

Santosh Devi and Ors vs.the State and Ors

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Court : Delhi

Decided On : Jan-23-2018

Appellant : Santosh Devi and Ors

Respondent : The State and Ors

Advocate for Def. : Mr. Parth Vashishtha, Mr. S.K. Tripathi, Mr. K.R. Verma, Mr. Amit Chandel, Ms. Suman Bagga

Advocate for Pet/Ap. : Mr. Sunil Ojha, Mr. Neeraj Thakkar

Judgement :

IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision:

23. d January, 2018 \$~25 * % + W.P.(C) 8650/2016 SANTOSH DEVI AND ORS
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... Petitioner

s Through: Mr. Sunil Ojha and Mr. Neeraj Thakkar, Advocates versus THE STATE
AND ORS

... RESPONDENTS

Through: Mr. Parth Vashishtha proxy for Mr. S.K. Tripathi, ASC for GNCTD Mr. K.R. Verma and Mr. Amit Chandel, Advocates for respondent No.2 Ms. Suman Bagga, Advocate for respondent No.3 CORAM: HON'BLE MR. JUSTICE J.R. MIDHA JUDGMENT (ORAL) 1. The petitioners have challenged the order dated

16th May, 2016 whereby the Claims Tribunal has dismissed their application for compensation.

2. The petitioners filed an application for compensation before the Commissioner, Employees Compensation claiming compensation in respect of the death of late Rajinder Kumar on 07th November, 2014. The case of the petitioners before the Commissioner, Employees Compensation was W.P.(C) 8650/2016 Page 1 of 6 that Rajinder Kumar was working as a driver with respondent No.2 since 2011 on Tata truck 407 bearing No.DL-1LS-1311 at a monthly salary of Rs.12,000/- per month; the aforesaid vehicle was validly insured with respondent No.3; on 24th September, 2014, Rajinder Kumar met with an accident during the course of his employment near Panipat after unloading the goods from the aforesaid vehicle which resulted in grievous head injuries; Rajinder Kumar was taken to a hospital at Panipat, then to PGI, Rohtak and thereafter, shifted to Safdarjung Hospital, Delhi and he expired due to the injuries on 07th November, 2014.

3. Respondent No.2 filed the written statement in which he admitted that the deceased was working as a driver with him at the salary mentioned above and he suffered an accident during the course of his employment on 24th September, 2014 which resulted in his death. Respondent No.2 gave particulars of the insurance policy by which the vehicle was validly insured with respondent No.3. Respondent No.2 submitted that respondent No.3 was liable to pay the compensation amount under the policy.

4. Respondent No.2 contested the application for compensation on the ground that the post-mortem report has not been placed on record. Respondent No.3 denied the relationship of employer and employee as well as the accident in question.

5. Appellant No.2 appeared in the witness box as PW-1 and reiterated the averments in the application for compensation. PW-1 proved the ration card and Aadhaar Card as Ex.CW-

to show their relationship with the deceased. PW-1 proved the driving licence of the deceased as Ex.PW-1/C. PW-1 deposed that his father suffered grievous injuries on his head, both legs as well as all over the body and he was initially taken to a hospital in W.P.(C) 8650/2016 Page 2 of 6 Panipat and then to PGI,

Rohtak and thereafter shifted to Safdarjung Hospital, Delhi but he could not recover from the injuries suffered. PW-1 deposed that the deceased suffered left frontal compound comminuted depressed fracture dural tear left frontal haemorrhagic contusion, comminuted fracture of left parietal bone, left frontal sinus and nasal displaced along with fracture on left frontal region as per discharge summary issued by Safdarjung Hospital. PW-1 further deposed that no FIR was registered as the accident occurred during the brake failure of the vehicle of the deceased and the police registered a DD entry. The certified copy of the DD entry was marked as Ex.PW-1/D. The deceased was admitted in Safdarjung Hospital on 25th September, 2014 where he was operated for exploration of CLW frontal free bone flap craniotomy around depressed segment, contusectomy and dural repair and cranioplasty, excision of frontal sinus and was discharged on 28th September, 2014. The discharge summary issued by Safdarjung Hospital was proved as Ex.PW-1/E. PW-1 further deposed that the deceased remained under regular treatment after the discharge. The OPD case sheets were proved as Ex.PW-1/F, G & H. On 07th November, 2014, the condition of the deceased became very serious and he was taken to Cygnus J.K. Hindu Hospital at Sonapat, where the doctors opined that his condition was very serious and he was referred to neurosurgeon. The copy of the OPD slip of Cygnus J.K. Hindu Hospital was proved as Ex.PW-1/I. The deceased was taken to Safdarjung Hospital in an ambulance but he expired on the way. The death certificate was proved as Ex.PW-1/J.

