

Neelam Devi and ors. Vs. Devendra Singh Yadav and anr.

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Court : Madhya Pradesh

Decided On : May-12-2005

Reported in : III(2005)ACC705; 2006ACJ139

Judge : S.S. Jha and ;P.K. Jaiswal, JJ.

Acts : Workmen's Compensation Act, 1923 - Sections 4

Appeal No. : M.A. No. 55 of 1999

Appellant : Neelam Devi and ors.

Respondent : Devendra Singh Yadav and anr.

Advocate for Def. : N.D. Singhal and ;R.V. Sharma, Advs.

Advocate for Pet/Ap. : Meena Singhal, Adv.

Disposition : Appeal dismissed

Judgement :

P.K. Jaiswal, J.

1. This appeal is directed against the award of the Commissioner for Workmen's Compensation, Gwalior, in Case No. 18 of 1995 [WC Act (fatal)] dated 31.12.1998, wherein the authority has passed an award for Rs. 89,084 as compensation plus penalty of Rs. 40,000 along with interest at the rate of 6 per cent per annum

against the respondent No. 1 and exonerated the insurance company, respondent No. 2.

2. Appellant No. 1 is wife of deceased Rajendra Singh, appellant Nos. 2 and 3 are father and mother of the deceased. The deceased Rajendra Singh was working as driver of respondent No. 1 and his salary was Rs. 2,000 per month plus the daily allowance at the rate of Rs. 30 per day. On 17.1.1994 passenger bus bearing registration No. CPG 8452 while on his way from Gangasagar to Gwalior, Rajendra Singh (deceased) went up to set the luggage which was placed at the roof carrier of the bus, at that time respondent No. 1 was driving the bus very rashly and negligently and near Dhabua Ghati at G.T. Road the bus hit the mahua tree and fell into a ditch. The deceased fell down from the bus and died on the spot, passengers travelling in the bus were also injured. An F.I.R. was lodged with the Police Station, Chouran of District Hazaribag. At the time of death, the age of deceased Rajendra Singh was 21 years. The claimants filed an application under Section 4 of the Workmen's Compensation Act, 1923, before the Commissioner, Workmen's Compensation and claimed Rs. 89,084 as compensation. Claimants also claimed Rs. 25,000 towards loss of consortium to claimant-appellant No. 1 and Rs. 25,000 towards pain and suffering to claimant-appellant Nos. 2 and 3 along with interest at the rate of 18 per cent per annum.

3. The respondent No. 1 in its reply admitted that Rajendra Singh was employed as driver and his salary was Rs. 2,000 per month with daily allowance at the rate of Rs. 30 per day. He stated that brake pipe was burst due to which driver lost control of the bus and it hit the tree. The accident did not occur due to rash and negligent driving. The respondent No. 2 insurance company filed its reply and admitted that the bus was insured and at the time of accident deceased was 21 years of age and denied that the deceased died during the course of employment and there was no privity of contract between the deceased and respondent No. 1 as a workman and employer nor any relationship existed between them. The respondent No. 2 lastly stated that respondent No. 1 committed breach of contract of policy and as such the insurance company was not liable to indemnify the compensation.

4. On the basis of the evidence on record the learned Commissioner decided the issue Nos. 1 to 6 in favour of claimants and came to the finding that at the time of accident the deceased was aged 21 years and his wage was Rs. 2,000 per month and assessed the dependency as Rs. 1,000 per month, fixed compensation of Rs. 89,084 with interest at the rate of 6 per cent per annum. The learned Commissioner also came to a finding that deceased was employed one year before the date of accident and at the time of appointment his age was less than 20 years. Learned Commissioner held that the respondent No. 1 was owner of bus and on the date of appointment deceased was not competent for employment. No licence was filed nor it was proved that deceased was having a valid driving licence. The learned Commissioner held that the claim was filed in connivance with the respondent No. 1 and as such insurance company was not liable to pay the compensation.

5. Thus, the learned Commissioner by impugned award exonerated the insurance company from payment of compensation and awarded Rs. 89,084 and Rs. 40,000 as penalty along with interest at the rate of 6 per cent per annum from the date of accident till its realisation against respondent No. 1.

6. The appeal filed by the claimant was admitted on 17.3.2005 on the following substantial question of law:

Whether after recording a finding that deceased was not driving the vehicle, Commissioner, Workmen's Compensation was justified in exonerating the insurance company as deceased was not having valid driving licence for heavy motor vehicle.

7. Learned counsel for the appellant has urged that deceased was employed as a driver by respondent No. 1 and this fact was admitted by respondent No. 1 in its reply filed before the learned Commissioner and on the date of accident vehicle was insured with the respondent No. 2. Learned counsel for the appellant further stated that learned Commissioner wrongly exonerated the insurance company from payment of compensation on the ground that the deceased was not having driving licence or he was underage at the time of employment.

8. On the other hand, learned counsel for insurance company, respondent No. 2, supported the award of the learned Commissioner and urged that condition I.M.T. 19 (3) of the insurance policy was not complied by the respondent No. 1 nor it was proved that deceased was driver of the bus No. CPG 8452 and as such learned Commissioner rightly exonerated the insurance company for payment of compensation. It is also pertinent to note that the owner of the vehicle has not filed any appeal or cross-objection challenging the finding of the Commissioner and so far as the owner, respondent No. 1 is concerned his liability has attained finality.

9. We have heard the learned counsel for the parties and perused the record of the case. Insurance policy of the insurance company, Exh. D-I, by which the bus No. CPG 8452 was insured as a commercial vehicle (B policy) passenger carrying. As per Sub-clause (3) of I.M.T. 19 the insured shall keep a record of the name of each driver, cleaner, conductor or person employed in loading and/or unloading and the amount of wages salary and other earnings paid to such employees and shall at all times allow the company to inspect such record. No such record was filed before the learned Commissioner nor any intimation was given to the insurance company regarding the accident of the vehicle and death of driver nor any record regarding the employment of driver and payment of wages to him were given to the insurance company. The claimant in her deposition admitted that at the time of appointment of deceased as driver his age was less than 20 years and at the time of accident he was less than 21 years. In the case of Meera Bai v. New India Assurance Co. Ltd. 1995 ACJ 1274 (MP), no evidence was produced to show that the deceased was travelling as an employee of the owner of the truck nor any record as required in terms of I.M.T. 17 under the policy was maintained by the owner, nor any legal evidence to the above fact was produced to demonstrate that deceased was travelling at that point of time as an employee of the owner of the vehicle. In the above circumstances the Division Bench of this court has held that insurance company is not liable to indemnify the insured and exonerated insurance company from payment of compensation. In the present case also the owner of the vehicle has not produced any legal evidence and the record to demonstrate that deceased was having valid driving licence for driving heavy vehicle and he was an employee of the owner of the vehicle. The learned Commissioner after appreciating the oral and documentary evidence gave a

finding that driving licence was not proved and deceased was not having valid driving licence for heavy motor vehicle which is a finding of fact. Learned counsel for the appellant failed to point out any perversity in the finding recorded by learned Commissioner. In view of the above finding that at the time of accident, deceased was not driving the vehicle is a finding of fact and learned Commissioner rightly exonerated the insurance company for payment of compensation. We are of the considered view that learned Commissioner has not committed any error of law in exonerating the insurance company. The answer to the question of law which has been formulated in this appeal is that the Commissioner, Workmen's Compensation was justified in exonerating the insurance company. The appeal has no merit and is accordingly dismissed without any order as to costs.

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