

Ram Autar Vs. Mohammad Rafiq

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Court : Allahabad

Decided On : Jan-09-1985

Reported in : 2(1985)ACC225

Judge : A.N. Varma, J.

Appellant : Ram Autar

Respondent : Mohammad Rafiq

Judgement :

A.N. Varma, J.

1. This first appeal has been filed Under Section 30 of the Workmen's Compensation Act against an order dated May 22, 1979 passed by the Commissioner, Workmen's Compensation under the Workmen's Compensation Act allowing the claim of the respondent for a sum of Rs. 16,800/- as compensation together with the interest of 6% per annum and damages to the extent of 50% in case the amount was not deposited within thirty days of the order.

2. The relevant facts are that the appellant is the owner of a truck No. UIU 3067 which was involved in the accident which admittedly resulted in the death of Shamim Ahmad, the son of claimant-respondent who was employed as a casual worker by the appellant. The claimant-respondent, as father of the deceased Shamim Ahmad, filed a claim petition under the Workmen's Compensation Act on

these assertions. Shamim Ahmad was employed by the appellant at a salary of Rs. 125/- month to work as a conductor of the aforesaid truck. On June 27, 1977 he went on duty and after getting the stones loaded in the truck left for village Soran, Police Station Budhana, district Muzaffarnagar about 8.30 A.M. The truck was driven by Bali Ram, the driver of the appellant. At 1.00 p.m. the same day the truck was unloaded and Shamim Ahmad was crushed to death as a result of the rash and negligent driving of Bali Ram who started the truck suddenly crushing Shamim Ahmad to death on the spot. One Ittan was also working as a labour on the truck and on the date of the accident, he also accompanied Shamim Ahmad as usual. Ittan and the driver brought the body of Shamim Ahmad at the claimant's residence at 4 p.m. Shamim Ahmad thus died in an accident arising out of and in the course of his employment with the appellant. A First Information Report was lodged by another son of the claimant in regard to the accident stating the facts mentioned above. The claimant, his two minor sons and wife were the dependants of the deceased. A registered notice was given to the appellant claiming a lump sum payment of Rs.19,200/- as compensation and, on his refusal to pay the same, the claim was lodged with the Commissioner under the Workmen's Compensation Act.

3. The claim was contested by the appellant on a variety of grounds including that Shamim Ahmad was not his employee, that he did not die in the course of his employment and that in any case the compensation claimed was highly excessive. It was also asserted that the liability, if at all, was that of the insurance company with which the vehicle was insured.

4. On the pleadings of the parties, the Commissioner framed necessary issues. On an examination of the evidence on record, he held that Shamim Ahmad had died by accident arising out of and in the course of his employment and that the appellant was liable to pay compensation which he assessed at Rs. 16,800/-.

5. Aggrieved by the aforesaid order, the owner of the truck has filed this appeal.

6. The main contention raised on behalf of the appellant was that Shamim Ahmad had died as a result of his own negligence as he was without warning the driver sleeping under the stationary vehicle. Consequently when the driver started the

vehicle he could not be held responsible for the death of Shamim Ahmad.

7. Having heard learned Counsel for the parties, I find no merit in this appeal. The Commissioner has rightly observed that the employer was bound produce the driver and Ittan who were his employees and who were eye-witnesses to the occurrence. The failure to examine these persons clearly leads to the inference that there is no substance in the plea that Shamim Ahmad had died as a result of his own negligence. It is apparent that once it is found that the Workmen has died in an accident arising out of and in the course of his employment, the burden to prove that the death was directly attributable to the negligence or any act in regard to which exception has been made under the provision to Section 3 would lie squarely on the employers. That being so on the material on record, the conclusion is inescapable that the employers have failed to discharge that burden.

8. Sri A.D. Prabhakar also made a feeble attempt to contend that the claimant has failed to discharge the initial burden of proving that Shamim Ahmad had died in any accident arising out of and in the course of his employment. It was urged that the respondent not being a witness to the accident could not legally prove the assertion that Shamim Ahmad had died in the circumstances alleged in the claim petition.

9. The argument is completely devoid of any substance. In the reply sent by the appellant himself the main ground taken was that Shamim Ahmad had died as a result of his own negligence. The fact that Shamim Ahmad had died in the course of his employment was not specifically denied. Indeed, reading the reply as a whole as well as the lines on which the claimant's witnesses were cross-examined, it is apparent that the only defence of the appellant was that Shamim Ahmad had died on account of his own negligence which, as I have already found, is without any substance. 10. In the result, the appeal fails and is dismissed with costs.