The deceased was holding LIC policy and the petitioners filed a claim with the LIC Sonapat branch whereupon LIC called for the medical record of the deceased from Safdarjung Hospital as well as W.P.(C) 8650/2016 Page 3 of 6 report of the operating doctor about the cause of death. The covering letter of LIC is Ex.PW-1/K and the certificate of the operating Dr. Abhinav Bansal, Senior Resident Doctor, Department of Neurosurgery, Safdarjung Hospital is Ex.PW-1/L. LIC passed the claim of accidental death of the deceased after examining the medical reports and certificates and the relevant documents are Ex.PW-1/M.

6. The petitioners examined Dr. Jitender Nasar, Emergency Medical Officer of Cygnus J.K. Hindu Hospital, Sonapat who proved the OPD receipt Ex.CW-

and deposed that the deceased was referred to a neurosurgeon as there was no neurosurgeon in the hospital. The petitioners also examined the administrative officer of LIC who deposed that the deceased was holding LIC policy in respect of which a claim was made by the petitioners. LIC obtained the medical certificate from the hospital. The LIC proved the medical certificate of the hospital as Ex.CW- and CW- and the covering letter Ex.CW-1/3.

7. During the course of hearing on 16th March, 2017, learned counsel for the petitioners submitted that respondent No.3 has settled the own damage claim of respondent No.2, whereupon this Court directed that record of the own damage claim of respondent No.3 be produced before this Court.

8. The relevant record has been produced by learned counsel for respondent No.3 before this Court today. As per the record, respondent No.2 lodged a claim of own damage with respondent No.3 which was verified by respondent No.3 and the payment of Rs.1,75,000/- was made to respondent No.2. In the claim lodged by respondent No.2, the respondent No.2 intimated the respondent No.3 that Rajinder Kumar was driving the vehicle at the time of the accident which was verified by the surveyor. The W.P.(C) 8650/2016 Page 4 of 6 record produced by respondent No.3 contains the motor survey report dated 04th November, 2014 which records that the surveyor verified the driving licence of the driver, Rajinder Kumar at the time of the accident. Copy of the driving licence is also available in the file. The record also contains the discharge summary of the Safdarjung Hospital of the deceased.

9. This Court is satisfied that the deceased, Rajinder Kumar was employed as a driver with respondent No.2 and he suffered an accident dated 24th September, 2014 during the course of his employment with respondent No.2 which resulted in grievous head injuries and the deceased died due to the said injuries. The petitioners are the legal representatives of the deceased, Rajinder Kumar and are entitled to compensation under the Employees Compensation Act. The deceased was aged 49 years at the time of the accident and was drawing a salary of Rs.12,000/- per month. The vehicle in question was validly insured with

respondent No.3 at the time of the accident. Taking the maximum wage limit of Rs.8,000/- under the Employees Compensation Act and applying the factor 156.47, the appellants are entitled to compensation of Rs.6,25,880/- from respondent No.3.

10. The appeal is allowed and compensation of Rs.6,25,880/- is awarded to the appellants along with interest @ 12% per annum from 25th October, 2014 upto the date of deposit. The respondent No.3 is directed to deposit the compensation amount with the Registrar General of this Court within four weeks.

11. Since the compensation amount was not deposited by respondent No.2 within 30 days of the accident, show cause notice is hereby issued to respondent No.2 under Section 4A(3) of the Employees Compensation Act to show cause as to why the penalty be not levied on respondent No.2. W.P.(C) 8650/2016 Page 5 of 6 Learned counsel for respondent No.2 accepts notice and seeks time to file the reply to the show cause notice. Let the same be filed within two weeks.

12. The petitioners are directed to remain present on the next date of hearing along with passbooks of their savings bank accounts near the place of their residence as well as PAN Cards and Aadhaar Cards. The concerned bank is directed not to issue any cheque book and/or debit card to the petitioners and if the same has already been issued, the concerned bank is directed to cancel the same and make an endorsement on the passbooks that no cheque book or debit card shall be issued to the petitioners without the permission of this Court. The petitioners shall produce the copy of this order before the concerned bank whereupon the bank shall make an endorsement on the passbooks.

... Petitioner

s shall produce the original passbooks with the necessary endorsement on the next date of hearing.

13. List for disbursement of the compensation amount and further hearing with respect to the imposition of penalty on 26th February, 2018 at 02:30 p.m.

14. Copy of this judgment be given dasti to counsels for the parties under signatures of the Court Master. JANUARY23 2018 rsk J.R. MIDHA, J.

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