

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO-10053-2014

Reserved on: 19.12.2023

Date of decision: 18.03.2024

Oriental Insurance Company

...Appellant

Versus

Manju Devi

...Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by: Mr. Vinod Chaudhary, Advocate for the appellant.

Mr. V.M. Handa, Advocate for the respondent.

KARAMJIT SINGH, J. (ORAL)

1. The present appeal has been filed by appellant insurance company against the award dated 31.07.2014 passed by the Commissioner Under Employees Compensation Act, Circle-V, Faridabad (in short 'the Commissioner') whereby compensation worth Rs.6,54,150/- is awarded to dependents/legal heirs of Suresh Yadav, a workman under the Employees Compensation Act (in short the Act).

2. The brief facts of the case of the claim applicants are that Suresh Yadav was employee of respondent No.8 (a licenced contractor) and in the month of May, 2011, Suresh Yadav being employee of a licenced contractor, was working in Chhainsa Compressor Station, Ballabhgarh, Faridabad, (in short 'the Compressor Station') which was run by respondent No.9 (GAIL India Limited). The monthly wages of Suresh Yadav who was working as a mechanic were Rs.7000/- per month. That on 29.05.2011,

while in course of his employment, Suresh Yadav while working in the aforesaid compressor station suffered accidental injuries and died. On account of death of Suresh Yadav, his legal heirs/dependents filed claim application seeking grant of compensation worth Rs.10 lacs along with interest at rate of 9% per annum from the date of accident till its realization, under Workmen's Compensation Act.

3. The claim application was contested by respondents No.8 M/s Jai Hind Project Limited, respondent No.9 GAIL India Limited and present appellant Oriental Insurance Company.

4. Respondent No.8 M/s Jai Hind Project Limited filed written statement wherein it was admitted that Suresh Yadav was employee of the answering respondent. However it was denied that any incident took place in Compressor Station on 29.05.2011. That actually Suresh Yadav was suffering from chronic disease and he was under treatment in Gold Field Hospital and Research Centre, Chhainsa Tehsil Ballabgarh since 26.05.2011 and he was on leave from 29.05.2011 to 07.06.2011 and he died on 29.05.2011, due to said chronic disease. The other averments of the claim application were denied being wrong and it was pleaded that the same be dismissed.

5. Respondent No.9 M/s GAIL (India) Limited filed separate written statement contesting the claim and took plea that Suresh Yadav died due to chronic disease from which he was suffering and he was under treatment in Gold Field Hospital and Research Centre since 26.05.2011 and was on sanctioned leave for 10 days w.e.f. 29.05.2011. It was pleaded that the claim application deserves to be dismissed.

6. Appellant Insurance Company filed separate written statement wherein the entire averments of claim application were denied. However, it was admitted that M/s Jai Hind Project Limited obtained employer's liability w.e.f. 13.10.2010 to 12.10.2011 from answering respondent. It was further pleaded that as it was not a case of accidental death, the answering respondent is not liable to pay any compensation to the claim applicants.

7. The claim applicants filed separate replications controverting the averment made by the respondents in their written statements.

8. On the basis of the pleadings, following issues were framed by the Commissioner:-

- a) Whether there is a relation of master and servant between the parties?*
- b) Whether the accident during and out of course of employment?*
- c) Whether the applicants have no locus standi to file the present application?*
- d) Whether the claimants are dependents of the deceased and entitled to get compensation from the respondents?*
- e) Whether the applicants are entitled to the claimant amount, if so to what effect?*
- f) Relief.*

9. In order to prove their claim, claimant No.1 Manju Devi W/o Suresh Yadav appeared in the witness box as AW-2 and she reiterated the averments made in the claim application. Dinesh Kumar brother of the deceased while appearing in the witness box as AW-1 also deposed on the same lines.

