




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

S.B. Civil Miscellaneous Appeal No. 6017/2017

The Oriental Insurance Company Ltd.,

-----Appellant

Versus

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1. Manhbar Devi  
2. Vimla  
3. Seema  
4. Subhash

5. Arjun Lal

-----Respondents

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For Appellant(s) : Mr. Pratap Singh Arya, through VC  
For Respondent(s) : Mr. Govind Khandelwal, through VC

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**HON'BLE MR. JUSTICE SUDESH BANSAL**

**Judgment**

**03/02/2022**

**Reportable**

1. Instant miscellaneous appeal has been filed by Insurance Company under Section 30 of the Employee's Compensation Act, 1923, assailing the award dated 12.09.2017 passed by the Court of Commissioner, the Employee's Compensation Act, 1923 Jaipur District-II, Jaipur awarding compensation of Rs.3,44,855/- to



claimants with interest @12% per annum and along with the order to make payment of the medical expenses also.

2. Before considering the appeal on merits, it is necessary to look into the scope of interference by the High Court in the appeal under Section 30 of the Employee's Compensation Act, 1923 (for short, "the Act of 1923"). It is no more *res integra* that such appeal to the High Court, against the order of the Commissioner, lie only against the specific orders set out in Clause (a) to (e) of Section 30 of the Act of 1923 with a further rider contained in Proviso-I. of Section that the appeal must involve substantial question(s) of law. The position of law is well settled that the appeal provided under Section 30 of the Act of 1923 to the High Court, against the order of Commissioner is not like a regular first appeal akin to the first appeal filed under Section 96 of the Code of Civil Procedure, 1908. The regular civil first appeal under Section 96 of CPC can be heard both on facts and law whereas the scope of appellate court to decide the appeal under Section 30 of the Act of 1923 is confined only to examine the substantial question(s) of law arising in the case. It is therefore, clear that the High Court is first required to find out as to whether the present appeal involves any substantial question(s) of law or not? If the substantial question(s) of law arises, the appeal may be admitted for final hearing on merits else the same is liable to be dismissed with reasons that it does not involve any substantial question(s) of law.

3. Now coming to the appeal at hand, the Insurance Company has suggested following questions of law for consideration by this Court:-



*"(a) Whether a workman after his duty hours leaves his work place for his house, will he still be treated to be in the course of employment?*

*(b) Whether a claim based on fabricated facts, as an afterthought merely with an intention to get a false claim from Insurance Company is liable to be dismissed with heavy costs as justice and fraud cannot be allowed to walk together with hand in hand?*

*(c) Whether the ECC can entertain the claim when no court fee has been paid by the claimants at the time of filing of the claim in contravention of the provisions of the Court Fee Act?"*

4. In order to examine as to whether the aforesaid questions are essentially questions of fact or can be considered as substantial question(s) of law, it is necessary to consider the facts of case in brief and the findings recorded by the Commissioner.

5. This is a case where claimants filed claim petition under Section 3 read with Section 22 of the Act of 1923 for compensation on account of death of the bread earner of their family namely, Shri Sita Ram (deceased herein). It was alleged that Shri Sita Ram was employed as a 'Helper' on drilling machine of truck No.RJ-14-P-055 of which non-claimant No.1-Arjun Lal is the owner and the deceased was discharging his duties under his employment. It was averred that on 27.03.2011 the deceased was engaged in drilling work on the said truck and he met with an accident during the course of his employment and sustained serious injuries including head injury. Later on he died on 23.04.2011 due to injuries received in the accident arising out of and in the course of employment. It was alleged that the truck of



non-claimant No.1 is insured with the Insurance Company (non-claimant No.2) therefore, it was prayed that non-claimant Nos.1 & 2 (owner/insured and Insurance Company) both are jointly and severally liable to pay the compensation to the claimants under the Act of 1923.

6. Non-claimant No.1 the insured has filed reply to claim petition and admitted his ownership of drilling machine on the truck No RJ-14-P-055 and also admitted that the deceased Shri Sita Ram was employed to work on the aforesaid drilling machine truck on the date of accident on payment of wages and the truck is insured with the Insurance Company.

