NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 1190 of 2014

The Oriental Insu. Co. Ltd. Thru- Branch Manager, Branch- Raigarh, Tah. & Distt. Raigarh, (C.G).

---- Appellant/Non-applicant No.2.

Versus

1. Smt. Shanti Mishra @ Basanti Mishra W/o Late Rajendra Mishra Aged About 28 Years.
2. Minor Kamlesh Mishra S/o Late Rajendra Mishra Aged About 10 Years.
3. Minor Akash Mishra S/o Late Rajendra Mishra Aged About 3 Years.

   Through natural guardian mother Smt. Shanti Mishra, all are R/o Darogapara, Raigarh, Tah & Distt. Raigarh C.G.

---- Applicants/Claimants.

4. Chhattisgarh Civil Supply Corporation Ltd, Thru- Zila Prabandhak, Chhattisgarh Civil Supply Corporation Ltd. Distt- Raigarh C.G.

---- Non-applicant No.1/Respondents

For Appellant	:	Mr. Raj Awasthi, Advocate.
For Respondent No.1 to 3	:	None.
For Respondent No.4	:	Mr. Chitrendra Singh, Advocate.

Hon'ble Shri P. R. Ramachandra Menon, CJ
Hon'ble Shri Parth Prateem Sahu, J

Order on Board

Per Parth Prateem Sahu, J
07/10/2020

1. Appellant/Insurance Company has filed this appeal under Section 30 of the Employee's Compensation Act, 1923 (earlier Workmen's Compensation Act, 1906) (for short 'the Act of 1923') challenging the impugned order/award dated 23.08.2014 passed by the learned Commissioner for Employees Compensation – Cum - Labour Court, Raigarh, (CG) in Case No.32/W.C.ACT/2003/Fatal, whereby the Commissioner partly allowed application filed by applicants/claimants, awarded compensation of Rs.1,73,806.92 paise alongwith interest at the rate of 12% p.a, fastened liability upon non-applicants, jointly & severally to make payment of amount of compensation. Non-applicant

No.1/employer has further been held liable to make payment of penalty of 25% of the awarded amount.

2. Facts relevant for disposal of this appeal are that deceased -Rajendra Prasad Mishra was working as 'Tulawati/weighman' under the employment of non-applicant No.1/respondent No.4 herein. In discharge of his duty he had to travel on Truck of non-applicant No.1 bearing registration No. MP/26/D/0676. On 08.06.2000 when deceased was travelling on said truck and going to Baramkela, it stopped due to mechanical fault in its crown. When deceased along with one Dilip Ejardhar was guarding truck near village -Lodiya, some dispute took place between Gopal Banjare (driver of truck) and Rajendra Mishra (deceased), in that process, Gopal Banjare assaulted Rajendra Mishra on head with a Jack Rod, resulting death of Rajendra Mishra. Criminal case was registered against Gopal Banjare in Police Station -Baramkela for commission of the offence punishable under Section 302 of IPC and after conclusion of trial, he was acquitted of the charge levelled against him.

3. Applicants filed an application under Section 22 of the Act of 1923 seeking compensation of Rs.2,71,000/- along with interest @ 12% p.a. and 50% penalty pleading therein that on the date of accident, deceased, who was aged about 35 years, was under the employment of respondent No.4, getting salary of Rs.1,823/- per month. Including other allowances he was earning Rs.4,000/- per month.

4. Non-applicant No.1/respondent No.4 -herein, employer of deceased, submitted reply to application, pleading therein that deceased had to travel out of city in connection with work of Department. On 08.06.2000 Dilip Ejardhar had lodged report against Gopal Banjare, driver of truck, based on which he was tried for commission of offence punishable under Section 302 of IPC, which

was decided on 10.10.2001 acquitting Gopal Banjare of the charge of murder. It was further pleaded that death of Rajendra was not on account of the incident arising out of and in the course of employment, but it was the outcome of dispute between Gopal Banjare and deceased, therefore, claimants are not entitled for any amount of compensation.

