

HIGH COURT OF CHHATTISGARH, BILASPUR**M. A. (C) No. 577 of 2012**

The Oriental Insurance Company Limited Through its Divisional Manager, The Oriental Insurance Company Limited OPP. Rajeev Plaza, 1st Floor, Rama Trade Centre, Bus Stand, Bilaspur, Chhattisgarh

---- Appellant**Versus**

1. Pokhan Singh Chhatri, aged about 50 years, S/o Seth Singh Chhatri
2. Prabhadevi Chhatri, aged about 45 years, W/o Pokhan Singh Chhatri
3. Ranjeet Singh, aged about 15 years, S/o Pokhan Singh Chhatri
4. Vikas Singh, aged about 11 years, S/o Pokhan Singh Chhatri

Respondent No.3 & 4 being minor represented through father Pokhan Singh Chhatri/respondent No.1, All resident of Village Gadaghat, P.S. Takhatpur, District Bilaspur, Chhattisgarh

5. Abhijit Singh Thakur, S/o Rajendra Singh Thakur, R/o A/10, Indira Vihar Colony, S.E.C.L. Bilaspur, Chhattisgarh

---- Respondents

For Appellant	: Shri H.P. Agrawal, Advocate
For Respondents No.1 to 4	: None
For Respondent No.5	: Shri A.L. Singroul, Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****Judgment on Board****Per Parth Prateem Sahu, Judge****13.07.2020**

1. Appellant/Insurance Company has filed this appeal under Section 30 of the Employees' Compensation Act, 1923 (hereinafter referred to as

'E.C. Act') (prior to 18/01/2010 known as Workmen's Compensation Act) challenging the impugned order dated 13.03.2012 passed by the Commissioner for Employees' Compensation Act - cum - Labour Court, Bilaspur, Chhattisgarh (hereinafter referred to as 'Commissioner') in Case No.82/WCA/COC.1.B/09/(F)Claim.

2. Facts of the case projected before learned Commissioner is that, on 29.04.2009, Kishore Singh while under the employment of non-applicant No.1 as driver of Truck bearing No.CG-10/C/2798 (hereinafter referred to as 'Truck') went to Aryan Coal Benefication, Korba for loading coal for Bilaspur. He found dead in cabin of Truck during the course of employment. It was pleaded that deceased along with other 28 Trucks were given token for exit from Aryan Coal Benefication Coal Washery, Korba, but all the other Trucks reached to Bilaspur except Truck bearing No.CG-10/C/2798. On 01.05.2009, at about 11.00 pm, Truck driven by late Kishore Singh was found near SECL, Dipka in stationary condition and upon search, driver of Truck was found dead inside the cabin of the Truck.
3. The claimants who are mother, father and siblings of deceased filed an application under Section 22 of the E.C. Act seeking compensation of Rs.4,32,000/- pleading therein that deceased was employed as driver with non-applicant No.1 and earning Rs.4,000/- per month.
4. Non-applicant No.1 submitted reply to claim application pleading therein that application was not maintainable; he has denied the

employment of deceased with him and his death. It was further pleaded that deceased was not an employee of his nor his death was during the course of his employment. It was also pleaded that claimants are not dependents upon the deceased and deceased was never an employee of non-applicant No.1 as driver of the Truck, whereas driver of the Truck was Gajanand and deceased was not known to non-applicant No.1.

5. Appellant/Non-applicant No.2/Insurance Company submitted reply to claim application pleading therein that claimants have not specifically pleaded the cause of death, therefore, application is not maintainable. It was further pleaded that claimants have failed to prove the employee-employer relationship. In the postmortem report (Ex.P/3), there is no mention about cause of death. It was further pleaded that for maintaining an application under Section 22 of the E.C. Act, claimants are required to prove that the death of an employee comes within the purview of Section 3(2) of the E.C. Act. Merely founding a body of a person in a cabin of the Truck will not lead to engagement of deceased under the employment of non-applicant No.1. It was lastly pleaded that deceased was not possessing valid and effective driving licence to drive the vehicle and thereby there was breach of the conditions of insurance policy.
6. The Commissioner on appreciation of pleadings and evidence placed on record, allowed the application and awarded a sum of Rs.4,33,820/- as compensation and fastened the liability to satisfy the

amount of compensation upon non-applicant No.2/Insurance Company with interest at the rate of 10% per annum along with 40% penalty of the amount of compensation i.e. Rs.1,73,528/- plus interest and the liability to pay the interest and penalty was fastened upon non-applicant No.1/owner of the Truck.

