

(2024) 03 SHI CK 0076

High Court Of Himachal Pradesh

Case No: First Appeal Order No. 417 Of 2012

Oriental Insurance Co. Ltd

APPELLANT

Vs

Hira Devi And Ors

RESPONDENT

Date of Decision: March 28, 2024

Acts Referred:

- Employees Compensation Act, 1923 - Section 2(dd)(ii)(c), 12, 30

Hon'ble Judges: Satyen Vaidya, J

Bench: Single Bench

Advocate: Ashwani K. Sharma, Ishan Sharma, I.N. Mehta, Saurav Thakur, Soma Thakur

Final Decision: Dismissed

Judgement

Satyen Vaidya, J

1.This is an appeal by insurer under Section 30 of the Employees Compensation Act, 1923, against award dated 27.07.2012, passed by learned Commissioner, Rampur Bushahr, District Shimla, H.P., in case No. 13-2 of 2012.

2. Respondents No. 1 and 2 (hereinafter referred to as 'claimants'), filed a petition under Employees Compensation Act (for short 'The Act') for grant of compensation on account of death of their son Sh. Ram Krishan. As per claimants, their son was employed by respondent No. 2 Sh. Chet Ram, to drive auto-rickshaw No. HP-50-0523. On 19.05.2006, at about 6:30 PM, the auto-rickshaw driven by Sh. Ram Krishan met with an accident, resulting in death of Sh. Ram Krishan on the spot. The claimants averred that the deceased was being paid salary of Rs. 4,000/- per month by respondent No. 2 Sh. Chet Ram. It was also averred that though the registered owner of auto-rickshaw was respondent No.1 Sh. Baldev, but he had reportedly sold the vehicle to respondent No. 2, Sh. Chet Ram.

3. Since, Sh. Ram Krishan was unmarried, the claimants being his parents preferred the claim.

4. Oriental Insurance Company (for short 'The insurer') was impleaded on the ground that at the time of accident the vehicle was insured with the insurer.

5. Respondent No. 1 came up with the stand that he had already sold auto-rickshaw to respondent No. 2 Sh. Chet Ram. The relationship of employer and employee between respondent No. 2 and deceased was specifically denied.

6. Respondent No. 2, Sh. Chet Ram, also entered into his defence and in reply specifically denied to have purchased auto-rickshaw from respondent No.1 Sh. Baldev.

He also denied having employed the deceased.

7. The insurer came up with the defence that it was not liable to pay compensation on account of breach of conditions of the policy.

8. Learned Commissioner framed the following issues:-

1. Whether the deceased was workman within the meaning of Workmen's Compensation Act ? OPP

2. Whether the deceased died during the course of his employment or because of the accident of vehicle in question ? OPP

3. Whether the petitioners are entitled to get the compensation, as claimed ? OPP.

4. Relief.

All the issues were decided in affirmative and the claimants were awarded a total sum of Rs. 9,08,656/-, out of which, a sum of Rs. 1,33,626/- was on account of penalty @ 30%. The award was ordered to be satisfied by the insurer except the amount of penalty which was held to be paid by respondents No. 1 and 2.

9. The appeal was admitted on 01.12.2012, on following substantial questions of law:-

"1. Whether liability for payment of compensation money to claimants could be foisted on insurance company when it was proved that deceased was not employed as a driver on insured auto rickshaw by Sh. Baldev, registered owner of the vehicle who had sold the vehicle to Sh. Chet Ram prior to the date of accident and as such, respondent No.3 was having no insurable interest?

2. Whether in the absence of employer-employee relationship between respondent No. 3 and deceased proved on record, the insurance company could be made liable to pay the amount as compensation to the claimants.

3. Whether the indemnification of the claim by the insurer could be ordered when the deceased was not having valid and effective driving license to drive the auto rickshaw and thereby, breach of policy conditions was committed?"

10. I have heard learned counsel for the parties and have also gone through the records of the case carefully.

11. Sh. Ashwani K. Sharma, learned Senior Advocate, for the insurer, at the very outset submitted that the substantial question No. 3 would not be pressed by him as there was no specific issue raised or decided by learned Commissioner with respect to the absence of driving license with the deceased at the time of accident.