7. The non-claimant No.2-Insurance Company filed separate reply and contested the claim petition alleging *inter alia* that, (i) No notice as required under Section 10 of the Act of 1923 was served on the Insurance Company, (ii) Relationship of employee and employer between the deceased Sita Ram and non-claimant No.1 was denied (iii) Wages being paid to the deceased by the employer was denied and, (iv) objection about having the connivance between the insured owner of truck and of the deceased was also alleged.

8. As per the rival pleading of the parties, the Commissioner framed issues, both parties adduced respective evidence before the Commissioner. The Commissioner, after hearing final arguments, has allowed claim petition vide award dated 12.09.2017. The issue Nos.1 and 2 were framed as to whether the deceased was appointed as Helper on the truck in question on the date of accident i.e. 27.03.2011 and as to whether the deceased was working as an employee under the employership of non-claimant No.1. The Commissioner, in the award dated 12.09.2017,





while deciding aforesaid issue Nos.1 and 2 has recorded findings that deceased-Sita Ram, on the date of accident i.e. 27.03.2011 was working as 'Helper' on drilling machine of Truck No.RJ-14-E-0335 under employment of the non-claimant No.1. The Tribunal also recorded findings that the deceased died due to injuries sustained by him in the accident dated 27.03.2011, arising out of and in the course of employment. Thus, the Tribunal has categorically recorded a finding of fact that the relationship of employee and employer between deceased and non-claimant No.1 was existing on the date of accident and the deceased has died due to injuries sustained by him in accident during the course of his employment. The issue No.3 was framed to consider defences raised by the Insurance Company and while deciding issue No.3, the Tribunal has recorded a categorical finding that when it has been held while deciding the issue Nos.1 & 2 that deceased was died during the course of his employment, the non-issuance of notice under Section 10(1)(a) of the Act of 1923 does not adversely affect the right to claim compensation. The objection of not having a valid driving licence with the driver was also turned down with clear findings that the same does not affect the right of claimants to claim compensation under the Act of 1923. The issue No.4 pertains to determination of compensation, wherein the Commissioner has taken monthly income of deceased as Rs.3,500/- after considering nature of his work as 'Helper' on boring machine and considering his age as 35 years according to the post mortem report, the compensation has been determined as per the schedule. The Tribunal has also awarded interest @12% per annum along with issuing direction to make payment of the medical expenses as well.



9. According to the counsel for appellant Insurance Company, the judgment and awarded 12.09.2017 passed by the Commissioner is erroneous and illegal as much as the same give rise to substantial question(s) of law as proposed hereinabove. The counsel for respondents-claimants argued that all the questions are related to question of facts and may not be treated as substantial question(s) of law.

10. Heard counsel for both parties and perused the material available on record.

11. As far as the question (a) referred hereinabove is concerned, the same is related to the issue of relationship between the deceased and non-claimant No.1 that of employee and employer.

The question (b) is also revolves around the factual issues and requires re-appreciation of evidence. The Employee's Compensation Act is a beneficial legislation aimed at alleviating the sufferings of the workman, who suffers injuries resulting disability or the sufferings of the legal heirs of the workman who dies in such accident. It is settled law that unless the findings of fact recorded by the Commissioner, are not shown to be perverse, the same are not required to be interfered with in the appeal. Any erroneous finding or any error of law cannot be the basis for entertaining an appeal under Section 30 of the Act of 1923 unless such erroneous findings do not give rise to substantial question of law. As far as findings of issue Nos.1 and 2 are concerned, the same are based on the material available on record and such findings cannot be held to be perverse by any stretch of imagination. In the case of **Krishna Weaving Mills Vs. Chandra Bhaga Devi** reported in **MANU/RH/0167/1984 [equivalent citation : 1985(1) WLN 455]**, the Rajasthan High Court while



