

136 **IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO No.1462 of 2016 (O&M)
Date of Decision: November 07, 2016

Magma HDI General Insurance Company Ltd.

.....Appellant

Versus

Pardeep Kumar and others

....Respondents

CORAM:- HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Pankaj Mehta, Advocate
 for the appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.5208-CII of 2016

Application is allowed and exemption from filing the typed copy of award dated 30.11.2015, is granted subject to all just exceptions.

CM No.5208-CII of 2016

Prayer in this application is for condonation of delay of 20 days in filing the appeal against the order dated 30.11.2016, passed by the Commissioner under The Employees Compensation Act, 2010, Karnal.

For the reasons mentioned in the application which is duly supported by an affidavit of Sh. Ved Vyas Tripathi, Manager Legal, Magma HDI General Insurance Co. Ltd., Magma House, 8 Sant Nagar East of Kailash New Delhi, 110065, delay of 20 days in filing the appeal stands condoned.

Application is allowed.

FAO No.1462 of 2016

Challenge in the present appeal is to the order dated 30.11.2015, passed by the Commissioner under Employees Compensation Act 2010 at Karnal, whereby the claim petition preferred by the wife of the deceased

Krishan Kumar, her two minor children and parents of the deceased has been

accepted by granting compensation amounting to ₹8,39,680/- alongwith interest @12% per annum from 13.06.2014, i.e. one month after the date of the accident, till the date of the order and in case the amount is not deposited within a period of 60 days from the date of the order, interest @ 12% per annum will be payable to them till actual realization.

It is the contention of learned counsel for the appellant that the respondents-claimants as well as the owner of the tractor have not produced the driving license of the deceased Krishan Kumar, which creates doubt with regard to the factum that he was indeed working as a driver on the tractor but rather was a simple employee of respondent No.1-Pardeep Kumar S/o Shri Rameshwar Dass. As a matter of fact, the employer did not step into the witness box and, therefore, the assertions of the Insurance Company that the deceased was not having a driving lincense and, therefore, was not entitled to drive the tractor and consequently the condition of the insurance company having been violated, no liability could have been imposed upon the appellant insurance company. He also asserts that doubt is created with regard to the employment of the deceased-Krishan Kumar as his wife when stepped into the witness box, in her cross-examination, stated that she was not knowing as to whether her husband was working as a driver with the owner-respondent No.1. He, thus, contends that the finding as recorded by the Commissioner in its order dated 30.11.2015 and the consequential liabilities as imposed upon the appellant, is not sustainable and deserves to be set aside.

I have considered the submissions made by counsel for the appellant and with his able assistance have gone through the impugned order but do not find myself in a position to accept the same.

There is a specific averment made in the claim petition with regard to the factum that Krishan Kumar-deceased was a qualified driver and was working as driver on Tractor bearing No.HR-05-AH-8915 owned by Pardeep Kumar S/o Shri Rameshwar Dass-respondent No.1 and that he died in an accident on 14.05.2014 during the course of the employment while on duty. The details with regard to the same have been mentioned in the affidavit filed by Smt. Mahindero Devi, who appeared as AW-1 and similarly, AW-2 Satpal who is brother of the deceased. The claimants have produced the following documents:-

- i) Copy of the DDR - Ex.A1
- ii) Copy of the postmortem report - Ex.A2
- iii) Copy of the Ration Card - Ex.A3
- iv) Copy of the application to Deputy Superintendent of Police
Assandh – Ex.A4
- v) Postal receipts - Ex.A5
- vi) Acknowledgment - Ex.A6

Nothing could be solicited so far as the cross-examination of AW-2 is concerned, who is in fact the brother of the deceased. A stray statement of Smt. Mahindero Devi, wife of the deceased, cannot be taken to totally washout the evidence which has been led by the claimants in support of the claim petition. The statement as also the cross-examination of a witness has to be seen as a whole and when seen from that perspective it cannot be said that she had anywhere denied the factum that her husband was not working as a driver with respondent No.1-Pardeep Kumar. Apart from that, in the reply to the claim petition which has been filed by Pardeep Kumar-employer, he has admitted the factum of the employment of Krishan Kumar with him as a driver on the tractor. There is no rebuttal on the part of respondent No.1 as he did not appear as a witness before the commissioner.

Keeping in view the fact that there is overwhelming evidence indicating that Krishan Kumar was employed with Pardeep Kumar, the owner of tractor No.HR-05-AH-8915 where he was employed as a driver, the findings as recorded by the Commissioner in its order dated 30.11.2015 cannot be interfered with.

It may be added here that an explanation has been given as to the non-production of the driving license by the claimants by asserting that the driving license has been lost at the time of the accident at the site. There is no evidence which has been brought on record by the appellant which would substantiate the assertion with regard to the factum that Krishan Kumar was not employed with respondent No.1, the owner of the tractor, or that he did not possess any driving license rather a positive assertion has been made by the claimants in their claim petition and also in the evidence that he was a qualified driver and was engaged as such by Pardeep Kumar, the owner of the tractor.

In view of the above, findings having been returned on the basis of proper appreciation of the pleadings and the evidence led by the parties, no interference in the impugned order is called for.

Resultantly, the present appeal stands dismissed.

CM No.5210-II of 2016

Since the main appeal stands dismissed, *CM No.5210-CII of 2016* praying for stay stands disposed of as infructuous.

November 07, 2016
ps-I

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No