



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Civil Miscellaneous Appeal No. 3268/2008

United India Insurance Co. Ltd. through Authorized Signatory,
Regional Office, Sahara Chambers, Tonk Road, Jaipur

----Appellant/Non-claimant No.3

Versus

1. Shanti Devi widow of Late Ram Kumar Sharma, R/o Gotda
Bhukran, Teh. & District – Sikar (Rajasthan)

----Respondent-Claimant

2. Padam Chand Jain S/o Shantilal Jain R/o Station Road, Sikar.
(Registered owner of Bus No. RJ-23/P-3211)

3. Jain Travels, Bajaj Road, Sikar through its proprietor Shantilal
Jain. (Operator of Bus No. RJ-23/P-3211)

----Respondents/Non-claimant No. 1 & 2

Connected With

S.B. Civil Miscellaneous Appeal No. 2546/2008

Shanti Devi Widow of Late Ramkumar Sharma, Resident of
Gothara Bhukrana, Tehsil & District Sikar (Raj.).

----Claimant-Appellant

Versus

1. Padam Chand Jain S/o Shantilal Jain, R/o Station Road, Sikar.
(Registered owner of Bus No. RJ-23/P-3211)

2. Jain Travels Bajaj Road, Sikar through Proprietor Shantilal
Jain. (Operator of Bus No. RJ-23/P-3211)

3. Insurance Company Vehicle No. RJ-23-3211, United India
Insurance Co. Ltd., through Branch Manager.

----Non-claimants-Respondents

For Appellant(s)	:	Mr. Pritam Bijlani (respondent in S.B. CMA No. 2546/2008)
For Respondent(s)	:	Mr. Avinash Fenin for Mr. Amit Singh Shekhawat (appellant in S.B. CMA No. 2546/2008) Mr. Tanmay Dhand

HON'BLE MR. JUSTICE RAVI CHIRANIA

Judgment

1.	Date of conclusion of Arguments	10.03.2026
2.	Date on which the judgment was reserved	10.03.2026
3.	Whether the full judgment or only operative part is pronounced	Full
4.	Date of pronouncement	01.06.2026



1. These two civil miscellaneous appeals arise out of the impugned judgment dated 02.04.2008 passed by the Court of learned Commissioner Workmen's Compensation, Sikar (hereinafter referred to as '**the learned Commissioner**'): one, bearing Appeal No. 3268/2008, filed by the appellant- United India Insurance Company Ltd. and another, bearing Appeal No. 2546/2008, filed by appellant-claimant- Shanti Devi for enhancement of compensation as awarded.

2. As both the appeals have common facts, therefore, for the sake of convenience, the facts are being taken from **S.B. Civil Misc. Appeal No. 3268/2008**, which is the appeal filed by the appellant-Insurance Company under Section 30 of the Workmen's Compensation Act, 1923 (hereinafter referred to as '**Act of 1923**')

S.B. Civil Misc. Appeal No. 3268/2008

3. The instant appeal has been filed by the appellant- United India Insurance Company Ltd. (hereinafter referred to as '**Insurance Company**') under Section 30 of the Act of 1923, whereby challenge has been made to the impugned judgment dated 02.04.2008 passed by the learned Commissioner in WCA/F/36/05 titled as '**Shanti Devi Vs. Padam Chand Jain & Ors.**' by which the claim was allowed and the appellant- Insurance Company was ordered to pay a sum of Rs. 3,70,632/- as compensation along with Rs. 2,500/- towards funeral expenses. The compensation amount was ordered to be paid with interest at the rate of 9% per annum from the date of accident, i.e.,





08.05.2005. The learned Commissioner further directed that if the amount is not deposited within 30 days, then the amount of compensation would carry the interest at the rate of 12% per annum. The learned Commissioner further held that the Insurance Company, i.e., the appellant herein, the owner- Padam Chand Jain (hereinafter referred to as '**respondent No. 2**') and the operator of Jain-Travels (hereinafter referred to as '**respondent No. 3**') are liable to pay the compensation jointly and severally.

