

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

FAO No.3845 of 2012 (O&M)
and Cross Objections No.168-CII of 2014 (O&M)
Date of decision: 28.07.2015

New India Assurance Co. Ltd.

..... Appellant

versus

Shimla Devi and others

..... Respondents

CORAM: Hon'ble Mr. Justice Kuldip Singh

Present: Mr.R.C.Gupta, Advocate for the appellant
Mr.Dheeraj Narula, Advocate for respondent No.1 and 2/
Cross objectors
Mr.Sunil Saharan, Advocate for
Mr.Jitender Dhanda, Advocate for respondent No.3

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

Kuldip Singh, J.

This judgment will dispose of FAO No.3845 of 2012 filed by the Insurance Company and Cross Objections No.168-CII of 2014, filed by the claimants against order dated 28.3.2012, passed by the Commissioner, under Workmen's Compensation Act, Circle Sirsa.

Brief Facts of the case are that Shimla Devi and Om Parkash had filed an application against Surinder – respondent and New India Assurance Company Limited under the Workmen's Compensation Act, 1923, claiming compensation on account of death of Bansi Lal which occurred during the course of employment with

the respondent. It was stated that Bansilal was the eldest son of the applicants. He was working as a tractor driver on Tractor bearing registration No.RJ-18-R-5966 belonging to Surinder –respondent on the monthly wages of Rs.3500/-. It was claimed that on 4.12.2008 at about 8.30 PM Bansilal was returning along with Balbir son of Sultan, Vinod Kumar and Dalbir after completing field work of the respondent on the tractor trolley. The tractor was being driven by Balbir, who was working as a driver under the control of the respondent –Surinder. Bansilal was sitting on the right mudguard of the tractor along with Vinod Kumar. Due to sudden jerk, Bansilal fell down from the mudguard and was run over by the tyre of tractor trolley and died at the spot. The statement of applicant No.2 Om Parkash was recorded by the police on 5.12.2008. Proceedings under Section 174 Cr.P.C. were conducted by the police. Respondent employer had promised to compensate the applicants. However, later on he refused to do so.

Respondent No.1 (Surinder) employer in his written statement has stated that the deceased was not working on his Tractor bearing registration No.RJ-18-R-5966. It was claimed that the said tractor was insured with the respondent –insurance company. He denied relationship of employer and employee between him and Bansilal. Later on, on the application of the applicants, the insurance company was impleaded as party. Insurance company also stated that there was no relationship of employer and employee between the insured and the deceased. The tractor was being driven in contravention of the conditions of the

policy. The other legal objections were also taken. From the pleadings, following issues were framed:-

- 1. Whether the deceased was a workman within the meaning of the Act?*
- 2. Whether the accident arose out of and in the course of deceased's employment?*
- 3. Whether the amount of compensation being claimed is due or any part of that amount*
- 4. Whether the opposite party is liable to pay such compensation as is due*
- 5. Relief*

The Commissioner held that there was a relationship of employer and employee between the parties. It was held that in the insurance policy, it is evident that the premium for tractor trailer and WC employees was also paid, therefore, the insurance company was held liable to pay the compensation. Accordingly, compensation to the tune of Rs.4,88,364/- was awarded and 12% per annum interest was also allowed.

The insurance company has preferred the appeal against the said order, whereas the applicants have also filed the cross objections, seeking enhancement of compensation.

I have heard learned counsel for the parties and have carefully gone through the file.

First and foremost argument of learned counsel for the insurance company is that there was no relationship of employee and employer between the deceased and the employer- Surinder. It has

been argued that it has been claimed that Bansi Lal was a driver on the tractor. However, at the same time, he claimed that Balbir was also working as driver. It has been argued that there cannot be two drivers on one tractor. The fact that the deceased was sitting on the mudguard goes to show that had he been driver then he would have been driving the tractor and not sitting idle on the mudguard. At the time of accident, Balbir was driving the tractor and other two persons, namely, Vinod Kumar and Dalbir were also present on the said tractor. To prove her claim, the applicant had examined Vinod Kumar as PW1 and the applicant herself appeared as PW2. Vinod Kumar has supported the case of the claimants. Shimla Devi applicant has also stated her case. Surinder employer appeared as RW1 and claimed that he had engaged Balbir as driver on the tractor. He had purchased the tractor in question two years back. He denied that Bansi Lal was the driver. The witness was subjected to cross examination. Therefore, the facts and circumstances show that there cannot be two drivers on one tractor. Therefore, the statement of Surinder is to be accepted that the deceased was not working as driver.

However, the facts and circumstances show that even though Bansi Lal was not proved to be driver but he is proved to be the employee of Surinder as he was returning on the tractor trolley after working in the fields of his employer that is why he was sitting on the mudguard. This is not the case under the Motor Vehicles Act. Therefore, even for sitting on the mudguard, the legal heirs of Bansi Lal cannot be denied compensation. Policy clearly shows that

premium on account of WC was also paid. Therefore, the workers of the employer were also covered under the said policy. It being so, the insurance company was rightly held liable to pay the compensation.

So far as quantum is concerned, the Commissioner has taken the salary of the deceased to be the minimum wages i.e. Rs.3500/- and considering the age of the deceased to be 27 years, took the 50% of the admissible minimum wages and multiplied the same with relevant factor. There is no illegality in the same.

Learned counsel for the cross-objectors has argued that in this case, income was considered on the lower side. However, in the absence of any proof, the income was rightly taken to be minimum wages as existing in the year 2008. Learned counsel has further argued that in this case, penalty was not awarded. Keeping in view the fact that it was claimed that the deceased was a driver, which was proved to be incorrect and his employment as driver was denied, therefore, I do not find it a fit case where penalty should be imposed. However, I find that the Commissioner has allowed the interest from the date of order, however, the same has to be awarded from one month from the date of accident i.e. w.e.f. 5.1.2008 till realization. Same is accordingly allowed.

In view of the foregoing discussions, appeal stands dismissed. Cross objections are partly allowed to the above noted extent.

28.07.2015*gk***(Kuldip Singh)
Judge**