

Managing Director and ors. Vs. Lrs. of Devi Lal and ors.

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Court : Rajasthan

Decided On : Feb-01-2006

Reported in : III(2006)ACC855; [2006(111)FLR61]; RLW2006(4)Raj2992; 2006(4)WLC690

Judge : Rajesh Balia and; R.P. Vyas, JJ.

Acts : Workmen's Compensation Act, 1923 - Sections 3; ;Motor Vehicles Act; ;Motor Vehicles Rules

Appeal No. : D.B. Civil Special Appeal No. 37 of 2006

Appellant : Managing Director and ors.

Respondent : Lrs. of Devi Lal and ors.

Advocate for Def. : Sanjeev Johari, Adv.

Advocate for Pet/Ap. : Sangeet Lodha, Adv.

Disposition : Appeal dismissed

Judgement :

Rajesh Balia, J.

1. This appeal is directed against the judgment of learned Single Judge dtd. 15.12.2004 dismissing the misc. appeal filed by the appellant against the order of

Workmen's Compensation Commissioner dtd. 16.12.2004.

2. The original applicant Devi Lal was in the employment of the present appellant as driver and while he was on duty driving the bus of the Corporation on 30.1.1999, an accident took place in which said Devi Lal suffered injuries as a result of which, he remained unfit to work for 2 and 1/2 months. In the said accident, a lady died and 13 passengers were also injured.

3. After resumption of duties on 16.4.1999, the workman sought voluntary retirement on 18.12.1999 which was accepted by the Corporation. Thereafter the workman preferred a claim before the Workmen's Compensation Commissioner for compensation in respect of injuries suffered by him as a result of accident which was caused during the course of his employment with the appellant.

4. The claim was laid on the basis that the applicant had suffered 100% permanent disability.

5. The Corporation contested the application inter alia on the ground that since the accident was caused on account of negligent driving by the employee himself, he is not entitled to any compensation. It was also pleaded that he has not produced before the employer any certificate of permanent disability and therefore, it cannot be said that he is entitled for compensation on the basis of any permanent disability.

6. The contention of the employer that the accident was caused on account of negligent act of the driver as per the Finding given by the Motor Accident Claims Tribunal in the claims arising there from cannot be considered a ground for denying compensation under the Workmen's Compensation Act when admitted case is that injuries were caused to the employee while discharging his duties and accident arose in the course of employment. Exception carved out to absolve the employer from liability under Section 3 of the Workmen's Compensation Act does not absolve the employer from the liability towards the payment of compensation to the injured-workman merely on the ground that the accident was caused due to negligence of the workman himself.

7. From the material on record, while the learned Workmen's Compensation Commissioner did not accept the claim of workman about 100% permanent disability, it came to the conclusion that he had suffered 20% permanent disability in his efficiency and therefore, the compensation was computed on that basis. The amount of compensation awarded was Rs. 32,534/- and Rs. 6507 were awarded as penal interest @ 12% from 30.1.1999 till the date of payment.

8. The learned Single Judge affirmed the finding of the Workmen's Compensation Commissioner vide judgment under appeal.

9. The workman has died during the pendency of application before the Commissioner in the year 2003 and his is now being prosecuted by legal heirs of deceased consisting of his wife and two children.

10. The learned Counsel for the appellant urged that the present case falls in Clause (ii) of proviso to Section 3 of the Workmen's Compensation Act, 1923 and therefore, compensation is not payable by the employer.

11. We are in agreement with the learned Single Judge in this regard that the case of appellant does not fall in any of the exception under which employer is absolved from the liability of compensation.

12. A perusal of Section 3 of the Act reveals that it does not provide for any compensation in respect of any injury which does not result in the total or partial disablement of the workman for a period of exceeding three days. Admittedly the present case does not fall in Clause (a) of the proviso.

13. The contingencies in which the employer is absolved from the liability to pay compensation reads as under:

(a) in respect of any injury which does not result in the total or partial disablement of the workman for a period of exceeding three days.

(b) In respect of any injury not resulting in death or permanent total disablement caused by an accident which is directly attributable to.

(i) The workman having been at the time thereof under the influence of drink or drugs, or

(ii) the wilful disobedience of the workman to an order expressly given or to a rule expressly framed, for the purpose of securing the safety of workman or

(iii) the wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of the workman.

14. The learned Counsel for the appellant urges that the case of the workman falls under proviso (ii) of Clause (b) of Section 3 of the Act.

15. We are of the opinion that mere negligence on the part of the workman which may have resulted in the accident does not take away the case from the purview employer's liability to pay compensation, if he has suffered injuries in an accident arising out of or in the course of employment. The essence of invoking Sub-clause (ii) of proviso (b) of Section 3 is firstly that any order must be expressly given or a rule must be framed for the purpose of securing the safety of workman. No special plea to that effect has been raised. The learned Counsel for the appellant has referred to the provisions made under the Motor Vehicles Act for regulating traffic about speed limits. Suffice it to say that the rules framed under the Motor Vehicles Act for regulating traffic can at best be considered for the purpose of security and public safety and such rule cannot be said to have been expressly framed for the purpose of securing the safety of workman nor any such plea has been taken that the workman has willfully disobeyed any Rule expressly framed for the purpose of his security. Secondly, use of expression wilful disobedience means deliberate disobedience of such order or rule made for the purpose of securing the safety of workman. Mere negligence without any specific attempt on the part of the workman to disobey the order expressly given or rule expressly framed for the purpose would not bring the case within this exception.

16. We are in agreement with the finding of learned Single Judge that mere negligence on the part of the driver itself cannot debar him to claim compensation under Section 3 of the Workmen's Compensation Act. The employer is required to

bring something more than negligence on the part of the employee to seek absolution from his liability. In this connection notice may be taken of decision of Nagpur High Court in Hiptullah Bhoy Ginning and Press Factory v. Sheikh Ismail reported in ILR (1937) Nagpur 88. The Nagpur High Court has held that the employer is not exempt from making compensation even if accident is due to workman's negligence provided accident is in course of employment. Similar view has been taken by Patna High Court in the case of Bhurangya Coal Co. Ltd. v. Sahebjan reported in : (1957)ILLJ522Pat in which Patna High Court observed as under:

A man does a thing willfully when he does it intentionally because he expects some benefit to himself, either some convenience or an easy way of doing a piece of work and so forth. Mere negligence of the worker cannot be regarded as wilful disobedience by the workman to an order expressly given. Contributory negligence on the part of the employee does not exonerate the employer from liability to compensate the employee if the accident could not have been avoided by the exercise of ordinary care and diligence.

17. In the case of Padam Debi v. Raghunath, reported in : AIR1950 Ori207 , the Orissa High Court observed that even if an accident is caused to a motor bus by the rash and negligent act of the driver in driving it at an excessive speed, it cannot be said that the dashing of the vehicle against a tree which caused the accident was brought about by any previous design or a wilful act on the part of the driver and hence once it is proved that the accident was caused in the course of his employment, the question of negligence, great or small is irrelevant.

18. This principle has been reiterated by the Mumbai High Court in the case of Ramrao Zingraji Shende v. Indian Yarn Manufacturing Co. reported in : (1993)ILLJ442Bom .

19. In view of the settled principle about invoking exception to employer's liability under Section 3 of the Act of 1923, we reject the contention of the learned Counsel for the appellant in this regard. So far as actual quantum of compensation awarded to the workman is concerned, we are satisfied that the findings reached by two courts below do not call for any interference.

20. Consequently this appeal also fails and is hereby dismissed. No order as to costs.

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