5. Initially the Commissioner passed an order on 15.01.2004 wherein the Commissioner allowed application, awarded Rs.1,73,806=92 paise along with interest at the rate of 12% and fastened liability upon respondent No.4/employer. Said order was put to challenge by respondent No.4/employer by way of filing MAC No.323/2004 in which Oriental Insurance Company was also impleaded as party respondent. Upon hearing on 09.11.2012 learned Single Judge affirmed the amount of compensation awarded by Commissioner, but allowed in part and remitted back the case for deciding *inter se* liability between appellant/employer and Oriental Insurance Company.

6. After receiving the case back on remand, Insurance Company/appellant submitted reply to application filed under Section 22 of the Act of 1923 denying the pleadings made therein. It was further pleaded that as per order dated 09.11.2012 passed in MAC No.323/2004, deceased was working as 'Tulawati/ weighman' which is binding on the parties. The vehicle was a goods carrying vehicle, policy was also issued for goods carrying vehicle, under the policy risk of 'Tulawati/ weighman' is not covered as such applicants are not entitled to receive any amount of compensation from Insurance Company. It was further pleaded that there was breach of conditions of Insurance Policy as on the date of accident, Gopal Banjare (driver) was not possessing valid and effective driving license, there was no valid permit and fitness certificate of vehicle. Other technical grounds were also raised by Insurance Company in its reply.

7. Upon considering the pleadings, evidence material available on record and also the submissions made by learned counsel for the respective parties, the Commissioner recorded a finding that death of Rajendra Mishra was on account of accident arising out of and in the course of his employment, fastened liability to satisfy the amount of compensation upon Insurance Company taking into consideration that under the Insurance Policy risk of driver and workmen is covered, as separate premium is charged in this regard.

8. Learned counsel for appellant-Insurance Company submits that learned Commissioner erred in arriving at a finding that deceased -Rajendra Mishra died of accident arising out of and during the course of employment. Deceased was not covered under the Policy as he was not employed in truck being driver or labourer. The Commissioner has not taken into consideration that as per the evidence available on record, deceased was employed as 'Tulawati/weighman' by respondent No.4 and not as an employee for operation and maintenance of truck. The Commissioner ought to have exonerated Insurance Company from its liability holding that deceased was not covered under the Policy.

9. Learned counsel for respondent No.4/employer submits that the Commissioner after taking into consideration the entire facts and circumstance of the case, evidence available on record, particularly copy of Insurance Policy, has passed just award and fastened liability upon appellant-Insurance Company to satisfy the amount of compensation. Finding recorded by the Commissioner is based on the evidence available on record, hence, it does not call for any interference.

10. Case was admitted on following questions of law :-

> " 1. Whether the death of the deceased was as a result of an accident arising out of and in the course of employment ?
>
> 2. Whether the insurance company would be liable to make payment for the death of deceased under the policy which they have issued to the employer ie respondent No.4 ?"

11. Perusal of record would show that initially on 15.01.2004 the Commissioner allowed application of applicants/claimants filed under Section 22 of the Act of 1923, awarded Rs.1,73,806:92/- paise as compensation along-with interest at the rate of 12% per annum, 25% penalty of awarded amount of compensation, fastened liability to satisfy the amount of compensation upon non-applicant/employer. This award dated 15.01.2004 was put to challenge in MA/323/2004 before the High Court and while deciding the appeal learned Single Judge has not interfered with entitlement of applicants for compensation but allowed that appeal in part and remitted back the matter to decide only *inter se* liability between the employer (insured) and insurer for satisfying the amount of compensation. Relevant portion of order is abstracted below for ready reference:-

> "17. For the reasons mentioned hereinabove, the appeal is allowed in part. The matter is remitted back to the Commissioner to decide inter-se liability between the appellant as well as respondent No.4/insurance company. Needless to mention, the Commissioner shall afford proper opportunity to the parties to lead evidence and to file additional documents, if any, and thereafter shall decide inter-se liability between the appellant as

well as respondent No.4/insurance company in accordance with law on its own merits without being influenced by any of the observations made hereinabove."

12.From perusal of order dated 09.11.2012 passed in MA/323/2004, it is apparent that the learned Single Judge has remanded back the matter only to decide the inter se liability and not interfered with the other finding of Commissioner with regard to entitlement of compensation to applicants/ claimants.

