixing the monthly income as Rs. 8,000/-. Even otherwise, job as Driver is a skilled work and since the accident was in the year 2011, the notional income could be fixed appropriately, in the light of the relevant rulings rendered by the Apex Court. The relevant factor has been adopted as provided in the Schedule to the Act, with reference to the age of deceased as 25 years. Similarly, no steps have been taken by the Appellant to hold that there was any violation or breach of the policy conditions, either in causing the vehicle to be driven without any valid driving licence or on such other grounds. This being the position, the verdict passed by the Commissioner arriving at the inference and fixing the compensation is not liable to be assailed.
8. It is further to be noted in this context, that the present appeal has been preferred under Section 30 of Employee's Compensation Act, 1923 (as

amended) which confers rights upon the aggrieved party to challenge the award passed by the Commissioner only on existence of a 'substantial question of law'. The point suggested by the Appellant as questions involving substantial questions of law is essentially a dispute as to the actual monthly income of the deceased and also as to the possession of valid and effective driving licence at the time of accident. These are purely 'questions of facts' and do not involve any question of law, much less any substantial question of law.

9. In the said circumstance, we are of the view that there is no tenable ground to admit or entertain the appeal. As it stands so, interference is declined and both the appeal and the petition to condone the delay, stand dismissed as devoid of any merit.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge