

Smt. Dariyao Kanwar & Ors. Vs. M/s. United India Insurance Company Ltd. & Anr.

Civil Appeal No(S). 5416 of 2012

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Full judgment text

Smt. Dariyao Kanwar & Ors. Vs. M/s. United India Insurance Company Ltd. & Anr.

[Civil Appeal No(S). 5416 of 2012]

Rajesh Bindal, J.

1. The judgment passed by the High Court¹ in an appeal² filed by the respondents is challenged before this Court. The appellants are the claimants who filed application before the Commissioner³ seeking compensation under the 19234 Act. The application filed by the appellants before the Commissioner was allowed by him vide order dated 22.03.2007. Compensation of ₹3,26,140/- (Rupees three lakh twenty six thousand one hundred and forty) with interest @ 12% p.a. was awarded w.e.f. 15.09.2003 till the date of realization.

2. Sumer Singh (the deceased) whose legal representatives are before this Court, was employed as a driver with the respondent no.25 for driving truck bearing no. DL-1G-B-3976. The deceased was assigned the duty of driving the abovesaid truck in connection with the trade and business of the respondent no.2 from Delhi to Baroda (Gujarat).

On 15.09.2003, around 12:30 a.m. while passing through Goverdhan Vilas, Udaipur (Rajasthan), he felt uneasiness. He parked his vehicle and expired. He was taken to the hospital where he was found brought dead. His post mortem was conducted. It was stated that he was 41 years of age at the time of death.

3. The order passed by the Commissioner awarding compensation was challenged by the Insurance Company⁶ before the High Court. Vide impugned order, the High Court accepted the appeal filed by the Insurance Company and set aside the order passed by the Commissioner. The same is impugned before this Court.

4. The learned counsel for the appellants submitted that the deceased Sumer Singh, who was employed as a driver on a commercial vehicle, was assigned the duty of driving the truck from Delhi to Baroda (Gujarat). While he was on duty, the incident took place on 15.09.2003. The death occurred on account of mental stress and strain arising from the prolonged driving. The Commissioner had rightly accepted the claim.

However, the High Court had reversed the order passed by the Commissioner on erroneous grounds. He further submitted that the owner of the truck had purchased the Insurance Policy from the Insurance Company in which an additional premium covering two employees was paid, for coverage of compensation payable under the 1923 Act. The Policy was effective from 30.06.2003 to 29.06.2004.

5. The Chemical Examiner's Report also mentioned that testing of portions of viscera and blood sample resulted in negative for metallic poisons, ethyl and methyl alcohol, cyanide, alkaloids, barbiturates, tranquilizers and insecticides.

Hence, it cannot be said to be a case of suicide or drunken driving. Relying upon the judgment of this Court in Param Pal Singh Through Father v. National Insurance Co. & Anr., (2013) 3 SCC 409 and Northeast Karnataka Road Transport Corporation. v. Sujatha, (2019) 11 SCC 514, the argument advanced is that the dependents of the deceased are entitled to receive compensation.

6. On the other hand, learned counsel for the Insurance Company submitted that it is not in dispute that the deceased was not driving the vehicle at the time of his death. On the basis of the material produced on record, his death was not directly caused by any accident.

The incident may have taken place in the course of employment, but it is not arising out of employment. Furthermore, the respondents argued that there is no evidence on record indicating that the deceased had suffered a heart attack due to stress and strain of driving the truck. It was a Policy purchased by the owner

of the vehicle in terms of the Motor Vehicles Act, 1988. Hence, the claim should have been made under that Act.

However, that was not availed of, because the death was not the result of a motor accident. There is no error in the order passed by the High Court. The appeal deserves to be dismissed. Reliance was placed by Ld. counsel upon *Ved Prakash Garg v. Premi Devi and Others* (1997) 8 SCC 1; *National Insurance Co. Ltd. v. Prembai Patel and others*, (2005) 6 SCC 172.

7. We have heard learned counsel for the parties and perused the records. The facts evident from the records are that the deceased Sumer Singh was employed as a driver on vehicle bearing Truck no. DL-1G-B-3976, which was owned by the respondent No. 2. The same was fully insured. The Insurance Policy was effective from 30.06.2003 to 29.06.2004. As per the terms of the Policy available on record, an additional premium was paid to cover two employees for any compensation payable under the 1923 Act.

While driving the vehicle from Delhi to Baroda, the health of the deceased deteriorated on 15.09.2003 at about 12:30 a.m. at Goverdhan Vilas, Udaipur (Rajasthan) and he died. Thereafter, the postmortem was conducted. On chemical examination of portions of viscera and blood samples, metallic poisons, ethyl and methyl alcohol, cyanide, alkaloids, barbiturates, tranquillizers and insecticides, were not found.

This report rules out that the death was on account of consumption of poisonous material or liquor. FIR No. 18/2003 dated 15.09.2003 was also registered. It was pleaded in the application filed by the appellants before the Commissioner that the deceased was drawing a monthly salary of ₹3,091/- (Rupees three thousand and ninety one) plus ₹50/- (Rupees fifty) per day as allowance. The appellants were dependents on the deceased as its widow and children.

8. The Commissioner accepted the application filed by the appellants. It was noticed in the order passed by the Commissioner that, the employer admitted that the deceased was employed as a driver and he was on duty from Delhi to Baroda on 15.09.2003. The wages being paid to him were also admitted. With these facts on records, the Commissioner accepted the application and assessed the compensation at ₹3,26,140/- (Rupees three lakh twenty-six thousand one hundred and forty).

Aggrieved against the aforesaid order of the Commissioner, the Insurance Company preferred an appeal before the High Court. The arguments raised by the Insurance Company was that there is no material on record to suggest that the death of Sumer Singh occurred due to strain and stress during employment.

In case, the deceased employee was already suffering from any existing disease and died on account of that, it cannot be said to be a case of death during the course of employment. The view of the High Court was that there is no relationship between the death and the work being done by the deceased. Hence, the order of the Commissioner was found to be unsustainable.

9. The judgment of this Court in *Param Pal Singh's case* (supra) relied upon by the counsel for the appellants, comes to their rescue. In that case, the deceased was a truck driver. While on duty, he suddenly suffered health set back and parked his vehicle on roadside hotel. After parking the vehicle, he fainted and was taken to the hospital. He was declared brought dead.

An application was filed by the dependents of the deceased for claiming compensation under the 1923 Act. The Commissioner accepted the claim whereas the order passed by the Commissioner was set aside by the High Court. The dependents filed an appeal before this Court. It is noticed in the aforesaid judgment that additional premium was paid for coverage of compensation payable under the 1923 Act.

10. This Court accepted the appeal filed by the dependents of the deceased and found that even if the death had not occurred on account of any accident but the driver was consistently driving the vehicle, there is every reason to assume that long spells of driving was a material contributory factor, if not the sole cause that accelerated his unexpected death at a young age.

Such an untoward mishap can reasonably be described as an accident, only attributable to the nature of employment. In the aforesaid judgment, the employee was 45 years of age. It squarely covers the case of the appellants. The relevant paras of the decision are extracted below:

"29. Applying the various principles laid down in the above decisions to the facts of this case, we can validly conclude that there was causal connection to the death of the deceased with that of his employment as a truck driver. We cannot lose sight of the fact that a 45- year-old driver meets with his unexpected death, may be due to heart failure while driving the vehicle from Delhi to a distant place called Nimiaghat near

Jharkhand which is about 1152 km away from Delhi, would have definitely undergone grave strain and stress due to such longdistance driving.

The deceased being a professional heavy vehicle driver when undertakes the job of such driving as his regular avocation it can be safely held that such constant driving of heavy vehicle, being dependent solely upon his physical and mental resources and endurance, there was every reason to assume that the vocation of driving was a material contributory factor if not the sole cause that accelerated his unexpected death to occur which in all fairness should be held to be an untoward mishap in his lifespan. Such an "untoward mishap" can therefore be reasonably described as an "accident" as having been caused solely attributable to the nature of employment indulged in with his employer which was in the course of such employer's trade or business.

30. In such circumstances, we are convinced that the conclusion of the Commissioner of Workmen's Compensation that the death of the deceased was in an accident arising out of and in the course of his employment with the second respondent was perfectly justified and the conclusion to the contrary reached by the learned Judge of the High Court in the order impugned in this appeal deserves to be set aside."

11. Similar view was expressed by this Court in Northeast Karnataka Road Transport Corpn's case. (supra).

12. To be fair to the counsel for the respondents, we may deal with the judgments relied upon by him. In our view, the judgments relied upon by him do not support his case.

13. In Ved Prakash Garg's case (supra), the issue before this Court was whether the Insurance Company is liable to meet the award of the Commissioner imposing penalty and interest against the insured employer. This is not an issue under consideration in the case in hand.

The issue under consideration in Prembai Patel and Ors's case (supra) was also different as this Court was called upon to examine as to whether the Insurance Company is liable to pay the compensation awarded or its liability is restricted to the extent prescribed under the 1923 Act. In any case, the claimants in the present case have been awarded compensation as assessed under the 1923 Act and in the Insurance Policy there was no limit prescribed.

14. For the reasons stated above, we find merit in the present appeal. The same stands allowed. The impugned order passed by the High Court is set aside. The order of the Commissioner is restored with no order as to costs.

1 High Court of Delhi

2 FAO No. 346 of 2007 dated 16.09.2009

3 Workmen's Compensation Commissioner

4 The Employee's Compensation Act, 1923 earlier known as Workmen's Compensation Act, 1923

5 Respondent No.2 in the present appeal is Kuldeep Bhatia, owner of the vehicle.

6 United India Insurance Co. Ltd.

Source disclosure: Complete sanitized public judgment text retained for research. Official-primary replacement and later-history closure remain pending.

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