On the other hand, the opposite party examined RW Chander Pal Proprietor of Janta Clinic who deposed that on 25.05.2011, Suresh Yadav came to his clinic for treatment as he was complaining of vomiting. RW Tara Chand, Record Clerk of Gold Field Hospital and Research Centre produced documents Ex.DW1/2, Ex,DW1/3, Ex.RW2/1, Ex.DW2/1 to

Ex.DW2/5. RW Shajahan, Manager of M/s Jai Hind Project Limited produced his affidavit DW1/A and also produced documents Ex.DW1/1 to Ex.DW1/3 and documents Mark-A to Mark-H. RW P.K. Roshan Kuzur, Chief Manager (HR) of respondent No.9 M/s GAIL (India) Limited tendered his affidavit Ex.RW3/A wherein he reiterated the defence taken by respondent No.9.

The appellant insurance company produced insurance policy Ex.RW3/1 in its evidence.

10. The detail of the medical record is as follows:-

Ex.DW1/1-Leave application of Suresh Yadav dated 29.05.2011 seeking privilege leave from 29.05.2011 to 07.06.2011 and the same was approved.

Ex.DW1/2- Patient Registration Detail of Suresh Yadav dated 26.05.2011 of Gold Field Hospital and Research Centre.

Ex.DW1/3- Digital X-ray report (Chest) of Suresh Yadav dated 26.05.2011 relating to Gold Field Hospital and Research Centre.

Ex.DW2/1- Bill dated 26.05.2011 issued in name of Suresh Yadav by Gold Field Hospital and Research Centre with regard to purchase of medicines worth Rs.100/- only.

Ex.DW2/2- Cash Bill worth Rs.600/- of Ambulance Referral Charges in name of Suresh Yadav dated 29.05.2011 issued by Gold Field Hospital and Research Centre.

Ex.DW2/3- Cash Bill worth Rs.100/- dated 26.05.2011 issued by Gold Field Hospital and Research Centre regarding X-ray (Chest) of Suresh Yadav.

Ex.DW2/4- Cash Bill worth Rs.110/- dated 26.05.2011 regarding clinical tests (ESR and CBC) of Suresh Yadav, issued by Gold Field Hospital and Research Centre.

Ex.DW2/5- Clinical Tests Report dated 26.05.2011 of Suresh Yadav, issued by Gold Field Hospital and Research Centre.

11. After hearing the counsel for the parties, the Commissioner decided all the issues in favour of the claim applicants and awarded compensation worth Rs.6,54,150/- in their favour and appellant insurance company was directed to pay the said compensation within a period of 60 days failing which interest would be charged at rate of 9% per annum from

the date of order.

12. The counsel for the appellant has submitted that respondent No.8 has admitted that Suresh Yadav was its employee. The counsel for the appellant has further contended that in the present case, claim applicants have failed to prove that Suresh Yadav died on account of accident which took place during course of his employment with respondent No.8. It has been further contended that no evidence has been led by claim applicants with regard to any such alleged accident. The claim applicants failed to produce copy of any DDR/FIR in order to establish the factum of alleged accident stated to have taken place in the compressor station. It has been further contended that no post mortem report is available on the record to prove cause of death of Suresh Yadav. It has been further argued that the factum of alleged accident was denied by respondents No.8 and 9. The counsel for the appellant has further argued that sufficient evidence is available on the record to show that the deceased was suffering from Tuberculosis (T.B) and he died due to said chronic disease on 29.05.2011. In this regard, counsel for the appellant referred to testimony of RWs namely Shajahan, Manager, M/s Jai Hind Project Limited who produced documents Ex.DW1/1 to Ex.DW1/3 and Mark-A to Mark-H, RW Tara Chand, Record Clerk, Gold Field Hospital and Research Centre who proved documents Ex.DW1/2, Ex.DW1/3 and Ex.RW2/1. The said witness also proved documents Ex.DW2/1 to Ex.DW2/5. The counsel for the appellant has also referred to testimony of RW Chander Pal, Proprietor, Janta Clinic who stated that on 25.05.2011, deceased came to his clinic for treatment.

