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(2014) 4 ACC 101

Jharkhand High Court

Case No: M.A. No. 73 of 2011

ICICI Lombard General Insurance Company	APPELLANT
Vs	
Umravati Devi	RESPONDENT

Date of Decision: Jan. 20, 2014

Citation: (2014) 4 ACC 101

Hon'ble Judges: Dhrub Narayan Upadhyay, J

Bench: Single Bench

Advocate: A.K. Das, Advocate for the Appellant; Manish Kumar, Advocate for the Respondent

Judgement

Dhrub Narayan Upadhyay, J.
The present Miscellaneous Appeal has been preferred by the appellant against the Judgment/Award dated

4th August, 2010 passed by the Commissioner, Workmen Compensation, Jamshedpur in connection with W.C.A. Case No. 6 of 2008, whereby

the respondent Nos. 1 and 2 have been directed to be paid Rs. 4,53,820 as compensation within 45 days from the date of order, failing which the

appellant shall have to pay interest @ 12% per annum. The brief facts behind institution of this case is that Niraj Mishra was employed as a driver

of Indica car bearing registration No. JH05L-8221. On 6th February, 2007 the aforesaid vehicle driven by Niraj Mishra met with an accident and

Niraj Mishra sustained injuries and died.

2. The appellant has assailed the impugned judgment/award mainly on the ground that the vehicle bearing registration No. JH05L-8221 is owned

by respondent No. 3 who happens to be own brother of deceased Niraj Mishra and the story of employment of the deceased by his brother has

been cooked up only to lay a claim after his death. The claimants/respondents have not furnished any document or express agreement that Niraj

Mishra was employed under owner of the vehicle, Rakesh Mishra. In this case, the learned Counsel has relied on a judgment reported in the case

of Gottumukkala Appala Narasimha Raju and Others Vs. National Insurance Co. Ltd. and Another, . It is contended that Hon''ble Apex Court

has held that story of employment of husband by the wife is nothing but a concoction only to get compensation after death of the husband. The

facts of the case in hand is almost similar and therefore the amount awarded is liable to be set aside.

3. Learned Counsel appearing for the respondents/claimant Nos. 1 and 2 has opposed the argument and submitted that the evidence was adduced

before the Commissioner, Workmen Compensation that deceased Niraj Mishra was employed as a driver of Indica car bearing registration No.

JH05L-8221, owned by Rakesh Mishra. The judgment referred to above is not applicable in view of the facts appearing in the case in hand. There

are many examples where unemployed brothers are employed by other brother who is having means. I have gone through the impugned award

and the materials placed before me. I do not think that there is any impediment in providing employment by one brother to another brother, if the

former is having sufficient means. If any business is run by any brother he would have his first choice to have assistance or provide employment to

his near and dear. Considering aforesaid view, I do not think that argument advanced by learned Counsel appearing for the appellant is tenable and

that would be the cogent ground for setting aside the impugned award.

It appears that the awarded amount of Rs. 4,33,820 has been deposited on 15th February, 2011 and the deposit was not within time indicated in

the impugned award. In that situation, the Commissioner, Workmen Compensation has directed to pay interest @ 12% from the date of death of

the deceased, to which I consider as penal interest and, therefore, that part of the award is set aside and the awarded amount deposited by the

appellant shall be given to the claimants/respondent Nos. 1 and 2 for which the Commissioner, Workmen Compensation shall take receipt and

peruse necessary documents for identification and other aspects. I do not find any merit in this appeal and the same stands dismissed with the

modification as indicated above.