

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

FAO-6273-2013 (O&M)

Reserved on : 13.7.2023

Date of Decision: 6.10.2023

M/s Kalpna Chawla College of Education and others

....Appellants

VERSUS

Manju and others

....Respondents

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by : Mr. Akash Yadav, Advocate,
for the appellant.

Mr. Sandeep Kotla, Advocate,
for respondents No.1 to 3.

Mr. Shubham Gupta, Advocate for
Mr. D.P.Gupta, Advocate,
for respondent No.5.

KARAMJIT SINGH, J.

Present appeal has been filed by the appellants against the order dated 6.8.2013 passed by the Court of Commissioner under Employee's Compensation Act, Circle Hisar (in short, "the Commissioner") whereby the claim application filed by the respondents No.1 to 3-claimants being legal heirs/dependents of deceased-Swami Nath Yadav was allowed and the respondents were awarded compensation worth ₹ 4,63,759/- along with interest from the date of accident.

2. Brief facts of the case of the respondents No.1 to 3-claimants are that deceased-Swami Nath Yadav was husband of respondent No.1 and father of respondents No.2 and 3; that the deceased was working as a driver with the appellants with effect from 9.1.2008 and his monthly wages were ₹ 10,000/-. On 7.5.2011, respondent No.2 in the claim application i.e.

Principal, Kalpna Chawla College of Education for Women, Village Chikanwas, District Hisar asked the deceased to take respondent No.4- Shamsher Singh Dahiya to Meerut in Tata Safari No.HR20N-0039 which was owned by said Shamsher Singh Dahiya. On the way when they were coming from the side of Sonapat towards Hisar, the said vehicle met with an accident, as a result of which, Swami Nath Yadav sustained multiple injuries and died at the spot. DDR to this effect was recorded in Police Post Jharoth, District Sonapat. The said accident occurred during the course of employment of Swami Nath Yadav with the appellants. The appellants gave assurance to compensate the claimants but later on, they failed to do so and then legal notice dated 3.8.2011 was issued under Section 10(1) of Employee's Compensation Act but despite this the employer failed to pay any compensation to the claimants.

3. The claim application was contested by the appellants and Shamsher Singh Dahiya. The appellants filed joint written reply wherein they denied the relationship of employer and employee between them and the deceased. It was pleaded that at the time of the accident, the deceased was driving Tata Safari No.HR20-N-0039 which was owned by Shamsher Singh Dahiya. It was further pleaded that on the date of accident i.e. 7.5.2011, the deceased was not in employment of the appellants and the deceased had already left the job of driver with the appellants on 25.2.2011 of his own. So, prayer is made that the appellants are not liable to pay any compensation to the claimants.

4. Shamsher Singh Dahiya filed separate written reply wherein he also denied his liability on the ground that at the time of the accident, the deceased was not his employee.

5. On the pleadings of the parties, the following issues were framed : -

1. Whether there exists relationship of employer and employee between the respondent no.1 and 2 and the deceased, at the time of alleged accident?
2. Whether the applicants are entitled to the amount of compensation as claimed in the application? If so, to what amount and from whom?
3. Whether the alleged accident occurred during the course of his employment?
4. Whether the present claim application is not maintainable in view of the preliminary objections of the respondents?
5. Whether the respondents are liable to penalty?
6. Relief.

6. In order to prove her claim, claimant No.1-Manju wife of late Swami Nath Yadav appeared in the witness box as PW1. PW2-Pawan Kumar Constable deposed that on the night intervening 6/7.5.2011, he along with Shamsher Singh Dahiya was travelling in vehicle No.HR20-N-0039 which was driven by deceased Swami Nath Yadav and when the car reached near village Jharoth, Sonapat, it went out of control and struck against a tree, as a result of which, all the occupants of the car sustained injuries and they were taken to General Hospital, Sonapat where Swami Nath Yadav was declared dead and the matter was also reported to the police. PW3-HC Rajveer Singh proved copy of DDR No.3 dated 7.5.2011 Ex.PW3/A. The claimants also tendered death certificate of Swami Nath Yadav Ex.P1, photocopy of letter dated 25.2.2011 Mark B, copy of legal

notice and postal receipts Mark 'C' to Mark 'F', photocopy of driving licence of the deceased Ex.P4 and photographs of the site of accident. On the other hand, the appellants examined RW1-Pardeep Kumar Accountant who produced documents Ex.R1 to Ex.R42. Shamsheer Singh Dahiya appeared in the witness box as RW2 wherein he stated that he was on visiting terms with Sunil Sharma Chairman of Kalpna Chawla College of Education for Women; that his driver was on leave on 6.5.2011 and Sunil Sharma offered the services of his driver Swami Nath Yadav to the deponent who was to go Meerut; that they went to Meerut and on 7.5.2011 when they were coming back to Hisar from Meerut and reached near village Jharoth (Sonepat), Swami Nath Yadav who was driving Tata Safari lost control and the vehicle rammed into a tree and due to the said accident, Swami Nath Yadav died at the spot while the deponent and his gunman also suffered injuries.

7. On completion of the evidence, opportunity of hearing was granted to the parties and thereafter, the Commissioner passed the impugned order whereby the appellants were directed to pay compensation worth ₹ 4,63,759/- along with interest from the date of accident to the claimants.