The counsel for the appellant while referring to Ex.DW1/3 submits that as

per said X-ray report dated 26.05.2011 Suresh Yadav was having Pulmonary Koch (T.B). Reference is also made to documents Ex.DW2/1, Ex.DW2/3, Ex.DW2/5 with regard to the treatment taken by the deceased from Gold Field Hospital and Research Centre on 26.05.2011. It has been further contended that from the perusal of leave application Ex.DW1/1, it is evident that Suresh Yadav was on leave from 29.05.2011 to 07.06.2011. That in the given circumstances, it is evident that on 29.05.2011 when the alleged incident is stated to have occurred, the deceased was on leave. Thus, making it clear that no such incident as alleged by claim applicants, happened in the compressor station on 29.05.2011. That there is ample evidence available on record, to prove that on 29.05.2011, deceased was present in his house but his condition suddenly deteriorated and his co-workers reached his house and from there deceased was firstly taken to Gold Field Hospital and Research Centre, from where he was further taken to Sarvodaya Hospital on the same very day and the concerned doctor of said hospital declared him brought dead. In this regard, counsel for the appellant referred to document Ex.DW2/2. The counsel for the appellant further submits that claim applicants have failed to prove that deceased Suresh Yadav suffered accidental injuries during the course of his employment or that he died on 29.05.2011 due to said injuries. The counsel for the appellant has further contended that all these relevant aspects were ignored by the Commissioner while passing the impugned award, which is not sustainable and deserves to be set aside.

13. The counsel appearing on behalf of claim applicants/respondents No.1 to 7 while supporting the award in question

submits that while passing the said award, the Commissioner properly appreciated the evidence led by the parties and arrived at right conclusion and awarded appropriate compensation to claim applicants. The counsel for claim applicants has further contended that the relationship of employer and employee between respondent No.8 and Suresh Yadav was not denied by anyone. It is further submitted that at the time of accident, Suresh Yadav was working in a compressor station of respondent No.9, being employee of respondent No.8 (a contractor). The counsel for the claim applicants has further contended that it was the duty of the employer to report about the accident which took place on 29.05.2011 which resulted in death of Suresh Yadav, but the employer failed to do so in order to avoid his liability. It has been further contended that respondents No.8 and 9 were in better position and were having resources but they failed to assist the widow and other family members of the deceased in getting post mortem examination of dead body of the deceased, who belonged to marginalized section of society and was native of Bihar. The counsel for the claim applicants has further contended that each and every aspect of the case was taken care of by the Commissioner while passing impugned award. It is further contended that the present appeal filed by the insurance company is devoid of merits.

14. I have considered the submissions made by counsel for the parties and gone through the record of the Court of the Commissioner.

15. There is no dispute with regard to the fact that deceased Suresh Yadav was employee of respondent No.8 (a contractor) who was engaged by respondent No.9 for execution of work in its compressor station.

Respondent No.8 obtained insurance policy from the appellant to cover

employer's liability which was valid from 13.10.2010 to 12.10.2011 as has been admitted by the appellant in its written statement.

16. There is no dispute with regard to the fact that deceased was working as a mechanic in the compressor station of respondent No.9 (principal employer) in May 2011, being employee of respondent No.8 (a contractor).

17. Respondent No.8 M/s Jai Hind Project Limited, in its written statement has specifically admitted that salary of the deceased for the period from 01.05.2011 to 29.05.2011 i.e. Rs.6742/- was disbursed to his brother Dinesh Yadav, who appeared in the witness box as AW-1. Even in his cross-examination AW-1 was put suggestion by representative of respondent No.8 to the effect that it is correct that salary of deceased for the period from 01.05.2011 to 29.05.2011 is already disbursed. From the aforesaid pleadings/evidence one thing is clear that wages of the deceased for 29.05.2011 were also paid by his employer to his family members, after death of Suresh Yadav. Thus, making it evident that on 29.05.2011, Suresh Yadav was present on his duty in the compressor station of respondent No.9 and that is why wages for 29.05.2011 were paid to his family members by his employer. This fact falsifies the plea taken by respondents No.8, 9 and appellant to the effect that deceased was on leave on 29.05.2011 vide leave application Ex.DW1/1.

