

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 21.4.2015

FAO No. 579 of 1995 (O/M)

Sh. Sardara Ram

..... Appellant

Versus

Haryana State through Collector, Hisar and others Respondents

FAO No. 599 of 1995 (O/M)

National Insurance Company Limited

..... Appellant

Versus

Sh. Sardara Ram and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- None for the appellant in FAO 579 of 1995.

Mr. Neeraj Khanna, Advocate, for,
Mr. Deepak Suri, Advocate, for the appellant,
in FAO No. 599 of 1995.

None for respondent No. 1 in FAO No. 599 of 1995.

Mr. Sharad Kumar Yadav, Deputy A.G., Haryana,
for respondents No. 1 and 2 in FAO No. 579 of 1995 and
for respondents No. 2 and 3 in FAO No. 599 of 1995.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH, J. (ORAL)

CM No. 2174-CII of 1995

There is 11 days' delay in filing the present appeal.

For the reasons mentioned in the application, which is accompanied by affidavit of the appellant, the delay of 11 days in filing the present appeal is condoned.

Application is accordingly disposed of.

FAO No. 579 of 1995

This order will dispose of FAO No. 579 of 1995 titled as Sh. Sardara Ram Versus Haryana State through Collector, Hisar and others and FAO No. 599 of 1995 titled as National Insurance Company Limited Versus Sh. Sardara Ram and others, against the award dated 30.9.1994, passed by the Commissioner under the Workmen's Compensation Act, 1923 (in short 'Commissioner'), Hisar Circle.

Brief facts of the case are that Sardara Ram, driver of the bus (applicant/appellant) was on duty on 11.1.1992 from Sirsa to Delhi. He was plying bus No. HYT 9836. On reaching Hisar, he parked said bus in the booth of Delhi and was checking the tyre of the said bus, in the meanwhile, another bus of Fatehabad Depot came there and the driver of that bus, namely, Dalbir Singh asked the applicant (appellant herein) to park his bus at Ledo Bar. On his refusal, he (Dalbir Singh) hit his tiffin on the right side of the head of the applicant/appellant. The applicant/appellant became unconscious and was removed to Civil Hospital, Hisar, from where he was referred to Medical College, Rohtak, where he remained admitted from 12.1.1992 to 2.2.1992. A criminal case was also

registered against Dalbir Singh (driver). The applicant/appellant has now become 100% disabled due to head injuries and was subsequently retired from service having been found unfit to perform the duty of the driver. The Commissioner awarded a compensation of Rs. 81,535/- taking into consideration the salary of the applicant/appellant as Rs. 1,410/- per month, which is to be considered at Rs. 1,000/- per month for the purpose of calculation of the amount of compensation. Applicant/appellant was 47 years of age. The compensation was calculated after applying the relevant factor.

Against this order, the applicant/appellant as well as the insurance company has come up in appeal.

Today, none has appeared on behalf of the applicant/appellant Sardara Ram (driver).

I have considered the case.

It comes out that under the Workmen's Compensation Act, 1923 (in short 'the Workmen's Compensation Act'), the salary of the applicant/appellant was to be considered at Rs. 1,000/- per month for the purpose of calculating the compensation. As per Section 4-A of the Workmen's Compensation Act, as applicable at the said time, the calculation is to be made by taking 50% of the amount of the monthly wages multiplied by relevant factor. The relevant factor in the present case is 163.07. Keeping in view the fact that the age of the applicant/appellant was 47 years at that time.

Therefore, the compensation was rightly calculated by the Commissioner at Rs. 1,000/- per month and cannot be enhanced. Therefore, FAO No. 579 of 1995, filed by the applicant/appellant fails and the same is accordingly dismissed.

Now, taking up the case of the insurance company (FAO No. 599 of 1995), the insurance company has raised two points :-

- (i) the alleged accident is not covered under the insurance policy ; and
- (ii) the vehicle was not involved.

Therefore, the insurance company is not liable. The facts of the case would show that at the time of accident, the applicant/appellant was checking the tyre of the bus. He was attacked by a fellow driver, who asked him to move his bus and park the same at another place. On his refusal, the fellow driver hit his head with a tiffin. Under Section 3 of the Workmen's Compensation Act, the employer's liability to pay the compensation to the employee arises on account of accident arising out of and in the course of employment. The applicant/appellant was certainly on duty and the injury was suffered by him during the course of employment. However, the term 'accident' is not defined anywhere in the Workmen's Compensation Act. This Court in Meena and others Versus M/S Ram Transport and another, The Punjab Law Report, Vol. CLXII-(2011-2) 697, has observed that expression 'accident' means an untoward mishap which is not expected or desired.

The present occurrence is untoward mishap on account of performance of duty by the applicant/appellant. Therefore, it is covered within the definition of 'accident' as given in the Workmen's Compensation Act. So far as the involvement of the vehicle is concerned, the applicant/appellant was checking the tyre of his bus when he was attacked by a fellow driver. The checking of the tyre is very much part of the vehicle for its smooth running. Accordingly, the use of vehicle is there. In view of the foregoing discussion, I find no merit in FAO No. 599 of 1995, filed by the insurance company and the same is dismissed.

As a result of the foregoing discussion, both the appeals accordingly stand dismissed.

(KULDIP SINGH)
JUDGE

21.4.2015
sjks