



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

S.B. Civil Miscellaneous Appeal No. 301/2013

Reliance General Insurance Company Ltd.,

Through Its Constituent Attorney

----Appellant

Versus

1. Shyam @ Jagdish

2. Shiv Lal

----Respondents



For Appellant(s) : Mr. Virendra Agarwal and
Mr. Prakhar Agarwal, through VC

HON'BLE MR. JUSTICE ANOOP KUMAR DHAND

Order

Reportable

28/01/2022

A challenge in the instant misc. appeal has been made to the impugned judgment and award dated 05.12.2012 passed by the Court of learned Commissioner Workmen's Compensation, Bundi, Rajasthan (for short 'the learned Commissioner') in WCC/F//51/2011 by which the claim petition filed by the claimant-respondent has been allowed and the Insurance company has been directed to pay compensation of Rs.3,96,165/- to the claimant-respondent with interest.

Brief facts of the case are that the claimant-respondent filed a claim petition under the provisions of Workmen's Compensation



Act, claiming compensation on account of death of one Kalulal who died in the road accident occurred on 26.01.2008. It was also stated in the claim petition that the death occurred during the course of the employment. Hence, the claimant is entitled to get compensation as the deceased was working as a 'Khalasi' and drawing salary of Rs.4750/- per month.

The owner of the vehicle did not appear before the learned Commissioner and hence, ex parte proceedings were initiated against him but the appellant-Insurance Company has submitted its reply and denied the averments made in the claim petition and raised objection that there was no relationship of employee and employer between the insured and the deceased and no notice under Section 10 of the Act of 1923 was given. Hence, the claim petition was not maintainable.

After hearing the parties, the learned Commissioner allowed the claim petition directing the appellant to pay a compensation of Rs.3,96,165/- with interest to the claimant-respondent.

Feeling aggrieved by the impugned award the appellant-Insurance Company has preferred this appeal. Learned counsel for the appellant submitted that the learned Commissioner has committed an error while allowing the claim petition as the claimant-respondent has failed to establish the relationship of employee and employer. Hence, the provisions of the Act of 1923 were not attracted. Learned counsel further argued that there was non compliance of the mandatory provisions contained under Section 10 of the Act of 1923, hence, the Insurance Company is not liable to make any payment of compensation to the claimant-respondent.



Heard counsel for the appellant and perused the impugned judgment and the documents available on record.

In the considered opinion of this Court, the findings given by the learned Commissioner are based on sound appreciation of evidence and the same is not liable to be disturbed by this Court.

In the opinion of this Court, the learned Commissioner is the last authority on facts as it has been held by the Hon'ble Supreme Court in the case of "*Golla Rajanna Etc. vs. The Divisional Manager And Anr.*" reported in 2017(1) SCC 45. It has been held in Para No. 8 & 10 as under:

"8. Section 30 of the Act provides for appeal to the High Court. To the extent, the provision reads as follows;

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 or otherwise or disallowing a claim in full or in part for a lump sum;

[(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;

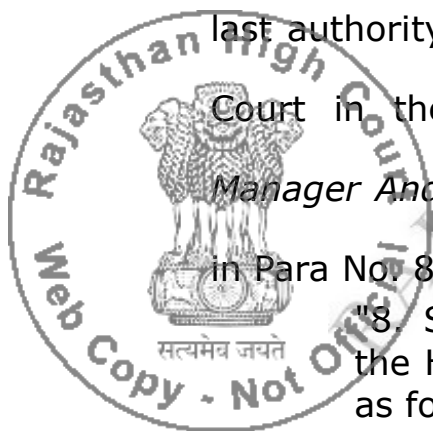
(d) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of Sub-section (2) of Section 12;

or

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

Provided that no appeal shall lie against any order unless a 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 (Emphasis supplied)

10. Under the scheme of the Act, the workmen's Compensation Commissioner is the last authority on facts. The Parliament has thought it fit to





restrict the scope of the appeal only to substantial question of law, being a welfare legislation. Unfortunately, the High Court has missed this crucial question of limited jurisdiction and has ventured to re-appreciate the evidence and recorded its own findings on percentage of disability for which also there is no basis. The whole exercise made by the High Court is not within the competence of the High Court under Section 30 of the Act."

The similar view has been expressed by the Hon'ble Apex

Court in the case of "*North East Karnatka Transport Corporation Vs. Smt. Sujatha*" reported in 2019 (11) SCC 514. It has specifically held in Para Nos. 9 to 12 as under:

"9. At the outset, we may take note of the fact, being a settled principle, that the question as to whether the employee met with an accident, whether the accident occurred during the course of employment, whether it arose out of an employment, how and in what manner the accident occurred, who was negligent in causing the accident, whether there existed any relationship of employee and employer, what was the age and monthly salary of the employee, how many are the dependants of the deceased employee, the extent of disability caused to the employee due to injuries suffered in an accident, whether there was any insurance coverage obtained by the employer to cover the incident etc. are some of the material issues which arise for the just decision of the Commissioner in a claim petition when an employee suffers any bodily injury or dies during the course of his employment and he/his LRs sue(s)

his employer to claim compensation under the Act.

10. The aforementioned questions are essentially the questions of fact and, therefore, they are required to be proved with the aid of evidence. Once they are proved either way, the findings recorded thereon are regarded as the findings of fact.

11. The appeal provided under Section 30 of the Act to the High Court against the order of the Commissioner lies only against the specific orders set out in clauses (a) to (e) of Section 30 of the Act with a further rider contained in the first proviso to the section that the appeal must involve substantial questions of law.

12. In other words, the appeal provided under Section 30 of the Act to the High Court against the order of the Commissioner is not like a regular first



appeal akin to Section 96 of the Code of Civil Procedure, 1908 which can be heard both on facts and law. The appellate jurisdiction of the High Court to decide the appeal is confined only to examine the substantial questions of law arising in the case."

In "*Smt. Ram Sakhi Devi Vs. Chhatra Devi*", reported in *JT 2005(6) SC 167*, the Hon'ble Apex Court held that without formulating substantial question of law appeal cannot be sustained.

In "*M/s Krishna Weaving Mills, Ajmer Vs. Smt. Chandra Bhaga Devi wide of Mool Chand & Anr.*", reported in *1985(1) WLN 455*, this Court while dealing with Workmen's Compensation Act has laid down law that unless there is a question of public importance and there is no final interpretation available while the substantial question of law is arising, the appeal under the Workmen's Compensation Act cannot be entertained. Relevant portion of the judgment reads as follows:-

"8. Moreover, under S. 30 of the Workmen Compensation Act only substantial question of law can be agitated. In the present case, I am convinced that there is no substantial question of law involved.

9. The question of public importance and question on which no final interpretation is available are known as substantial question of law. Even if this definition is further extended, it will have to bear in mind that there is vast difference between the question of law and substantial question of law. It is only when the question of law is not well settled and it is of importance, it would become a substantial question of law."

It is the settled position of law that limited jurisdiction has been given to the High Court confined to the substantial question of law only and the High Court cannot venture and reappreciate the evidence and finding of fact recorded on the evidence led by both the parties.



This Court find no good ground to call for any interference on any of the factual findings. None of the factual findings are found to be either perverse or arbitrary or based on no evidence or against any provision of law. This Court accordingly uphold these findings.

Since the appeal is not qualifying to have a substantial question of law, which is mandatory under Section 30 of the Workmen's Compensation Act, 1923.

Therefore, no interference is called for in this appeal and the same is dismissed.

All the pending applications, if any, stand disposed of.

(ANOOP KUMAR DHAND),J

HEENA GANDHI /11