12. As regards, the other two questions, both are overlapping and can be answered by common findings.

13. It stands established on record that on the date of accident of auto-rickshaw, the vehicle was registered in the name of respondent No. 1, Sh. Baldev. It was Sh. Baldev, respondent No.1, who had purchased the insurance policy in respect of the vehicle in question. Even on the date of accident, there was no change in the policy of insurance as regards the ownership of vehicle.

14. The contract of insurance binds the insurer to indemnify the insured in respect of risks covered under the contract. Though, respondent No. 1 maintained that he had sold the vehicle to respondent No. 2, but respondent No. 2 had denied such fact. Neither claimants nor respondent No. 1 has been able to definitively prove the factum of sale of vehicle to respondent No.2. Respondent No. 1, during his cross-examination

admitted that no document was executed by him in respect of the sale of the auto-rickshaw No. HP-50-0523 to respondent No. 2.

15. Further, respondent No. 1, disclosed that he had verbally informed the insurer through its agent about the sale of the vehicle. When confronted during cross-examination about the name and identity of the agent respondent No. 1 could not make any relevant disclosure.

16. Respondent No. 1 being registered owner of the vehicle coupled with the fact that the sale of vehicle could not be proved by him, the only inferences that can be drawn was that respondent No. 1 was the owner of the vehicle on the date of accident and he was also the insured.

17. It is no one's case that Ram Krishan was not driving the vehicle at the time of accident and that he had not died as a result of such accident.

Additionally, PW-2 had specifically deposed that Ram Krishan had been driving auto rickshaw No. HP-50-0523.

18. It, thus, emerges that respondent No. 1 was the registered owner and insured of the vehicle and the vehicle was being driven by deceased Ram Krishan at the time of accident.

19. Now to ascertain the capacity of deceased Ram Krishan to drive the vehicle, the attending circumstances clearly suggest that the driving of vehicle by Ram Krishan was not unauthorized. It was not the case of respondent No. 1 that his vehicle had been stolen or unauthorizedly used by Ram Krishan, rather his case was that he had sold the vehicle to respondent No. 2. Since, the factum of sale of vehicle by respondent No. 1 to respondent No. 2 has not been proved and further there being no allegation of unauthorized use of vehicle, it can be concluded that respondent No. 1 had consciously allowed respondent No.2 to ply the auto-rickshaw and thus, it can further be inferred that respondent No. 1 had impliedly consented for such use of the vehicle at the risk of the vehicle being driven by any person authorized by respondent No. 2. In such circumstances, respondent No. 1 cannot get himself absolved by denying his relationship of employer and employee with the deceased. The above hypothesis gets further strength from the fact that respondent No. 2 though had denied purchase of vehicle from respondent No. 1 or its user but respondent No. 1 failed to lead any evidence in support of his stand. The said respondent did not even close to enter the witness box, hence, learned Commissioner had rightly drawn adverse inference against him.

20. Section 2(dd) (ii) (c) of Employees Compensation Act, reads as under:-

“‘Employee’ means a person, who is a person recruited as a driver, helper, mechanic, cleaner or in any other capacity in connection with the Motor Vehicle.”

21. Thus to be an employee for the purposes of Employees Compensation Act, 1923, a person is required to be recruited. In private employments, recruitment usually is not by way of appointment letter. It is also not necessary, in the context of the Employees Compensation Act, that the recruitment should directly be by the employer. It is sufficient to establish the relationship of employer and employee in case the recruitment is shown to exist either directly or indirectly. Recruitment is a process for engagement of employee(s), which can either be direct or indirect.

22. Section 12 of the Employees Compensation Act, recognize the principle of contracting and where the “principal” indulges in contracting with someone else for execution of the whole or any part of any work which ordinarily is part of the trade or

business of the principal, the principal has been made liable to pay to the employee employed in the execution of the work any compensation which he would have been liable to pay if that employee had been immediately employed by the principal. Though the principal in such event has a right to get indemnified by the Contractor but for the purpose of adjudication of the question involved herein, the owner herein cannot get himself absolved merely by inventing a plea of vehicle having been sold by him.

23. In view of what has been held above, the insurer also cannot escape liability.

24. Though the learned Commissioner had not been able to spell out explicit reasons for holding the insurer to satisfy the award, except to the extent of liability of penalty, yet the conclusion remains inevitably the same for the reasons detailed hereinabove.

25. The appeal is, accordingly, dismissed.

26. Pending miscellaneous application(s), if any, shall also stand disposed of.