

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.3877 of 2016 (O&M)

Date of Decision: 03.08.2016

The New India Assurance Company Limited

...Appellant

Vs.

Rambha Devi and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?
3. Whether the order is speaking/reasoned?

Present:- Mr. Suvir Dewan, Advocate
for the appellant.

Amol Rattan Singh, J (Oral)

Mr. Suvir Dewan, learned counsel for the appellant-insurance company has vehemently argued, as on the last date of hearing also, that in view of the bar contained in Section 53 of the Employees' State Insurance Act, 1948, a claim petition filed under any provision, including under Section 166 of the Motor Vehicles Act, 1988, would not be maintainable.

However, a perusal of the Award of the Tribunal shows that neither was the vehicle, with which the deceased met with an accident, owned by the deceaseds' employer, nor was he actually on duty when the accident occurred. He was stated to have been returning home at 12.10 a.m. after having completed his duty at his place of employment, when he unfortunately met with an accident.

Consequently, in the opinion of this Court, the bar under

Section 53 of the Act of 1948, would not apply, in view of the fact that other considerations apart, the accident in the first place did not take place in the course of employment, and also, it did not happen even during duty hours. Hence, simply because the deceased met with an accident while he was returning home in the middle of the night, he could not be deemed to have been on duty, and as such, the aforesaid bar would not apply.

The opinion of this Court is also fortified by a judgment of a coordinate Bench in the case of New India Assurance Co. Ltd. Vs. Urmila and others, (2016) 2 RCR (Civil) 480, in which case the deceased was peddling his bicycle while going to his place of work when the accident took place, in which he unfortunately lost his life.

The situation is no different in the present case; if at all, it is more “in favour” of the claimants, because the deceased had already finished his duty and was returning home.

No other issue has been raised.

Hence, finding no merit in the appeal, it is dismissed *in limine*, with no order as to costs.

August 03, 2016
vcgarg/dinesh

(AMOL RATTAN SINGH)
JUDGE