

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO No.1894 of 2013 (O&M)

Date of decision: 21.04.2017

Oriental Insurance Company Ltd.

....Appellant

Versus

Kulwinder Kaur & others

...Respondents

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

Present: Mr.R.K.Bashamboo, Advocate, for the appellant.

Mr.Udit Mehndiratta, Advocate, for

Mr.Vikas Suri, Advocate, for respondents No.1 to 3.

G.S. SANDHAWALIA, J. (Oral)

The appellant-company is aggrieved against the order passed by the Commissioner dated 29.01.2013, whereby a sum of Rs.4,32,766/- was directed to be paid as compensation along with interest @ 9% per annum, from the date of accident, in view of the death of Jagir Singh, the employee.

A perusal of the record could go on to show that the claimants had filed the claim petition under the Employees Compensation Act, 1923 (for short, the 'Act'), on account of the fact that the deceased was employed as a driver on the oil tanker bearing registration No.HR-58-3393. It was pleaded that he was getting Rs.10,000/- per month as salary and Rs.100/- per day extra for meals, tea etc. His son, Harjit Singh, one of the claimants, was working as a cleaner on the said tanker. While coming back from Village Kaza, Distt. Kinnaur to Yamuna Nagar, they had met with an accident, leading to the death of Jagir Singh on 08.05.2011 and an FIR was also lodged at P.S. Pooh. Resultantly, the claim petition was filed, claiming compensation.

The employer admitted the factum of employment and

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submitted that there was a valid road permit and there was fitness of tanker and the licence (Ex.R1) was valid and it was held out that since the vehicle was insured, the appellant was liable to pay the amount. The claim was denied by the appellant on the ground that there was no employment, as such.

Keeping in view the statement of the widow and the fact that there was a postmortem report, duly exhibited along with the FIR (Exs.P2 & P3) and even notice had been served and in view of the admission of the relationship of employer-employee, the amount has been awarded. The licence was also placed on record as Ex.R1 by the claimants themselves apart from the fitness certificate, registration certificate and the national permit of the tanker and the insurance policy. The same were also exhibited in evidence as Exs.R2 to R5, respectively. The son of the deceased employee, Harjit Singh, who was the cleaner, also appeared as PW2, in support of the claim. Resultantly, a sum of Rs.5017/- per month was assessed as per minimum wages fixed by the State Government under the Minimum Wages Act, 1948 and the age was taken as 44 years, with the relevant factor of 172.52 and accordingly, the amount had been awarded.

Counsel for the appellant has argued that the vehicle was a tanker and therefore, the driving licence was to be issued as per the provisions of Section 14 of the Motor Vehicles Act, 1988, as there was requirement for endorsement on the driving licence with regard to dangerous or hazardous in nature of goods and therefore, the liability has

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been questioned by the Insurance Company.

However, a perusal of Ex.R1 shows that the driver was licenced to drive a heavy transport vehicle. The argument that the vehicle was being used for carrying haphazardous material, was never pleaded before the Commissioner, which would be clear from the written statement filed by the appellant-company and no such plea was taken.

Under Section 30 of the Act, only substantial questions of law are to be adjudicated. In the absence of any pleadings having been raised and the other side having not been given an opportunity to rebut the same, the said argument cannot be taken into consideration. Had this argument been raised before the Commissioner, as such, the employer would have got opportunity to place sufficient material on record to rebut the same. Once the Insurance Company chose not to plead so, it cannot be allowed to raise, for the first time, the said issue, before this Court. Resultantly, there is no merit in the present appeal and the same is, hereby, dismissed.

21.04.2017

Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*