7. This Court while admitting the appeal on 11.12.2012 has formulated following substantial questions of law :-

“(i) Whether the Commissioner, Workmen's Compensation was justified in holding that death of Kishore Singh was an accidental death, which arose out of and during the course of employment ?

(ii) If the cause of death is not established, whether death of Kishore Singh can be said to be an accidental death, thereby entitling the claimants to claim compensation for his death under the Workmen's Compensation Act, only on the ground that it arose out of and during the course of employment ?”

8. Shri H.P. Agrawal, learned counsel for the appellant/Insurance Company submits that learned Commissioner erred in awarding amount of compensation by impugned order by recording a finding that death of Kishore Singh was accidental only on the basis of presumption and there is absolutely no material to show, much less medical expert opinion about the cause/reason for the death of Kishore Singh. He further submits that for maintaining an application for compensation, claimants are required to fulfill the conditions as

mentioned in Section 3(1) of the E.C. Act. It is contended that it is for the claimants to prove the death to be accidental in nature and at least the cause of death; adding that, every death will not come within the purview of Section 3 of the E.C. Act.

9. Shri A.L. Singroul, learned counsel for respondent No.5 submits that Kishore Singh was never in employment, there is no employee-employer relationship between deceased, claimants have failed to prove the employee-employer relationship, which is essential for seeking compensation under the E.C. Act and learned Commissioner only on presumption, passed the impugned order. He further submits that respondent No.5/owner of Truck has also filed a separate appeal challenging the impugned order being MAC No.1035 of 2013, in which, entitlement of receiving compensation by the applicants as well as award of penalty against the answering respondent is under challenge.
10. We have heard learned counsel for the appellant/Insurance Company and perused the record carefully.
11. In the postmortem report (Ex. P/3), no opinion has been given regarding cause of death by the doctor; the death occurred about 18 to 36 hours prior to date of performance of postmortem examination and viscera preserved for chemical analysis by forensic expert. The claimants have examined Pokhan Singh Chhatri (AW-1) to prove the engagement of deceased as driver and documents have also been placed on record (Ex. P/1 to Ex. P/15) i.e. documents of criminal

case, documents of vehicle and copy of the newspaper. In his cross-examination, he stated that information of brain fever was given to police by him. Ramesh Kumar Thakur was examined as AW-2, who in his evidence stated that death of Kishore Singh was on account of brain fever due to excessive pressure of work. He further stated that doctors have stated that death of Kishore Singh was on account of brain fever due to excessive work and its pressure. Apart from this, there is no evidence available on record to show the cause of death of Kishore Singh. In absence of any specific evidence before learned Commissioner with regard to the cause of death, the Commissioner could not have arrived at a finding that death was accidental, when the doctor who conducted postmortem to be expert in the field has mentioned in postmortem report (Ex.P/3) that no opinion can be given regarding the cause of death of Kishore Singh.

12. Section 3(1) of the E.C. Act envisages that if personal injury is caused to an employee by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation. From bare reading of provisions of Section 3, it is clear that the injury should be accidental.
13. The claimants have placed the documents available with them, but unfortunately in those documents, cause of death has not been shown. But then, the claimants could have placed on record viscera report after obtaining it from police to ascertain the cause of death, which has not been done in this case. The claimants have also not

called the doctor for his examination before the Commissioner and Commissioner could have only after considering the evidence of doctor, who is expert in the field, could have arrived at a conclusion instead of drawing presumption based on the information with regard to status of dead body found in the cabin of the Truck as mentioned in the requisition of Police Department and forwarded for postmortem of the dead body.

14. In view of absence of specific evidence and finding with regard to cause of death, we are of the considered view that learned Commissioner has committed error in passing the impugned order, which is not sustainable.
15. For the foregoing reasons, the appeal is allowed. We set aside the impugned order and remit back the case to the Court of Commissioner for Employees' Compensation Act - cum - Labour Court, Bilaspur, Chhattisgarh for deciding the issue afresh whether the death of Kishore Singh was an accidental, which arose out of and during the course of employment only. It is needless to mention that the parties will be at liberty to amend their pleadings, lead additional evidence in support of their case, file additional documents to prove their case and learned Commissioner will decide the issue afresh after affording reasonable opportunity to all the parties concerned as expeditiously as possible.

16. Record of the case shall be remitted back to the Court of Commissioner for Employees' Compensation Act - cum - Labour Court, Bilaspur, Chhattisgarh forthwith.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Yogesh