

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 1588 of 2012 (O & M)

Date of decision: 16.02.2017

New India Assurance Company Ltd.

....Appellant(s)

Versus

Balwinder Kaur and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. D.K. Prajapati, Advocate,
Mr. R.S. Madan, Advocate,
for the appellant.

Mr. Raj Kapoor Malik, Advocate,
for respondents no. 1 to 6.

G.S.SANDHAWALIA, J. (Oral)

The present appeal has been filed by the insurance company challenging the order dated 30.11.2011 passed by the Commissioner under Section 30 of the Employee's Compensation Act, 1923. Vide the said order, a sum of ₹2,91,854/- has been awarded as compensation alongwith interest @ 7.5% from the filing of the application, which the insurance company was held liable to pay. In case of failure to deposit within 30 days, interest was liable to be recovered @ 12%.

Counsel for the appellant has vehemently submitted that the driver died while crossing the road and was hit by another vehicle and, therefore, he is not liable to be paid the compensation and secondly that there was no relationship of employer and employee and, therefore, the company was not liable.

A perusal of the paper book would go on to show that on 18.05.2017, deceased-Harnam Singh, who was employed as a driver with respondent No.7 alongwith his conductor were going from Cheeka to Ropar on Truck No. HR-37-4389. It was stated that when they had reached near

G.T. Road, Sirhind due to over heating, the deceased had stopped the truck on the left side and got down for getting water and was hit by an unknown vehicle. He had been referred to the PGI, Chandigarh and died on 19.05.2007 and an FIR No. 72 of the said date under Sections 279 and 304-A had also been registered. Resultantly, the amount was claimed by submitting that the salary was ₹4,000/- and no compensation had been paid.

It is pertinent to mention that respondent no. 7 herein, who was the owner of the vehicle, admitted the factum of the accident as well as the employment of Harnam Singh and that the vehicle was insured under the policy, which was valid. Thus, the stand of the insurance company that there was no relationship of employer-employee, in view of the fact that there is no denial by the employer is not acceptable. Admission is the best form of evidence and, therefore, the stance taken that there was no material on record to show the terms of employment is without any basis. The judgment relied upon in ***Oriental Insurance Company Ltd. vs. Jaswinder Singh, 2009 (1) RCR (Civil) 404*** is a case where the employer had denied the factum that the deceased was driver and no evidence had come on record in the affirmative, therefore, it is not applicable to the facts and circumstances of the case. It is to be noticed that the widow had stepped into the witness box and alongwith Gurpreet Singh AW-2, who was the cleaner on the vehicle and was also present when the accident took place. The post mortem report was duly placed on record alongwith the medical certificate as Ex.PB and the legal notice also alongwith the driving license. The insurance policy was placed on record as Ex.R1/A and alongwith R.C. of the truck. On the basis of the same and the admission of the employer, a finding has been recorded that Harnam Singh died in the road side accident

and since he was going to take water for the truck. Thus, it was arising out of and in the course of employment and resultantly, there is no reason to disbelieve the oral as well as documentary evidence led by the claimants.

Reliance of counsel for the appellant upon the judgment of the Apex Court in *Malikarjuna G. Hiremath vs. The Branch Manager, The Oriental Insurance Co. Ltd. and another, 2009 (13) SCC 405* also would not take him a long way since in that case, the driver was sitting on the stairs of the temple and fell into the pond and in such circumstances, the Apex Court held that it was not during the course of the employment that the accident had taken place. This Court in *FAO No. 287 of 2017, National Insurance Company Ltd. vs. Jagjit Singh @ Babloo and another* decided on 03.02.2017 has noticed the judgment in *'Partap Vs. The Panipat Co-operative Sugar Mills Ltd, Panipat and another' 2011 (2) PLR 631* to hold that once the employee had been attacked just a few minutes before joining, it could not be said there is no connection between the accident and the employment. In similar circumstances, Delhi High Court in *'ICICI Lombard General Insurance Co. Ltd. Vs. Sonia and others' 2014 (18) RCR (Civil) 833* held that a driver who was attacked while performing the duties and subsequently died would also amount to the accident having arisen out of and in course of employment. Resultantly, the arguments which are now put forward do not raise any substantial question of law and accordingly the appeal merits dismissal and it is ordered accordingly.

16.02.2017
shivani/sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No