

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

FAO No.287 of 2017 (O&M)

Decided on : 03.02.2017

National Insurance Company Limited

... Appellant

Versus

Jagjit Singh @ Babloo and another

... Respondents

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

Present : Mr. D.P. Gupta, Advocate
for the appellant.

G.S. Sandhawalia, J.

CM-965-CII-2017

The present application has been filed for condoning the delay of 233 days in filing the present appeal.

In view of the averments made in the application and duly supported by affidavit, the delay of 233 days in filing the present appeal is condoned.

CM stands disposed of.

Main case

The present appeal has been filed under Section 30 of the Employees Compensation Act, 1923 challenging the order passed by the Commissioner dated 09.02.2016 whereby a sum of ₹4,98,988/- was held payable by the Insurance Company within one month from the date of the order. On the failure of the same, the Insurance Company was liable to pay interest @ 12% per annum, after one month from the date of this order till realization was directed. The claimant was also held entitled to the interest @ 12% per annum on the abovesaid amount from after one month of the

date of accident i.e. 01.11.2010 by the employer within one month from the date of the order.

The order passed was on the basis that the claimant was working as a driver with one Shri Prince Chopra on his Car bearing No.HR-02W-9622 @ ₹4,500/- per month besides allowance of ₹100/- per day. On the day of the accident the deceased owner had gone to Ambala to fetch Anshul Chopra his nephew who was coming from Jalandhar. The claimant was asked to sit in the car, whereas the owner took over the wheel and met with an accident in which both of them received multiple injuries alongwith Anshul Chopra. He had been referred to the General Medical College and Hospital, Sector 32, Chandigarh and incurred ₹2 lakhs on his treatment. The petitioner had become 100% disabled due to the accident, which had arisen out of and in the course of his employment with the said employer who had been impleaded through his widow. Resultantly, he had claimed ₹12 lakhs compensation alongwith penalty.

The appellant-company took the plea that it was not liable on the terms and conditions of the Insurance Company as the company had already paid ₹2 lakhs to the driver and owner as per the terms and condition of the Insurance Policy and the claim was bad for mis-joinder and non-joinder. It was admitted by the wife of the employee that the claimant was employed as a driver and the car was comprehensively insured with the Insurance Company and that he had suffered 100% disability, but the liability was of the company. The following issues

were framed by the Commissioner:-

- “1) Whether the applicant was the employee of the respondents at the time of accident as alleged? OPA*
- 2) Whether the Jagjit Singh injured due to the injuries sustained by him while working under the employment of the respondent as alleged? OPA*
- 3) Whether the applicant is entitled to the amount claimed, if so with what details?*
- 4) Whether the claim petition is not maintainable under the provision of Employee Compensation Act as alleged in the preliminary objections? OPR*
- 5) Relief.”*

The evidence in the form of Shri Tirlok Nath, Restorer of the Government Medical College and Hospital, Sector 32, Chandigarh who was appeared as AW-1 was taken into account that reference had been made by Gaba Hospital, Yamuna Nagar and the claimant had been admitted on 08.11.2010 in a road side accident and had been discharged on 06.12.2010. The Medical Officer, Dr. Vandana had appeared as AW-3 to opine that due to the spinal injuries, both legs of the claimant had not been working and he had been referred to PGI. FIR No.96 dated 09.11.2010 registered at Police Station Sadar, Jagadhari was proved as Ex.AW4/A by AW-4 Balwan Singh, Constable alongwith the copy of the DDR dated 01.11.2010 as Ex.AW4/B Two more witnesses were also examined for proving the medical expenses apart from Dr. Dipender Singh Sandhu who had appeared as AW-7 to depose that it was a case of “Vertebra Fracture Paraplegia” and there was non-functioning of both legs and non-functioning of the latrine and urine veins and also proved

the disability certificate as Ex.AW7/A. The claimant himself had appeared as AW-2 in support of his case.

