

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

**C.M. NOS.11891-92 AND 25172 CII OF 2015 &
F.A.O. NO.3865 OF 2015**

DATE OF DECISION: NOVEMBER 09, 2016

The New India Assurance Company Limited, Rohtak

.....Appellant

VERSUS

Krishna Devi and others

....Respondents

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

Present: Mr. R. C. Gupta, Advocate,
for the appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

C.M. Nos.11891 and 25172 CII of 2015

Applications are allowed as prayed for subject to all just exceptions.

C.M. No.11892 CII of 2015 and F.A.O. No.3865 of 2015

Challenge in this appeal is to the order dated 07.04.2015 passed by the Commissioner, Employee's Compensation Act, Circle-I, Sonapat, whereby the application of respondent-claimant Nos.1 to 3 preferred under the Workmen's Compensation Act, 1923 (for short, "1923 Act"), has been allowed, holding them to be entitled to compensation amounting to ₹3,94,120/-, which has been directed to be deposited with the Commissioner within 30 days, failing which simple interest @ 12% per annum on the amount of compensation only from the date of order till realization has been passed.

It is the contention of learned counsel for the appellant that contradictory pleas have been taken by claimant-respondent Nos.1 to 3 as also respondent No.4-owner of the vehicle i.e. HR-11GA-0626 with regard to the nature of employment of deceased Jai Singh. In an earlier petition preferred under Section 163A of the Motor Vehicles Act, 1988 (for short, "1988 Act"), it was asserted that deceased Jai Singh was employed as a skilled labourer on the truck of Raj Pal son of Kali Ram, the owner of the vehicle whereas in the present claim petition, he has been stated to be employed as a Driver-cum-Mechanic. In the petition under Section 163A of 1988 Act, the owner of the vehicle had denied that Jai Singh was employed as a skilled labourer and, therefore, there are contradictory statements/pleadings on the part of the claimants-respondent Nos.1 to 3 and owner of the vehicle (respondent No.4). When the respondents have not approached the Court of the Commissioner with clean hands, no relief can be granted to them as has been claimed and granted vide impugned order. That apart, he states that it appears to be a connivance between the respondent-claimants and the owner of the vehicle to foist the responsibility on the Insurance Company as in the present case, the owner of the vehicle has admitted that deceased Jai Singh was employed as Driver-cum-Mechanic. On this basis, prayer has been made for setting-aside the impugned order by allowing the present appeal.

I have considered the submissions made by counsel for the appellant and with his able assistance have gone through the impugned order as also the documents which have been placed on record.

It is an admitted position that petition under Section 163A of 1988 Act was preferred by the respondent-claimants, which was dismissed

up to this Court vide order 15.01.2013, however, liberty was granted to the claimants to prefer a petition under the 1923 Act and prove the factum of employment of deceased Jai Singh with Raj Pal son of Kali Ram, the owner of the truck. On the basis of order dated 15.01.2013 passed by this Court, which has attained finality as the same was not challenged by any of the party, the claimants preferred the claim petition under the 1923 Act.

It appears that there are contradictory pleadings on the part of the claimants in the petition under Section 163A of 1988 Act preferred by them and the claim petition in the first flash, which is the subject matter of the present appeal. However, when the pleadings in detail are seen and evaluated, there does not appear to be contradictions for the reason that in a petition under Section 163A of 1988 Act, it was asserted that Jai Singh was employed as a skilled labourer, which would include a Driver-cum-Mechanic, as has been asserted in the present claim petition. It cannot be said that a Driver-cum-Mechanic is not a skilled labourer. The stand of respondent No.4-owner of the vehicle appears to be justified in the present case as in the earlier petition he had only denied about Jai Singh being a skilled labourer. However, with regard to he being employed as a Driver-cum-Mechanic, which is a specific post referred to in the present claim petition, the admission on the part of respondent No.4 cannot be said to be contradictory.

It has also been pointed out by counsel for the appellant that in the claim petition one Dalbir was shown to be the Driver of the truck, which factum was not disputed by the owner of the vehicle.

Even if that be so, there is no bar in having two drivers on a truck and in any case, the deceased was not an exclusive Driver, rather he

was holding both the responsibilities of Driver as also Mechanic, which assertion has been admitted by the owner of the vehicle and rightly so keeping in view the nature of duties and responsibilities, which were assigned to him and were being performed by deceased Jai Singh.

In view of the above, it cannot be said that there is active connivance between claimant-respondent Nos.1 to 3 and owner of the truck-respondent No.4.

Rest of the aspects with regard to the factual assertions are not in dispute and, therefore, the compensation, as awarded by the Commissioner vide impugned order dated 07.04.2015, cannot be faulted with.

Thus, finding no merit in the appeal, the same stands dismissed.

Since the main appeal stands dismissed, C.M. No.11892 CII of 2015 for staying the operation of the impugned order is also dismissed.

**November 09, 2016
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**(AUGUSTINE GEORGE MASIH)
JUDGE**

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No