

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Misc. Appeal No. 2980/2011

1. Chain Ram S/o Shri Sawa Gayari, aged about 41 years, R/o Medta, Tehsil Mavli, District Udaipur, Rajasthan.
2. Taku Bai W/o Chain Ram Gayari, aged about 39 years, R/o Medta, Tehsil mavli, District Udaipur, Rajasthan

----Appellants

Versus

1. Shambhu Singh S/o Khuman Singh, R/o Udai Sagar Chouraya, Manager, Udaipur.
2. The New India Assurance Company Limited through its Branch Manager, Udaipur.

----Respondents

For Appellant(s)	:	Mr. Pooshan
For Respondent(s)	:	Mr. D.K. Bhootra

HON'BLE MR. JUSTICE SANDEEP SHAH
Order

26/02/2026

1. The present civil miscellaneous appeal under Section 30 of the Workmen's Compensation Act, 1923 has been filed by appellants being aggrieved against the award dated 31.05.2011 passed by the learned Workmen's Compensation Commissioner, Udaipur in Claim Case No.W.C./F.(D.)-43/2010 "*Chain Ram & Anr., v. Shambhu Singh & Anr.*" whereby the claim of the appellants was dismissed on the ground that the appellants could not prove the existence of employee-employer relationship between the deceased - Onkar Gayari with the owner/employer - Shambhu Singh.
2. Facts of the case in brief are that a claim was filed by the claimant while asserting that the deceased - Onkar Gayari (son of

claimants) was working under the employment of respondent No.1-Shambhu Singh as a *Khalasi* in the truck in question and was earning Rs.6,000/- per month. It was further emphasized that the accident occurred during the course of employment and the deceased expired due to the accident of the truck in question. A reply to the claim was filed by the owner - Shambhu Singh who admitted the factum of ownership in Para Nos. 1 & 2 of his reply, however, denied the receipt of salary to the tune of Rs.6000/- and stated that the salary being paid was Rs.1,500/- per month. The Insurance Company on the other hand denied the factum of existence of employee-employer relationship as well as all other facts. The learned Commissioner thereafter framed 5 issues for adjudication which are as under:-

"प्रार्थीगण के क्लेम, अप्रार्थी संख्या-1 व 2 के जवाब दावे एवं प्रस्तुत दस्तावेजात के आधार पर दिनांक 24.01.11 को न्याय निर्णयार्थ निम्न नैसर्गिक विवाद्यक विरचित किए गए-

- 1.-**क्या मृतक स्व.श्री ऊंकार गायरी की मृत्यु अप्रार्थी संख्या-1 के नियोजन एवं निर्देशन में उसके वाहन ट्रक संख्या-आर.जे. 27-जी.6848 पर बतौर खलासी कार्य करते हुए दिनांक 15.04.10 को घटित दुर्घटना में कारित हुई?
- 2.-**वक्त दुर्घटना मृतक की आयु व वेतन क्या था?
- 3.-**क्या बीमा पॉलिसी की शर्तों का उल्लघन हुआ है और अप्रार्थी संख्या-2 के क्षतिपूर्ति व व्याज अदायगी के उत्तरदायित्व पर इसका क्या प्रभाव होगा?
- 4.-**क्या अधिनियम के तहत केवल प्रार्थीगण ही वक्त दुर्घटना मृतक पर आश्रित थे?
- 5.-**अनुतोष।"

3. In order to prove their case, the claimant Chain Ram (appellant No.1) examined himself as AW-1 and he was cross-examined by the learned counsel for the respondent. An affidavit of Taku Bai was also filed, however, she did not appear in the cross-examination and therefore the affidavit was not considered. The claimants also got exhibited 16 documents to prove their claim. On the other hand, on behalf of respondent No.1, the owner

was examined as DW-1 Shambhu Singh who was cross-examined by the claimant as well as learned counsel for the respondent No.2. Nobody appeared in witness box on behalf of the respondent-insurance company.

4. Learned Commissioner after completion of the evidence, proceeded to decide the issue No.1 as preliminary issue and the same was decided against the appellants while holding that the appellants could not prove the existence of employee-employer relationship on the fateful date 15.04.2010 and, therefore, the claim was rejected while without delving into the merits of the other issues.