The Insurance Company examined Shri Harish Arora, Assistant Manager as RW-1 to prove that there was a valid insurance for the period in the accident which had taken place and more than ₹2 lakhs was paid to the legal heirs of the deceased Prince Chopra as he himself was driving the car and also placed on record the letter written by the wife of deceased Prince Chopra in respect of the accident.

Resultantly, the issues regarding the factum of the employee and employer relationship and issue to the effect that the employer had gone to bring his nephew from Ambala and the employee was accompanying the owner was decided in favour of the claimant and also that he did not sustain injuries which had arisen out of and in his employment with the husband of respondent No.1.

Accordingly, it was held that the minimum wages were of ₹4328.21 and the age of the claimant being 37 years, the amount of compensation was quantified ₹4,98,988/-. It was noticed that the appellant could not object to the maintainability as such as to how the claim was not maintainable under the Employee's Compensation Act, 1923 and as per the copy of online payment approval advice dated 16.11.2011 as policy Ex.RW-1/A the liability of the Insurance Company was there to pay the amount of compensation. It was held that as per sub-Clause D of the policy, the legal liability to paid a driver @ ₹25/- had

been charged and in case the death of the paid driver took place compensation had to be paid.

Thus, the following substantial question of law arises for consideration “that whether a driver who is sitting in the vehicle but not driving and suffers injuries would not be considered entitled to the benefits of the Act, since the accident did not arise out of and during the course of his employment.”

Counsel for the appellant has accordingly contended that since the driver was not performing his terms of employment and was not on the wheel and was only a passenger and was only accompanying the employer, therefore, the accident did not arise out of and during the course of his employment.

The said argument is not liable to be accepted. The employer might take his driver alongwith him for utilization at any subsequent point of time during the course of a journey and to seek his help at any other point of time for parking help in case of a breakdown etc. and merely because at the time of the accident, he was not on the wheel as such would not mean that he was not present during the course of employment. As noticed an additional amount of ₹25 had been charged as per sub-Clause D of the policy. In such circumstances the arguments raised that the disability suffered is not in the course of employment, since the driver was only accompanying the employer cannot be accepted. It was open to the employer to utilize the services of his employee as per

his convenience on the vehicle concerned.

As noticed he had gone to pick his nephew from Railway Station, Ambala necessarily at that point of time the driver would be given the charge of the vehicle for the purposes of parking etc. The driver being under the control of his master would thus be working and thus would be liable to claim compensation as caused to him as an employee, on account of accident which had arisen out of and in course of his employment which is defined under Section 3 of the Act.

In similar circumstances, the Commissioner in '**Partap Vs. The Panipat Co-operative Sugar Mills Ltd, Panipat and another**' 2011 (2) PLR 631 had held that the employee who had been murdered 15 minutes prior to the joining his duty was held to be not entitled for compensation under the Workmen Compensation Act, 1923. This Court set aside the order of the Commissioner and held 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. Therefore, the argument raised by the Insurance Company that the death took place not on account of driving the vehicle and, therefore, did not arise out of and

in the course of employment was accordingly rejected. The relevant observations read as under:-

“13. The second argument urged on behalf of the appellant also has no merit because the expression arising out of and in the course of employment' is wide enough for taking into its fold a death of employee who is attacked while performing the duties of a driver. In the present case, the applicants before the Commissioner have sufficiently discharged their onus of proof by filing of their own affidavits as also the documents in the criminal case including the FIR which was registered that deceased Rakesh Yadav was in fact attacked by the accused Vikram and his two sons which caused serious injuries to the deceased Rakesh Yadav who was declared as brought dead at G.T.B hospital. Therefore, the accident in this case, being the murder of the deceased, clearly arises out of and in the course of employment. The expression arising out of and in the course of employment' does not mean that there has to be death only because of driving of the vehicle. Accordingly, I reject the second argument which is urged on behalf of the insurance company.

Resultantly, this Court is of the opinion that the findings which have been recorded as such in the order impugned would not warrant interference as such. Accordingly, the present appeal is dismissed.

FEBRUARY 03, 2017
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No