IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

FAO No.10328 of 2014 (O&M)
Date of decision: 29.05.2015

New India Assurance Co. Ltd.

….. Appellant

versus

Bimla Devi and others

……Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Pardeep Goyal, Advocate for the appellant
Mr.Vivek Goyal, Advocate for respondent Nos.1 and 2
None 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. (Oral)

This appeal has been filed against order dated 9.9.2014, passed by the Commissioner under the Employee's Compensation Act, 1923, Kaithal, vide which, the Commissioner awarded compensation to the tune of Rs.11,28,960/- in favour of the applicants and against respondent No.2 Insurance company, holding that only respondent No.2- insurance company is liable to pay the compensation.

Insurance company is not satisfied with the order and has come up in the present appeal. In the appeal, notice was issued to all the respondents. The applicants put in appearance. However, the employer Ashish- respondent No.3 did not appear despite notice.

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

It is necessary to reproduce brief facts of the case. According to the case of the petitioners before the lower Court, Balinder @ Bender son of Siria Ram was employed by Ashish – respondent No.3 as a driver on Bolero jeep bearing registration No.HR-67-6140 on the month salary of Rs.8000/-. On 9.6.2012, said Balinder along with Ishwar had gone for the work of respondent No.3 Ashish from Kalyat towards Mataur. At about 10.00 p.m., when they reached near Indane Gas Agency Matour Road Kalayat, Balinder @ Binder stopped the vehicle on the road side and went towards Gas Agency to fetch drinking water. There he was struck by the unknown vehicle and died at the spot. Ishwar son of Bhaga witnessed the said accident. An FIR No.81 dated 9.6.2012 under Sections 279/304A IPC was also registered.

Respondent No.3- Ashish employer in the written statement admitted the accident and also admitted that the deceased was employed by him. However, the insurance company denied its liability saying that the insurance policy was in the name of Istikar son of Nasirudin r/o Hali Colony Babli Road Panipat and that it is not liable to pay the compensation.

The learned Commissioner, after recording the evidence of both the parties, came to the conclusion that the insurance policy was not in the name of respondent No.1, rather it stood in the name of Istikar son of Nasirudin. However, the learned Commissioner took strength from the law laid down in the *2014 ACJ 1266 SC* and *2014 ACJ 818* to hold that even if the insurance policy is not transferred in the name of the transferee owner, the insurance company is still liable to pay the compensation.

First and foremost question arising for consideration before this Court is as to whether the transfer of vehicle by said Istikar son of Nasirudin in favour of Ashish – respondent No.3 is proved on file. To prove the said transfer, there is only a copy of the affidavit mark A on file which is dated 18.5.2012. The insurance policy was effective from 17.5.2012 to 16.5.2013, indicating that the affidavit is of the next day of the issuance of the policy. The accident occurred on 9.6.2012. Now, the question would arise whether mere production of photostat copy of the affidavit, without any other document of transfer, will prove that the Istikar son of Nasirudin had transferred the said Bolero Jeep in favour of Ashish – respondent No.3. I am of the view that merely unproved photostat copy of the affidavit will not prove the said transfer. For the transfer of the vehicle, some other documents are required to be executed and then the registering authority is to be informed about the said transfer. It is not even alleged that any other document was executed. It being so, the photostat copy of the affidavit mark A cannot be read into evidence and if the same is discarded, transfer of Bolero Jeep by Istikar son of Nasirudin in favour of Ashish – respondent No.3 is not proved. Once the transfer of the vehicle in favour of Ashish is not proved, the insurance company cannot held liable to re-imburse the insured. Unluckily in this case, the registered owner Istikar son of Nasirudin is not a party. Therefore, no order can be passed against him.

Learned counsel for the respondent Nos.1 and 2 has produced authorities *Mallamma (dead) by Lrs v. National Insurance Co. Ltd. and others, 2014(2)RCR (Civil) 617, M/s United India Insurance Co. Ltd. v. Manjit Kaur and others, 2000(3) RCR (Civil) 441, Manjit Kaur v. H.S.Atwal c/o Chandigarh Gas co., Chandigarh and others, 2013(2) RCR(Civil) 558, The National Insurance Company Ltd. v. Printo P.Jose and others, 2014(8) RCR (Civil) 165, M/s United India Insurance Co. Ltd. v. Manjit Kaur and others, 2000 (3) RCR (Civil) 441.* However, these authorities are regarding the deemed transfer of the insurance policy when the sale of the vehicle is proved, which is not so in the present case.

Since Ashish has admitted that deceased was his employee, therefore, the entire liability will now be shifted on Ashish – respondent No.3, who had not put in appearance before this Court despite service.

It being so, the present appeal is allowed. The impugned award is modified to the extent that in place of insurance company, Ashish – respondent No.3, who is the employer of the deceased, shall be liable to pay the entire compensation.

29.05.2015 **(Kuldip Singh)**
gk **Judge**