

**HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU**

MA No. 45/2019
[FAO (WC) No. 04/2019]

Pronounced on : 19th .05. 2020

Shree Ram General Insurance Company Ltd. Appellant(s)

Through:- Mr. Dewakar Sharma, Advocate

V/s

Geeta Sharma &ors.Respondent(s)

Through:- Mr. R. S. Jamwal, Advocate

Coram : **HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE**

ORDER

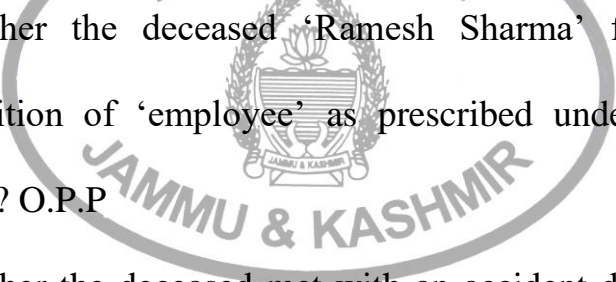
01. This appeal has been preferred under section 30 of the Employees Compensation Act, 1923 (hereinafter referred to as the Act) passed by the Commissioner under Employees Compensation Act, 1923 (Assistant Labour Commissioner), Jammu (herein after referred to as Commissioner) in case titled *Geeta Sharma & ors. Vs. Anil Sharma & anr.*

02. The facts relevant for disposal of this appeal are that, deceased-Ramesh Sharma was an employee as a salesman working in the canteen situated in 213 Transit Camp Panama Chowk, Jammu. He met with an accident on 11th of September, 2014, while travelling in the vehicle of respondent No. 4 (owner) as a result of which Ramesh Sharma, who was sitting next to owner, sustained multiple injuries which resulted in his death. Thus the claimants, respondent Nos. 1, 2 & 3 i.e., wife and two sons of the deceased filed a claim petition before the Commissioner

under the aforesaid Act seeking compensation of Rs. 18,00,000/- (Rupees Eighteen Lacs only) along with interest @ 18% from the date of accident.

03. The owner/respondent No. 4 appeared but chose not to file objections, and thereafter as he did not appear and was set ex parte. Appellant/Insurance Company contested the claim of the claimants by objecting to the cause of accident, age and income of the deceased. Appellant also submitted that no compensation could be granted to the claimants as the death of the employee did not occur during the course of his employment, and there was no relationship of employee and employer between the parties.

04. Vide order dated 26.04.2017, the Commissioner framed the following issues for determination:-

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- (i) Whether the deceased 'Ramesh Sharma' falls within the definition of 'employee' as prescribed under the E.C Act, 1923? O.P.P
 - (ii) Whether the deceased met with an accident during and in the course of his employment for n/a No.1? O.P.P.
 - (iii) What was the age and wages of the deceased at the time of accident? O.P.P.
 - (iv) Relief? O.P.Parties.

05. After considering the evidence adduced by the parties, the Commissioner held that deceased was an employee in terms of Employees Compensation Act and decided the issue No. 1 in favour of the claimants. Issue No. 2 was also decided in favour of the claimants on the ground that the deceased met with an accident during the course of his employment in view of the law laid down in '*2018 LLR 708*',

'Delhi Tourism and Transportation Development Corporation and anr. vs. Suraj Mukhi & anr'.

06. While considering Issue No. 3, it held that the deceased was 55 years of age and wages of salesman would have been at least Rs.6,000/-, therefore, in terms of the said Act, awarded an amount of Rs. 4,06,680/- in favour of the claimants with 12% interest. Appellant-Insurer with whom the Insurance Policy was effective at the time of accident was thus directed to deposit the entire awarded amount.

07. Appellant has assailed the aforesaid award on the ground that the terms and conditions of the Policy, the risk cover under the Policy was for an employee working in indoors of the hotel. Since the deceased was working in canteen in Transit Camp which was not covered in the terms and conditions of the Insurance Policy, therefore, the award is perverse, therefore, employment of the deceased was not in terms of the Insurance Policy. This according to the appellant is a substantial question of law which arises for consideration.

08. Learned counsel for the respondents, has placed on record Workmen's Compensation Insurance-Other than collieries policy schedule, Policy No.105011/48/14/000314 from 14.03.2014 to mid-night of 13.03.2015. In terms of the said policy contract details, it states that the policy covers 1 skilled employees drawing salary @ 10000/- per month, 2 semiskilled employees drawing salary @ 5000/- per month as the employees working in canteen. In terms of the said policy, the employees working in the canteen are specifically covered. Therefore, this submission of the respondent, that it is for a hotel and not for the canteen, was rightly rejected. As the policy itself mentioned the address

as 123 Transit Camp Panama Chowk, Jammu and the policy was operative at the time of death of the deceased.

09. The other two substantial questions of law according to the appellant were regarding perverse finding on evidence and with regard to the competence of the Commissioner. However, nothing has been brought on record to show such an objection was taken and these issues were never struck by the court below, therefore, the same cannot be considered at this stage. In terms of section 30 of the Employees Compensation Act, an appeal filed is not to be considered as a regular appeal but in fact the only question is to be considered is, whether any substantial question of law is involved. Hon'ble the Supreme Court in '*(2019) 11 Supreme Court Cases 514*', '*North East Karnataka Road Transport Corporation v. Sujatha*' has held that:

“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 dependents 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.

10. Since all the issues raised are issues of fact and not of law and appeal lies only, if substantial question of law arises, therefore, this appeal is not maintainable as no substantial question of law arises in this appeal.

11. In view of the aforesaid, there is no substantial question of law raised in this appeal. Accordingly, there is no merit in this appeal and the same is, accordingly, **dismissed** alongwith connected IA(s), if any.

JAMMU
19th .05.2020
SUNIL-II



(Sindhu Sharma)
Judge

Whether the order is reportable : Yes/No.

Whether the order is speaking : Yes/No