
(1998) 03 MP CK 0005

Madhya Pradesh High Court (Indore Bench)

Case No: M.A. No. 838 of 1997

Mangala Ben

APPELLANT

Vs

Dilip Motwani and
Another

RESPONDENT

Date of Decision: March 27, 1998

Acts Referred:

- Employees Compensation Act, 1923 - Section 2, 20, 30, 4

Citation: (1998) 1 ACC 667 : (2000) ACJ 1388

Hon'ble Judges: Shambhoo Singh, J; B.A. Khan, J

Bench: Division Bench

Advocate: Chhabra, for the Appellant; M.L. Dhupar, for the Respondent

Final Decision: Allowed

Judgement

Shambhoo Singh, J.

This appeal has been filed by the claimant Mangala Ben, the mother of the deceased Hansmukh Manilal being aggrieved of the award dated 7.11.1997 passed by Commissioner, Workmen's Compensation, Indore, in Claim Case No. 45 of 1996 whereby the application for compensation was dismissed.

2. The case of the applicant, in brief, was that her son Hansmukh Manilal was an employee of non-applicant-respondent Dilip Motwani and was earning Rs. 2,000 as pay and Rs. 1,500 as allowance per month. On 17.11.1996 during the course of his employment, he was coming from Bombay to Indore driving Maruti car No. MP 09 HA 4744 on National Highway, when he came near Chandwad Police Station, truck No. WB 03 6075 came from front side at high speed rashly and negligently and dashed against the car, as a result of which Hansmukh died on the spot. The claimant mother filed claim petition u/s 20 of the Workmen's Compensation Act, 1923 (for short "the Act") and claimed Rs. 2,15,000 as compensation with interest at the rate of 24 per cent per annum. The respondent-non-applicant Dilip Motwani remained absent and was proceeded

exparte. The respondent insurance company filed written statement in oppugnation. It challenged the jurisdiction of the Commissioner and pleaded that the deceased was not the employee of non-applicant, owner Dilip Motwani who had mentioned in his O.D. claim that the deceased Hansmukh Manilal was not his employee, he was his friend. The learned Commissioner after recording evidence held that the claimant failed to prove that the deceased Hansmukh was workman in the employment of respondent-non-applicant, owner of the vehicle and dismissed the claim. It is this order that has been challenged before us.

3. Mr. Chhabra, learned counsel for the claimant, contended that the learned Commissioner fell in grave error in holding on the basis of Motor Claim Form (O.D. form) submitted by the respondent, owner of the Maruti car that the deceased was not in the employment of the respondent owner. On 6.11.1997 the owner himself submitted W.C. form, Exh. P1, wherein he made categorical statement that the deceased was serving with him as a driver and he met with accident while discharging his duty as his employee. The investigation report of the insurance company also supports this fact. Mr. Dhupar, learned counsel for the respondent insurance company submitted that the learned Commissioner rightly believed the O.D. form as it was submitted earlier in time. The W.C. form was afterthought. It was submitted by the owner to avoid his liability of payment of compensation to the deceased's L.Rs. He also submitted that this appeal is not maintainable as there is no substantial question of law involved in the matter.

4. Now the question is whether this appeal involves substantial question of law in terms of Sub-section (1) of Section 30 of the Act. It is settled legal position that a finding of fact arrived at without considering material evidence on record, or overlooking the statutory provisions or misconstruing the same then such question, for the purposes of Section 30 will be said to be the substantial question of law. Patna High Court in [Sumitra Devi Vs. Executive Engineer, Udar Asthan Irrigation Division](#), held that if the question of law is fairly arguable or where there is a room for difference of opinion with regard to the question involved, then the question will be treated as substantial question of law. In the present case, the claimant Mangala Ben, the mother of the deceased deposed that her son Hansmukh was employed with respondent Motwani. He was driving his car. He was paid Rs. 2,000 as pay and Rs. 1,500 as allowance per month. Respondent Motwani, owner of the car submitted W.C. form, Exh. P1, wherein he mentioned that Hansmukh Manilal was in his employment. He was his driver. He died in car accident during the course of his employment. In the investigation report of the insurance company also it has been mentioned that the deceased Hansmukh Manilal was working as a driver on the car which met with accident. Learned Commissioner did not take into consideration this report which was filed by the respondent insurance company itself. He rejected the above evidence and put reliance on the following entry made in column No. 8 of Exh. D-I Motor Claim Form (O.D. form) allegedly filed by the respondent owner:

8. Injury to driver/occupant

(a) was driver/any occupant injured-yes, driver expired on the spot

(b) if yes, give full details-death of driver (friend).

5. In our opinion, the finding of the Commissioner on the basis of above that it is not proved that the deceased was in the employment of the respondent owner of the car is perverse. The learned Commissioner further held that the claimant did not produce any evidence to prove that the deceased was employed for the purposes of respondent Dilip Motwani's trade or business. He observed that in absence of such evidence, the deceased cannot be held to be a workman. In our opinion, the learned Commissioner committed grave error of law in holding that the burden lay on the claimant to prove that the deceased was employed for the purposes of respondent's trade or business. It is settled that the onus is upon the employer to prove the conditions necessary for excluding a person from the category of workman. From the definition of "workman" given in Section 2(1)(n) of the Act, it is clear that for not treating a person as workman, two conditions are required to be proved, namely, that his employment is of casual nature and he is not employed for the purpose of employer's trade or business and the onus is on the employer to prove these conditions. The learned Commissioner wrongly held that the onus lay on the claimant to prove that Hansmukh Manilal was employed for the purpose of his employer Motwani's trade or business, it resulted in failure of justice. The finding of the learned Commissioner is vitiated by error of law. Under these circumstances, it is clear that substantial question of law is involved. From the evidence produced by the claimant it has been proved that Hansmukh Manilal was in the employment of car owner respondent Motwani and he died during the course of his employment. Therefore, the claimant is entitled for compensation.

6. Now we come to the quantum of compensation. It is proved from the statement of Mangala Ben that the monthly earning of the deceased was (Rs. 2,000 pay + Rs. 1,500 allowance) Rs. 3,500. In view of Explanation II to Section 4 of the Act, it is deemed that wages of the deceased were Rs. 2,000 per month. The age of the deceased was 35 years. In view of Schedule IV of the Act, the factor of 197.06 is taken and it is multiplied with Rs. 1,000, 50 per cent of Rs. 2,000 and thereby, amount of compensation comes to Rs. 1,97,060.

7. In our opinion, the learned Commissioner wrongly rejected the W.C. form filed by the respondent. He committed error in not considering the statement of Mangala Ben given on oath and the report of the insurance company. The finding of the Commissioner, therefore, suffers from perversity. Under these circumstances, it is clear that the substantial question of law is involved in this appeal.

8. In the result, this appeal is allowed and the judgment of the learned Commissioner is set aside and it is directed that the respondent insurance company shall pay Rs. 1,97,060 to the claimant with interest at the rate of 12 per cent per annum from the date of accident, i.e., 17.11.96 till realisation. Out of this amount Rs. 1,25,000 with accrued

interest be deposited in interest paying scheme in fixed deposit in some nationalised bank for a period of six years. She will be entitled to draw interest from the bank every month.

The parties shall bear their own costs.