

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

400 & 407 (2 cases)

Date of Decision : 14.03.2018

1) FAO No.1358 of 1996 (O&M)

National Insurance Company Ltd.

..... Appellant

Versus

Richhpal Kaur and others

..... Respondents

2) FAO No.1494 of 1996 (O&M)

Richhpal Kaur and others

..... Appellants

Versus

Shri Balbir Singh and another

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Suman Jain, Advocate
for the appellant-insurance company (in FAO-1358-1996)
for the respondent No.2 (in FAO-1494-1996)

Mr. Sagar Aggarwal, Advocate
for Mr. Ashit Malik, Advocate
for the appellants-claimants (in FAO-1494-1996)
for respondents No.1 to 4 (in FAO-1358-1996)

None for respondent No.5-employer (in FAO-1358-1996)
None for respondent No.1 (in FAO-1494-1996)

AJAY TEWARI, J. (Oral)

These are two appeals. The appeal bearing FAO No.1358 of 1996 has been filed by the insurance company against the order dated 30.11.1995 passed by the Commissioner, Karnal under the Workmen's

Compensation Act, 1923 granting compensation on account of death of Bhupinder Singh who was stated to be a tractor driver while appeal bearing FAO No.1494 of 1996 has been filed by the claimants claiming penalty as provided under Section 4(3) of the Workmen's Compensation Act. Both the appeals are being decided by this common order and since only a limited issue is involved in the present appeals further detailed reference to the facts would not be necessary.

The first argument raised by the counsel for the insurance company is that the claimants had not been able to prove that Bhupinder Singh was the employee of respondent-employer because no written contract of appointment or any other evidence was placed on record. In my considered opinion, this argument must fail. It is well known that such kind of jobs are seldom accompanied with a written contract of appointment. Had the respondent-employer appeared in the witness box and was cross-examined on his claim that Bhupinder Singh was not his employee, something may have been said, but in his absence, the insurance company cannot be heard to say that the claimants were not able to prove that Bhupinder Singh was an employee of respondent-employer. This argument is therefore rejected.

The second argument of counsel for the insurance company is that the number of vehicle was not mentioned on the policy. Therefore, the deceased was not covered by the said policy. This argument also must fail since the chassis and engine numbers were mentioned on the policy.

Counsel for the claimants has argued that the Commissioner erred while not imposing any penalty in terms of Section 4(3) of the Workmen's Compensation Act. I find this to be indeed so. As regards

penalty, the Supreme Court in the matter of ***Oriental Insurance Co. Ltd. vs. Siby George and Others***, 2012(12) SCC 540, has held that the liability to pay penalty is on the employer.

Consequently, the appeal of the insurance company bearing FAO No.1358 of 1996 is dismissed and the appeal of the claimants bearing FAO No.1494 of 1996 is allowed and penalty is assessed at 50% of the awarded amount. Further it is held that the liability to pay penalty is on the respondent-employer.

Since the main cases have been decided, the pending civil miscellaneous application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

March 14, 2018
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Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No