5. Learned counsel for the appellants asserts that the appellants in so many words has stated the factum of the existence of relationship of employee-employer between the deceased - Onkar Gayari with Shambhu Singh in the claim. It was asserted that deceased was working as a *Khalasi* in the truck in question. He further asserts that the above-mentioned averment made in the claim was supported by the affidavit of Chain Ram (father of the deceased) and in his cross-examination also, he remained firm on the stand wherein multiple times he was asked with regard to the details of the said employment and he had specified that the deceased was employed at the truck of the employer-Shambhu Singh and was getting the salary from the employment. Learned counsel further submits that not only the claimants but the respondent-truck owner himself has admitted the factum of the employee-employer relationship between the deceased and the owner in his reply to the claim as well as in his affidavit. Not only this, during the course of cross-examination

also, Shambhu Singh has remained firm on the stand and has admitted the fact that "the deceased was employee in the vehicle in his ownership, as a *Khalasi*". Learned counsel further asserts that not only this, the documents produced by the claimant i.e. Exhibit Nos.1 to 6, mostly pertaining to the criminal case lodged post occurrence of the accident further fortified the factum of the deceased being employed as a *Khalasi* on the truck belonging to the respondent No.1-Shambhu Singh, which is clear from the FIR as well as the notice sent under Section 133 of the Motor Vehicles Act, 1988 by the police officials to the owner Shambhu Singh. He further asserts that even perusal of Exhibit A1 i.e. the notice sent by advocate Kamlesh Shrimali on behalf of the respondent-insurance company to the owner itself will reveal that the factum of the deceased being employed in the vehicle in question in the ownership of Shambhu Singh has been admitted by the insurance company also. He, therefore, submits that the finding given by the learned Commissioner are without any basis and is perverse which is not supported by anything available on record to contravene the factum of existence of employee-employer relationship between the deceased and the owner Shambhu Singh (respondent No.1).

6. Nobody appears for the owner - Shambhu Singh. However, Mr. D.K. Bhootra, learned counsel puts in appearance for the Insurance Company and opposes the submission made by the learned counsel for the appellants. He asserts that the learned Commissioner has rightly considered the evidence of the claimant wherein the claimant has not been able to specify in his affidavit as to which of the respondent was the owner and which of the respondent was the insurance company. He, therefore, asserts

that the Commissioner has rightly denied the claim of the claimants.

7. Having considered the arguments raised by both the sides and perusing the record, I am of the firm opinion that when the owner himself has admitted the factum of the existence of employee-employer relationship between the deceased and the owner and even the claimant as well as owner has remained firm on the stand during the course of cross-examination, there was no reason for the Commissioner to come to a different conclusion barely on the basis of the fact that in the affidavit filed for the purpose of examination-in-chief by the claimant-Chain Ram, the reference of the respondent more particularly the number of respondent was wrongly specified as respondent Nos.2 and 3. The insurance company had specifically cross-examined the claimant and he had remained firm with regard to the stand of the existence of employee-employer relationship. That apart, post the admission on the part of the owner with regard to the existence of employee-employer relationship on the fateful day and the death being caused during the course of employment, there was no requirement of better proof than admission itself and thus the finding of the learned Commissioner is apparently perverse and not supported by any evidence or document whatsoever.

8. Furthermore, the evidence of the appellant Chain Ram was very categorical with regard to the existence employee-employer relationship between the deceased and the respondent No.1 on the fateful day of the accident. To substantiate the claim, the copy of the FIR and ancillary documents pertaining to the criminal proceedings as well as the notice under Section 133 of the Motor

Vehicles Act, 1988 issued to the respondent No.1 during the criminal proceedings were also exhibited by the claimant which further fortified the accident having occurred on the fateful day of the truck in question which was in the ownership of the respondent No.1 and further wherein the deceased- Onkar Gayari was shown as working as a *Khalasi* on the truck in question. Not only this when the respondent- Insurance Company did not produce any evidence whatsoever to rebut the claim of ownership, more particularly, post admission of employer-employee relationship on the part of the owner/employer himself, there was no occasion available to the learned Commissioner to come to a different conclusion, as has been done in the present case while holding that there was no existence of employer-employee relationship between the deceased and the respondent No.1. Thus,

the finding upon the issue No.1 cannot be sustained whatsoever.

9. Normally, this Court would had adjudicated and passed the order on all the issues itself, more particularly when the impugned award is of the year 2011, however, since the award impugned has been passed based upon the preliminary issue only and there is no adjudication of other issues, it would be appropriate to remand the matter to the learned Workmen's Compensation Commissioner (Employees' Compensation Commissioner now) for adjudication on other issues also. However, this Court holds that the issue No.1 with regard to existence of employer-employee relationship on the fateful day between deceased Onkar Gayari and respondent No.1 stands decided in favour of the appellants while treating the deceased Onkar Gayari as being employed

under the respondent No.1 on the fateful day as *Khalasi* in the truck bearing No.RJ 27 Z 6848.

10. Thus, the impugned judgment and award dated 31.05.2011 passed by learned Workmen's Compensation Commissioner, Udaipur Claim Case No.W.C./F.(D.)-43/2010 "*Chain Ram & Anr., v. Shambhu Singh & Anr.*" is quashed and set aside. The matter is remanded to the Commissioner to adjudicate upon the other issues and to determine the case of the appellants while treating the issue No.1 being decided in their favour, at the earliest. The Commissioner shall issue notices to the parties and thereafter decide the case at the earliest, preferably within a period of six months from today.

11. Accordingly, the present Civil Misc. Appeal is allowed.

12. The record of the case be sent back forthwith.

(SANDEEP SHAH),J