13. For the foregoing reasons, substantial question No.1 is not required to be decided by this Court as it has attained its finality by order passed by learned Single Jude in MAC/323/2004. Hence, substantial question No.1 as framed is answered accordingly.

14. So far as second substantial question of law is concerned, perusal of insurance policy placed on record as Ex.D-1 reveals that truck Bearing registration No. MP/26/D/0676 was insured with appellant-Insurance Company. Policy issued for 'goods carrying commercial vehicle' was policy act only. Certified copy of policy also bears Schedule of premium which is extracted below :-

"**Drivers Clause : Persons or classes or persons entitled to drive :-** Any person including the insured providing that the person driving holds an effective and valid driving license to drive the category of vehicle insured hereunder, at the time of accident and is not disqualified from holding or obtaining such a license. Provided also that a persons holding an effective and valid Learner's License to drive the category of vehicle insured hereunder may also drive the vehicle when not used for transport of goods at the time of

Insured Estimated Value in Rupees	Of the Vehicle	Side Car/Trailer	Accessories Non-Electrical	Accessories Electrical	Total I.E.V
	Rs.0,00	Rs.0,00	Rs.0,00	Rs.0,00	Rs.0,00

SCHEDULE OF PREMIUM

A) OWN DAMAGE – BASIC	0.00	B) LIABILITY TO PUBLIC -BASIC	2,779.00

ADD: OWN DAMAGE -SURCHARGE NCE/MALUS: LESS: ADD :	0.00	ADD : Legal Liability for Paid Driver/Workmen No.6 Workmen > 6 No.1 ADD : TPPD Cover For Unlimited Amount ADD :	90.00 30.00 75.00
		Total of (B) Total Premium (A+B)	Rs.2,974.00 Rs.2,974.00
Total of (A) Under Hire Purchase/Hypothecated/ Lease with	Rs.0.00	Not Premium (Rs): Service Tax : Total Premium Rs.	Rs.2,974.00 Rs.149.00 Rs.3,123.00
Subject to Endorsement			

Limitations : Use only under a public carrier permit within the meaning of Motor Vehicles Act, 1988. The Policy does not cover use for Organized racing. Speed testing."

15. Perusal of above Schedule of premium reveals that appellant-Insurance Company has charged premium for other workmen apart from driver. Question arise for consideration is whether deceased who was travelling as 'Tulawati/weighman' employed on daily wages is covered under the Policy. Evidence of RB Shukla (NAW-1) Branch Manager of non-applicant No.1/respondent No.4 would show that he admitted that the deceased was employed on daily wages as Tulawati / weighman. He also proved the payment made to him for the month of August, 1999; October, 1999, April & May, 2000. In cross-examination also he admitted that he moves along with truck.

16.Applicant No.1 was examined as AW-1. In her statement she stated that the deceased was working as Tulawati/weighman with non-applicant No.1. On the date of incident, he went to work and went to Baramkela on the truck of respondent No.1. FIR is filed as Ex.P-1 lodged by Dilip Egardar who is also an employee of non-applicant No.1 Contents of FIR would clearly show how incident took place. The evidence available on record clearly shows that the deceased went on truck as an employee of non-applicant No.1, his work is to travel along with truck due to his nature of employment and on the date of incident, he was watching the truck which was left on road due to some mechanical fault in crown of the truck.

17.Appellant-Insurance Company has charged premium for the workmen looking to the nature of work, for which deceased was kept for travelling in truck, he is covered under the policy.

18. When Insurance Company has taken a separate premium for workmen then other workmen engaged for the purpose of working on motor vehicles other than the driver are also covered.

19. For the foregoing reasons, appellant -Insurance Company is liable to make the payment of amount of compensation. Second substantial question of law is answered accordingly. It was brought to the notice of this Court that respondent No.4/employer in earlier round of litigation has deposited amount of compensation, hence, appellant -Insurance Company is directed to deposit amount of compensation including interest on it except amount of compensation awarded towards penalty and interest on it. If amount of compensation deposited by respondent No.4/employer was disbursed to respondent Nos.1 to 3/claimants then the amount so deposited by Insurance Company shall be refunded to respondent No.4.

20. In the result, appeals stands dismissed with the aforementioned directions.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

Jamal/-