18. It is the case of appellant, respondent No.8 and respondent No.9 that deceased was admitted in Gold Field Hospital and Research Centre on 26.05.2011 on account of chronic disease, by two persons namely Manoj Pant and Parmesh Bharti as this fact was put to AW-1 in his cross-

examination by the representative of respondent No.8. However, RW Tara Chand, Record Clerk of said Hospital while appearing in the witness box clearly stated that Suresh Yadav came only in a Out Patient Department (OPD) and it was not an emergency case. Thus, it could be easily inferred that deceased was never admitted in aforesaid hospital for any treatment on 26.05.2011 or thereafter.

19. Another plea was taken by appellant, respondent No.8 and respondent No.9 that on 29.05.2011, firstly deceased was taken to Gold Field Hospital and Research Centre and from there he was taken to Sarvodaya Hospital, where he was declared brought dead. However, no such medical record of Sarvodaya Hospital was produced by them during trial before the Commissioner.

20. Further, the evidence led by appellant, respondent No.8 and respondent No.9 does not inspire confidence. RW Chander Pal who proved one prescription slip dated 25.05.2011, admitted in his cross-examination that he does not maintain record of the patients treated by him. He further admitted that he is not a qualified doctor and is a Registered Medical Practitioner (R.M.P). Tara Chand, Record Clerk of Gold Field Hospital and Research Centre simply produced the concerned record regarding medical treatment of the patient and also admitted that the said patient was not indoor patient and it was not an emergency case. RW P.K. Roshan Kuzur, admitted in his cross-examination that on 29.05.2011, he was not present at the site and thus, is having no personal knowledge as to what exactly happened in the compressor station on 29.05.2011. RW Shajahan who produced the relevant documents while appearing in the witness box in year

2013, admitted in his cross-examination that he was posted in the compressor station for last 6 months only. It means that even the said manager of respondent No.8 was having no personal knowledge with regard to incident if any, happened in the said compressor station on 29.05.2011.

21. The evidence as has been discussed above and rightly appreciated by the Commissioner, improbably the defence taken by employer, principal employer and insurer and probably the claim lodged by respondents No.1 to 7.

22. It is no one's case that deceased died due to his own negligence. Even otherwise, Section 3 of the Act does not create any exception of the kind, which permits the employer to avoid his liability if there was negligence on part of the workman as has been held by Hon'ble Supreme Court in ***Jaya Biswal and Others Vs. Branch Manager, IFFCO Tokio General Insurance Company Limited and Another 2016 (11) SCC 201.***

23. Further, the Commissioner is the last authority on facts involved in a case as has been held by the Hon'ble Supreme Court in Civil Appeal No.4713 of 2023 titled as ***Fulmati Dharamdev Yadav and Another Vs. New India Assurance Company Limited and Another***, decided on 04.09.2023, wherein the Hon'ble Supreme Court placed reliance on its earlier decision in ***Golla Rajamma and Others Vs. Divisional Manager and Another (2017) 1 SCC 45*** in which it was observed that "under the scheme of the Act, the Workmen's Compensation Commissioner is the last authority on facts. Parliament has thought it fit to restrict to scope of the appeal only to substantial question of law, being a welfare legislation. Unfortunately, the High Court has missed this crucial question of limited

jurisdiction and has ventured to re-appreciate the evidence and recorded its own findings on percentage of disability for which also there is no basis. The whole exercise made by the High Court is not within the competence of the High Court under Section 30 of the Act.”

24. Furthermore, the Act is a piece of social security and welfare legislation. Its dominant purpose is to protect the workmen and therefore, the provisions of the Act are not to be interpreted too narrowly so as to debar the workmen from compensation which the parliament thought they ought have. The intention of the legislature was to make the employer an insurer of a workman responsible against the loss caused by the injuries or death, which may have happened, while the workman was engaged in his work.

25. In view of the aforesaid legal and factual position, I am of the considered opinion that there is no illegality or perversity in the impugned award and thus, no case for interference in the findings of facts recorded by the Commissioner is made out, as the scope of an appeal under the Act is limited only to substantial question of law.

26. For the foregoing reasons, the present appeal is hereby dismissed being devoid of merits.

18.03.2024
Yogesh

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned:-	Yes/No
Whether reportable:-	Yes/No