IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.4718 of 2007 (O&M)
Date of Decision.02.08.2017

Surender Singh ....Appellant

Vs

Balwant and others ....Respondents

Present: Mr. Kulvir Narwal, Advocate
for the appellant.

Mr. R.K. Girdhwal, Advocate
for respondent No.1.

Mr. R.N. Singal, Advocate
for the insurance company.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.(ORAL)

The appellant-owner has challenged the finding of the Tribunal rendered on issue No.2 by absolving the insurance company from payment of compensation.

Mr. Kulvir Narwal, learned counsel appearing on behalf of the appellant submits that the claimants, who are legal representatives of deceased-Mukesh preferred the claim petition claiming compensation on account of death of their son in roadside accident involving two trucks bearing registration No.HR-46A-7143 and HR-46A-1769, which incidentally were owned by the appellant. In fact, there was some defect in the engine of the other truck, which was being towed by the truck bearing registration No.HR-46A-7143. In this regard, FIR bearing No.237 dated 5.12.2003 under Sections 279, 304-A IPC was also registered with Police Station, Beri.

The claimants in paragraphs 4 and 5 of the claim petition stated that the occupation of the deceased was a labourer at brick kiln i.e. for the purpose of loading and unloading of trucks on thousand bricks contract (TBC) by giving name of employer i.e. Surender Singh s/o Priyavart, 747, Shivaji Colony, Rohtak.

The Tribunal has committed illegality and perversity in not adverting to the contents of the written statement in correct perspective as there has been specific pleading in paragraph 6, though the contents of para 6 of the claim petition have been denied but it was explained that the deceased was employed for the purpose of loading and unloading of bricks per thousand bricks, thus, there is misdirection and perversity. The insurance company being the indemnifier ought not to have been absolved owing to the fact that a sum of ₹150/- as premium towards six employees had been received, in essence, it was a Package Policy. In this regard, he refers to the typed copy insurance policy (Annexure A-1), thus, urges this Court for setting aside the finding of the Tribunal to the extent of fastening the liability upon the insurance company and not on the appellant-owner.

Mr. R.N. Singal, learned counsel appearing on behalf of the insurance company submits that finding of the Tribunal in paragraph 17 is perfectly legal and justified, for, once the appellant has denied the relationship of employer and employee, he cannot claim indemnification, thus, urges this Court for upholding the award passed by the Tribunal.

He further submits that the best evidence which the insurance company could have led was to examine the owner but he did not step into the witness box. In this regard, the insurance company has been prevented from leading material evidence, thus, adverse inference is liable to be drawn by upholding the findings under challenge.

I have heard learned counsel for the parties, appraised the paper book, much less, pleadings and of the view that the finding rendered by the MACT on aforementioned issue is not correct and liable to be modified. It would be apt to reproduce paragraph 4 and 5 of the claim petition and paragraph 6 of the written statement. The same read as under:-

"4. Occupation of the person deceased	*Labour at bricks kiln, loading & unloading of bricks on TBC*
5. *Name and address of the employer of the deceased*	*Surender Singh s/o Priyavart 747, Shavaji Colony, Rohtak.*

Para 6 of reply:-

6. That para no.6 of the petition as stated is wrong and denied. The deceased was not employed with respondent No.2 on monthly salary as alleged. In fact, he was working on contract basis for loading and unloading of bricks in the trucks on the basis of labour per thousand bricks loading and unloading."

A conjoint reading of the aforementioned pleadings leads to irresistible conclusion that owner explained the relationship of the deceased-Mukesh that he was working on contract basis for the purpose of loading and unloading of the bricks on TBC basis. The factum of premium of ₹150/- for six employees has not been controverted by the learned counsel appearing on behalf of the insurance company.

On the basis of the aforementioned pleadings and the factum of reception of premium, the question which is posed before this Court is whether the insurance company can be absolved. The answer in view of my aforementioned observations is in negative. Once the insurance company has already granted indemnification to the owner, therefore, non-appearance of the owner would not serve any purpose as payment of premium is an admitted fact as the pleadings are better than evidence.

For the reasons aforementioned, the finding of the Tribunal on issue No.2 of fastening the liability upon the owner to pay compensation to the legal heirs of the deceased is hereby modified, in essence, the insurance company is held liable to pay compensation being indemnifier. The appeal stands allowed in the aforementioned terms.

(AMIT RAWAL)
JUDGE

August 02, 2017
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No