4. The appellant has filed the present appeal on the following questions of law:

"(i) Whether, in view of the fact that the relationship of employer-employee was denied by the employer/insurance company, the order of the Learned Commissioner in awarding the interest from the date of accident is illegal and against the provisions of section 4A(3) of W.C. Act.

"(ii) Whether the Learned Commissioner has misdirected itself to the evidence on record and committed an illegality in deciding issue no. 1 in favour of the claimant that the deceased was employed as Khalasi on the bus of the non-claimant no. 1 & 2."

5. The **brief facts** as argued by the learned counsel for the appellant- Insurance Company, Mr. Pritam Bijlani, are that the respondent-claimant Shanti Devi (hereinafter referred to as '**respondent-claimant**') filed a claim petition before the learned Commissioner stating that her son, Rakesh (hereinafter referred to as '**the deceased**'), aged 28 years, was employed as a **Khalasi (helper)** on bus bearing No. RJ-23/3211, owned by respondent No. 2 and operated by respondent No. 3 on a salary of Rs. 4,000/- per month. On the night of 07.05.2005, while on duty,





the deceased had slept on the roof of the bus for guarding it and was found seriously injured the next morning, i.e., on 08.05.2005, near the vehicle. Thereafter, he was taken to the hospital in Sikar, wherefrom he was referred to Jaipur, where he died during the course of the treatment.

6. The employer–respondent Nos. 2 and 3 filed their reply while specifically denying the employment, stated that the deceased was never employed with them and they admitted him in the hospital only on humanitarian grounds. The appellant- Insurance Company also denied its liability, asserting that as no employer–employee relationship existed and not proved by way of any documentary or other cogent evidence, therefore, claim as filed was false and concocted.

7. Learned counsel for the appellant, Mr. Pritam Bijlani submitted that the impugned judgment is illegal, perverse and based on no evidence. The first contention as raised was that the claimant had failed to prove the existence of an employer–employee relationship between the deceased and the respondent Nos. 2 and 3. It was further submitted that no documentary proof of employment such as salary register, attendance record or any other document was produced before the learned Commissioner in the claim case to prove that the deceased had been working for 10-12 years with the respondent Nos. 2 and 3 and thus, no proof renders the total testimony a weak and unreliable evidence.

8. Learned counsel, Mr. Brijlani, further submitted that compensation under the Act of 1923 is payable only on existence of the employer–employee relationship. In the absence of any such





proof of the same, no claim petition for claiming compensation under the Act of 1923 was maintainable. However, without examining this the learned Tribunal passed the impugned judgment which is in violation of the mandate of the Act of 1923.

9. Learned counsel further submitted that **in case deceased worked for 10-12 years, then those who were working with him during that period should have come forward to prove the employment of deceased with the respondent Nos. 2 and 3.**

10. Learned counsel further submitted that the learned Commissioner has erroneously relied on the Police Report (Exhibit A-2), testimony of claimant- Shanti Devi and two other witnesses. The conclusion was drawn by learned Commissioner on the basis of police report, which contains the fact that the temple priest informed the respondent No. 2 about the accident. The same priest, in the investigation, failed to support the fact of employment of deceased by way of any proof. Therefore, the learned Commissioner erroneously recorded the conclusion that deceased was employed with respondent Nos. 2 and 3.

10.1 Further, learned counsel Mr. Bijlani pointed out that the respondent Nos. 2 and 3 stated that the bus already had a regular driver and Khalasi (helper) and deceased was admitted to the hospital on humanitarian grounds only. Learned counsel, on the basis of above, contended that the findings of the employment of deceased with respondent Nos. 2 and 3 as recorded by the learned Commissioner are perverse and deserves to be quashed and set aside, and accordingly it may be held that the appellant is





not liable for the claim amount as awarded by impugned judgment.

11. Next contention, as raised by learned counsel Mr. Bijlani, was in respect of interest on the compensation amount. He submitted that under Section 4A(3) of the Act of 1923, interest is payable only if the amount of the compensation is not paid within a period of one month from the date it fell due. Further, he submitted that where the employer has denied his liability, the amount does not become due on the date of incident but after the liability was adjudicated by the Commissioner under the Act of 1923. In the present case, the respondent Nos. 2 and 3 had denied the employment of deceased with them and also any liability on that ground from the beginning of the claim. Thus, compensation, if any, even if payable, became due only from the date of impugned judgment, i.e. 02.04.2008.