8. Being aggrieved, the appellants have filed the present appeal.

9. I have heard the counsel for the parties.

10. Counsel for the appellants, while assailing the findings recorded by the Commissioner has, *inter alia* contended that at the time of the accident, the deceased was driving a vehicle belonging to Shamsheer Singh Dahiya and there is nothing on record to prove that at the time of the accident, the deceased was employee of the appellants. He has further submitted that no reliable evidence is available to prove that Shamsheer

Singh Dahiya was having any acquaintance with the appellants or that the

appellants offered the services of the deceased as a driver to Shamsher Singh Dahiya. Counsel for the appellants has further contended that even otherwise, defence taken by Shamsher Singh Dahiya in his testimony was not pleaded by him in his written reply and as such, the said defence cannot be taken into consideration. He has further contended that there being no relationship of employer and employee between the appellants and the deceased, the appellants are not liable to pay any compensation and that the appeal be allowed accordingly.

11. Counsel appearing on behalf of Shamsher Singh Dahiya and insurance company while supporting the impugned order, contended that the Commissioner rightly exonerated the owner and insurer of the car as there was no relationship of employer and employee between the owner of the vehicle and the deceased.

12. Counsel appearing on behalf of the respondents has submitted that the appellants failed to appear in the witness box in order to prove their testimony; that only RW1-Pardeep Kumar who was working as an Accountant was examined on behalf of the appellants and he was having no personal knowledge about the facts of the present case. Counsel for the respondents has further contended that documents Ex.R1 to Ex.R42 are not reliable documents as they are not bearing signatures of any of the employees. Counsel for the respondents while referring to the testimony of Shamsher Singh Dahiya has submitted that from the perusal of the same, it is evident that at the relevant time, the deceased was working as a driver with the appellants but on request made by Shamsher Singh Dahiya, services of the deceased were offered to him by the appellants and that is

why the deceased was driving the vehicle of Shamsher Singh Dahiya at the

time of the accident on 7.5.2011. So, prayer is made that the present appeal be dismissed.

13. I have considered the submissions made by the counsel for the parties.

14. There is no dispute with regard to the fact that at the time of the accident, the deceased was driving a Tata Safari owned by Shamsheer Singh Dahiya and the said Tata Safari struck against a tree, as a result of which, deceased-Swami Nath Yadav died at the spot. The aforesaid incident was reported to the police and DDR Ex.PW3/A was registered in the concerned police station and the same was proved by PW3-HC/Rajveer Singh. Respondent No.1 is widow while respondents No.2 and 3 are minor children of the deceased.

15. Question involved in the present case is as to whether the deceased was employee of the appellants or Shamsheer Singh Dahiya at the time of the accident. The appellants in their written reply took the plea that earlier the deceased was working as a driver in their institute but he left the job on 25.2.2011. RW1-Pardeep Kumar Accountant of the appellants, while appearing in the witness box, admitted that the deceased remained working as a driver in the college of the appellants from 9.1.2008 and left the job on 25.2.20211. However, RW1 failed to produce any notice or document to show that the deceased left his job of driver on 25.2.2011. Further, Shamsheer Singh Dahiya, while appearing in the witness box, stated that Sunil Sharma, the then Chairman of the appellants offered services of the deceased as a driver to him as he was to go to Meerut in his own car and that on the way, the car driven by the deceased met with an accident and the deceased died at the spot. Sunil Sharma, the then Chairman of the appellants

did not choose to appear in the witness box to rebut the aforesaid statement of Shamsher Singh Dahiya. Only RW1-Pardeep Kumar, Accountant was examined on behalf of the appellants but he was having no personal knowledge about the accident in question. On the basis of the evidence discussed above and the fact that one cannot expect to have a written contract of employment as a driver and furthermore, there is admission on the part of the appellants that prior to the accident in question, the deceased remained working as a driver with them, the Commissioner rightly took the view of existence of relationship of employer and employee between the appellants and the deceased.

16. Further as per the provisions of Section 30 of Employee's Compensation Act, an appeal from an order of the Commissioner can be entertained only if there exists a substantial question of law to be considered. In **Golla Rajamma and others v. Divisional Manager and another** (2017) 1 SCC 45, Hon'ble Supreme Court observed that under the scheme of Workmen's Compensation Act, the Commissioner is the last authority on facts involved in a case. Hon'ble Apex Court further observed that Parliament has thought it fit to restrict the scope of the appeal only to substantial questions of law it being a welfare legislation. The same view has been reiterated by Hon'ble Supreme Court in Civil Appeal No.4713 of 2023; **Fulmati Dhramdev Yadav and another v. New India Assurance Company Limited and another** decided on 4.9.2023. While passing the said judgment, Hon'ble Supreme Court held that it is well established that Employee's Compensation Act is a social welfare legislation and therefore, it must be given a beneficial construction. The matters thereunder are to be adjudicated with due process of law and also with a keen awareness of the

scope and intent of the Act.

17. While reverting back to the facts of the present case, there is ample evidence to show that the deceased was employee of the appellants and further, there being a limited scope of an appeal under the Employee's Compensation Act, there is no illegality or perversity in the impugned order passed by the Commissioner.

18. Consequently, the appeal filed by the appellants is hereby dismissed.

(KARAMJIT SINGH)
JUDGE

October 6, 2023
Paritosh Kumar

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No