

FAO No. 1560 of 1995 (O&M)

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

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FAO No. 1560 of 1995 (O&M)
Date of Decision : 6.3.2018

Gaj Raj

....Appellant

VS

Smt. Saroj and others

....Respondents

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI

Present: None for the appellant.

Mr. Vaibhav Sharma, Advocate for respondent No. 4.

Mr. Shubham Jain, Advocate for respondent No. 5.

Mr. Neeraj Khanna, Advocate for respondent No. 6.

AJAY TEWARI, J.(Oral)

This appeal has been filed against the award dated 23.3.1995 passed by the Commissioner for the death of Nain Singh under the Workmen's compensation Act, 1923 awarded an amount Rs. 1,26,035/-.

Brief facts of the case are that the appellant was a contractor for the respondent No.4. The respondent No.4 is a tractor manufacturing company and it had various dealers, one of them was respondent No.5. As mentioned above, it was the job of the appellant to arrange for drivers to deliver tractors from the respondent No.4 to various dealers including the respondent No.5. As part of that business relationship, he had arranged for the deceased-Nain Singh to drive a newly sold tractor to the respondent No.5. It was during that delivery that an accident occurred and Nain Singh died as a result thereof. His legal representatives filed a claim petition which having been allowed,

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the appellant is before this Court.

The limited grievance raised by the appellant is that he is not liable to pay the penalty which has been foisted upon him and the respondent No.4 jointly. As per the appellant it was the respondent No.5 who is liable to pay the penalty amount. None has appeared on behalf of the appellant but from the record it transpires that respondent No.5 was ex parte before the commissioner. However, the appellant had appeared and had stated that the payment for the delivery used to be made to the drivers directly by the respondent No.5. This statement has gone rebutted (since as mentioned above respondent No.5 was ex parte before the Commissioner).

In the circumstances, this unrebutted statement could not have been ignored by the Commissioner and therefore, he returned a wrong finding that the appellant was the employer of the deceased since the facts which have come before the Court now show instead of appellant the employer would only be the respondent No. 5.

Consequently, the appeal is allowed. It is declared that the liability which has been foisted on the appellant considering him to be the employer has to be set aside and would fall upon the respondent No. 5.

Since the main case has been decided, the pending C.M, if any, also stand disposed of.

6.3.2018
anuradha

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No