deciding the appeal under Section 30 of Workman Compensation Act, 1973 has draw a distinction between the question of law and substantial question of law. It was held that the question of public importance and question of which no final interpretation is available are known as substantial question of law. If a question of law is not well settled and the same is of public importance, it may be treated as a substantial question of law. The view has been followed in subsequent judgment delivered by the Rajasthan High Court, in case of **Khuma vs. Shyam Lal** reported in **MANU/RH/1287/2019**. The scope of interference under Section 30 of the Act of 1923, on the ground of perversity in the findings of Commissioner, was also considered by the High Court of Gauhati in the case of **Oriental Insurance Co. Ltd. Vs. Gita Rani Roy** reported in **MANU/GH/0608/2015** decided on 16.09.2015.

12. Thus, after elaborate discussion on facts and proposition of law, the question Nos.a and b do not fall within the scope of substantial question of law. As such the present appeal is not liable to be admitted on these questions of law.

13. As far as question No.c regarding non-payment of court fees by claimant before the Commissioner is concerned, the payment of court fees by the claimant before the Commissioner is governed by the provisions of the Rajasthan Workmen's Compensation (Costs & Fees) Rules, 1959 (for short 'the Rules of 1959'). The Rules of 1959 contemplates amount of fee on application for compensation to the extent of one rupee where the same does not exceed Rs.500/- plus one rupee in each of Rs.500/- or fraction thereof, where compensation is claimed in the form of lump sum amount. It is within the power and jurisdiction of the



Commissioner, to remit any or all of such fees. It appears that no such objection of non-payment of court fee by the claimant was raised before the Commissioner and no issue in this regard was framed.

14 In this backdrop, this question of law may also not be treated as substantial question of law.

15 The Hon'ble Supreme Court, in case of **Golla Rajanna Versus Divisional Manager** reported in **[2017(1) SCC 45]** considered the scope of interference by the High Court in the findings of the Commissioner Workman Compensation, under Section 30 of the Act of 1923 and held as under:-

*"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 questions 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."*

16. The Hon'ble Supreme Court in case of **North East Karnataka Road Transport Corporation Versus Sujatha** reported in **[2019 (11) SCC 514]** has again held in clear and explicit words 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. 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.

17. The Commissioner has also passed order for reimbursement of the medical expenses/bills to the employee for which the employee is entitled by virtue of Section 2-A of Section 4. The interest awarded on the compensation amount @12% per annum is also within the permissible limits of Section 4-A(3) of Act of 1923.

18. None of the questions as raised and suggested by the counsel for Insurance Company fall within the ambit and purview of substantial question of law. All these questions are essentially the question of facts and require, re-appreciation of the pleadings and evidence. As far as factual issues are concerned, it is clear proposition of law that the jurisdiction to appreciate the pleadings and evidence on record and to deliver findings thereupon lies with the Commissioner. The finding of facts as recorded by the Commissioner are treated as final as the Commissioner is the last



authority to record findings on facts. The High Court, while exercising its powers and jurisdiction as appellate court under Section 30 of Act of 1923 may not and should not re-appreciate the evidence and pleadings to substitute the factual findings of the Commissioner, by its own view. Unless and until the findings recorded by the Commissioner, do not raise any substantial question of law, the same are not required to be interfered with.

19. The upshot of discussion made hereinabove, is that the present appeal does not qualify the requirement of involving any substantial question of law, which is mandatory requirement under Section 30 of the Act of 1923 to entertain and admit the appeal. Accordingly, the appeal is not worth for admission and the same is hereby dismissed. No order as to costs.

20. The claimants are entitled to get compensation as awarded by the Commissioner under the impugned award dated 12.09.2017. If any amount of compensation is lying deposited with the Commissioner, the same shall be disbursed to the claimants. If the whole amount has not deposited, the appellant shall deposit the unpaid amount with interest before the Commissioner. The Commissioner shall issue notice upon the claimants to withdraw the amount.

21. The record of the Commissioner be returned forthwith.

(SUDESH BANSAL),J

SAURABH/56