11.1 It was submitted by learned counsel that the appellant-Insurance Company deposited the compensation amount of Rs.4,62,403/- before the learned Commissioner on 02.05.2008 i.e., within one month from the date of the judgment. Further, in terms of Section 4A(3), the employer is bound to pay compensation within one month after it fell due, but as there was no employer-employee relationship in the present case, therefore, Section 4A(3) has no application in the case. Therefore, no interest is payable and the learned Commissioner has grossly erred in awarding interest from the date of the accident. The learned counsel lastly prayed that in terms of the above submissions the appeal be allowed, the impugned judgment be set





aside and the claim petition be dismissed as against the Insurance Company. Further, the amount as deposited be ordered to be refunded back.

12. *Per Contra*, learned counsel for the respondent-claimant, Mr. Amit Singh Shekhawat, submitted that the impugned judgment does not suffer from any illegality and the learned Commissioner correctly appreciated the evidence on record. Learned counsel further submitted that the testimonies of the claimant-Shanti Devi and other two witnesses, namely, Mukund Singh and Sukhveer Singh were sufficient to prove the fact that the deceased was employed as Khalasi (helper) on the bus of respondent Nos. 2 and 3. It was further submitted that the police report (Exhibit A-2) also supported the fact of employment and respondent No. 2 admitted the fact that the priest of the temple informed him about the incident which clearly demonstrated that the deceased was employed with the respondent Nos. 2 and 3. Further, the act of taking the deceased to the hospital was not on any humanitarian ground but an acknowledgement of the liability by respondent Nos.2 and 3. Lastly, counsel prayed that the appeal filed by Insurance Company be dismissed.

13. Learned counsel for the respondent Nos. 2 and 3, Mr. Tanmay Dhand, contended that the fact as asserted that deceased was working as Khalasi (helper) with respondent Nos. 2 and 3 is false and fictitious and was made only with the sole intention to extort money by way of compensation, through claim petition as filed under the Act of 1923. It was further contended by learned counsel that the act of admitting the deceased to the hospital was





purely on humanitarian grounds including informing the family members and providing initial medical assistance, and such humanitarian conduct cannot create any legal liability when there was no employer-employee relationship. Learned counsel submitted that the claimant made false statement about the income of deceased. Claimant failed to produce any reliable documentary or other evidence on record in support of the same. Lastly, the learned counsel submitted that compensation of Rs. 4,23,580/- as awarded by the learned Commissioner is perverse and erroneous as the same is based on no evidence, thus, deserves to be quashed and set-aside.

14. Heard the learned counsel for respective parties and perused the material available on record.

15. The appeal under Section 30 of the Act of 1923 lies only on involvement of the substantial question of law and not on facts.

Section 30 of the Act of 1923 is reproduced here under:

"30. Appeals: - (1) *An appeal shall lie to the High Court from the following orders of a Commissioner, namely:--*

(a) an order awarding as compensation a lump sum whether by way of redemption of a half-monthly payment otherwise or disallowing a claim in full or in part for a lump sum;

1. [(aa) an order awarding interest or penalty under section 4A;]

(b) an order refusing to allow redemption of a half-monthly payment;

(c) an order providing for the distribution of compensation among the dependants of a deceased workman, or disallowing any claim of a person alleging himself to be such dependant;

(d) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of sub-section (2) of section 12; or





(e) an order refusing to register a memorandum of agreement registering the same or providing registration of the same subject to conditions:

Provided that **no appeal shall lie against any order unless substantial question of law is involved in the appeal** and, in the case of an order other than an order such as is referred to in clause (b), unless the amount in dispute in the appeal is not less than three hundred rupees:

Provided, further, that no appeal shall lie in any case in which the parties have agreed to abide by the decision of the Commissioner, or in which the order of the Commissioner gives effect to an agreement come to by the parties."

16. The appellant-Insurance Company has raised two substantial questions of law in terms of Section 30 of the Act of 1923. Both the questions are inter-dependent and revolves around the question of law which emerges for adjudication of this Court is whether in the absence of any employer-employee relationship with respondents nos. 2 and 3, the claim petition was maintainable and amount could be awarded under the Act of 1923 or not?

