

(2007) 11 UK CK 0016
Uttarakhand High Court
Case No: None

New India Assurance Co. Ltd.

APPELLANT

Vs

Sofia Khatoon and Others

RESPONDENT

Date of Decision: Nov. 1, 2007

Acts Referred:

- Workmens Compensation Act, 1923 - Section 4A(3)(a)

Citation: (2008) 116 FLR 355 : (2008) 2 LLJ 47

Hon'ble Judges: Rajesh Tandon, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Rajesh Tandon, J.

Heard T. A. Khan counsel for the appellant and Neeraj Upreti counsel for respondent Nos. 1 and 2. 5

2. Present appeal has been preferred against the judgment and award dated February 4, 2005 passed by the Commissioner, Workmen's Compensation, Pithoragarh.

3. Claimant respondent Nos. 1 and 2 have filed a claim petition under Workmen Compensation Act, for the grant of compensation on account of the death of their son Saman Ali in an accident. According to the claimants their son was employed in the establishment of respondent No. 3. He died in an accident during the course of his employment. At the time of his death Late Saman Ali was 21 years of age. He was getting Rs. 3,750/- per month as salary.

4. Respondent Preyssinet Prestressed Concrete Com., filed its written statement and admitted the alleged accident. It was submitted that the deceased was its employee and was getting Rs. 3,750/- per month as salary. Appellant insurance company has submitted that the wages shown by the claimant is exaggerated. The

death of the deceased was caused due to blasting and the Company has not paid any premium for blasting and as such the respondent No. 3 has committed breach of Insurance Policy.

5. The Claimants examined Smt. Sofiya Khatoon and respondent No. 3 examined M.P. Singh and N.N. Pandey. The Insurance Company examined Chandrapal Singh Tomar.

6. The Workmen's Compensation Commissioner after considering the evidence on record awarded a sum of Rs. 4,15,068/- as compensation, after taking into consideration the wages payable to the deceased i.e. Rs. 45 3750/- per month, along with interest at the rate of 8% per annum from the date of institution of the claim petition. The entire amount was directed to be paid by the Insurance Company.

7. Counsel for the appellant T.A. Khan, advocate has submitted that the insurance company cannot be held liable to pay compensation if the death of the employee was caused in the blasting area. One cannot be permitted to go in the blasting area and as such the insured has flouted the terms and conditions of the insurance policy and as such the Workmen's Compensation Commissioner has erred in law by awarding compensation against the Insurance Company-appellant.

8. The Commissioner has framed issue on this point and on the basis of evidence on record has held that there is no evidence that the death of the deceased was caused in the blasting area.

Copy of the F.I.R. paper No. 30 shows that the death was caused due to fall of stone on the head of labour. The extract of the F.I.R. lodged by Tahir Ali Khan, Project Engineer reads as under:

Vernacular matter omitted

D.W.I M.P. Singh is the eye-witness of the incident. He has stated in his examination-in-chief that on May 14,2002 at about 2.30 PM he was standing near the store. Saman Ali was coming from the work site to the store for taking goods. As soon as he reached the approach road a stone fell down from the hill which hit the head of Saman Ali and he died at the spot. Similar statement has been given by another eye-witness M. N. Pandey who was working as Technician in Company.

9. As against this the Insurance Company-appellant has examined Chandra Pal Singh Tomar, who is surveyor of the Insurance Company. He has stated that the death of the deceased was caused in the blasting area. The deceased was not a labour but he was helper. This witness in his cross-examination has admitted that he has not prepared spot map. He has also not annexed the statements of the witness and employer of Saman Ali deceased on the basis of which he reached to the conclusion. This witness is not an eyewitness of the incident. He is a servant of the Insurance Company and his report and statement cannot be relied upon.

10. Thus the Workmen's Compensation Commissioner has rightly arrived to the conclusion that death of the deceased was caused due to falling of stone from the hillside. The so-called Survey report is a concocted document on the basis of conjecture and surmises and no reliance can be placed on it.

So far as the monthly wages of the deceased is concerned the Claims Tribunal has assessed the compensation on the basis of wages proved by the witnesses of the employer i.e. Rs. 3,750/- per month. As per explanation II of Section 4 (b) the word Two thousand rupees has been substituted by four thousand rupees vide Workmen's Compensation (Amendment) Act, 2000 but the Commissioner has taken Rs. 3,750/- for assessment of the amount of compensation, which cannot be said to be illegal or excessive.

11. The Commissioner has awarded 8% interest from the date of filing of the Claim Petition while it should be @ 12% per annum from the date of accident. The relevant provision is quoted below:

4(3) Where any employer is in default in paying the compensation due under this Act; within one month from the date it fell due, the Commissioner shall:

(a) Direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve per cent per annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government, by notification in the Official Gazette, on the amount due: and

(b) If, in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears, and interest thereon pay a further sum not exceeding fifty percent of such amount by way of penalty:

Provided that an order for the payment of penalty shall not be passed under Clause (b) without giving a reasonable opportunity to the employer to show cause why it should not be passed.

Explanation.-For the purposes of this sub-section, "scheduled bank" means bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934).

((3-A) The interest payable under Sub-section (3) shall be paid to the workman or his dependant, as the case may be, and the penalty shall be credited to the State Government.)

12. As will appear from Section 4-A (3) (a) of the Workmen's Compensation Act, that liability of the employer is to pay simple interest at the rate of 12% per annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government, by notification in the Official Gazette, on the amount due. However, as no appeal has been preferred on behalf of

the claimant, therefore; no order is being passed in respect of the rate of interest.

13. In view of above, I find no merit in the Appeal. The appeal is hereby dismissed.

14. No order as to costs.