17. For deciding the issue of employment of the deceased, this Court considered the evidence of respondent-claimant Shanti Devi (**mother of the deceased**) and other two witnesses, Mukund Singh and Sukhveer Singh. All these three witnesses tried to support the claim by their evidence, however, none of them was able to prove the working of deceased by way of any documentary and other cogent evidence, which could establish employer-employee relationship in between the deceased and respondent Nos. 2 and 3.





18. The respondent No. 1, mother of the deceased, though stated that the deceased was working for around 10-12 years, however, she failed to give any specific detail regarding the same. She also failed to give any documentary evidence of payment and receipt of wages from respondent Nos. 2 and 3. The police report also concluded regarding the employment, as well, on the basis of the statement of these above three witnesses, which the learned Commissioner relied upon while passing the impugned judgment. However, this Court, after examining the record, noted that none of the witnesses have proved the employment of the deceased by any documentary and other cogent evidence. Just because the respondent No. 2- Padam Chand Jain (also the owner of Respondent No. 3) took the deceased to hospital on humanitarian ground, informed the claimant's mother and provided some initial medical help, his act cannot be treated/considered a reason/basis to assume the employment of deceased.

19. In the society, many a times people extend their support and help to the people in need around them on humanitarian grounds, however, those acts cannot be the basis to assume relationship of employer and employee. This Court, after considering the complete evidence of the above three witnesses and findings as recorded by learned Commissioner, for deciding the two **substantial questions of a law as raised**, has reached to the definite conclusion that the learned Commissioner committed an error in law while passing the impugned judgment in disregard of the fact that the respondent No. 1 and the other two witnesses have completely failed to satisfy the first basic requirement to





claim compensation under the Act of 1923, which is to establish the proof of the employment of the injured/deceased with the employer. The claim under the Act of 1923 can only be filed when there exists an employer-employee relationship.

20. The complete conclusion as drawn and recorded in the impugned judgment by the learned Commissioner is based on self-assumption as there was no document to reach to such conclusion. This Court also noted that though, through evidence respondent No. 1 stated that her son was working from 10-12 years with respondent Nos. 2 and 3, but neither she nor any person who had worked with the deceased during that period came forward to support the fact of employment of deceased with respondent Nos. 2 and 3. On the basis of same, this Court has further reached to the conclusion that the claimant failed to prove the relationship of employer and employee as required to claim compensation under the Act of 1923. Therefore, in terms of above discussion, both the questions are answered in favour of the appellant-Insurance Company and it is held that as the deceased was not an employee of respondent No. 2 and 3, therefore, the claim as filed before the learned Commissioner under the Act of 1923 was not maintainable and the learned Commissioner committed grave illegality while passing the impugned judgment in violation of the provisions of Act of 1923.

21. Consequently, the appeal No. 3268/2008 filed by the appellant-Insurance Company is allowed and the impugned judgment dated 02.04.2008 is hereby quashed and set aside.





22. As this Court has recorded above conclusion that in the absence of any employer-employee relationship, no compensation could have been awarded under the Act of 1923, therefore, the amount as deposited by the appellant-Insurance Company deserves to be refunded in terms of the judgment dated 02.04.2008.

23. The learned Commissioner is directed to refund the 50% of the amount as lying with it to the appellant in accordance with law. The 50% of the amount as already disbursed in terms of order of this Court dated 07.10.2009 to the respondent-claimant no. 1 shall be returned back by her to the appellant herein within a period of 60 days from the date of passing of this order.

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24. In view of the above, as this Court has allowed the appeal filed by the appellant-Insurance Company bearing No. 3268/2008 whereby Court has quashed and set aside the impugned judgment dated 02.04.2008, therefore, the instant appeal filed by claimant Shanti Devi deserves to be dismissed. Consequently, the appeal of claimant is hereby dismissed.

25. There shall be no order as to cost(s).

26. All pending application(s), if any, of both the appeals also stand disposed of.

27. Record of the Court below be sent back forthwith.

(RAVI CHIRANIA),J

PARSHANT/