

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

213

FAO No.1852 of 2013 (O&M)

Date of Decision : 21.03.2018

National Insurance Company Ltd.

..... Appellant

Versus

Rupinder Kaur and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present :- Mr. R.C.Kapoor, Advocate
for the appellant.

Mr. Vikram Bali, Advocate
for respondents No.1 and 2.

AJAY TEWARI, J. (Oral)

This appeal has been filed against the award dated 29.01.2013 passed by the Commissioner, Patiala under the Employees' Compensation Act, 1923 awarding compensation of Rs.3,94,120/-.

On 11.04.2013 the following contention was noticed :-

“Learned counsel for the appellant inter alia contends that nothing has been mentioned in the FIR about the relationship of employer and employee. Even the widow of deceased, while appearing as AW1 before learned Commissioner, had denied the employment and payment of any salary to the deceased-Avtar Singh. Learned counsel further submits that as per post-mortem report, the deceased was in drunken condition. Learned counsel also submits that employment has not been proved by leading any evidence and moreover, it was a two seater jeep and the employer is in close relation of the deceased.”

As regards the first argument, counsel for respondents No.1 and 2 has pointed out that a wrong statement was made before this Court because the widow had reiterated the employment and salary and on the basis of this wrong statement, widow and the children had to suffer because the disbursement of the award has been stayed.

Learned counsel for the appellant is not in a position to show that AW-1 had denied the employment and payment of salary.

In the circumstances, it has to be held that a wrong statement was made before the Court on 11.04.2013. I shall take this matter up when I decide the issue of relief. Learned counsel for respondents No.1 and 2 states that the argument that the deceased was in a drunken condition is also not correct because merely by smell it can not be concluded that the person has imbibed liquor beyond the legally permissible quantity. As regards the employment, as per learned counsel for the respondents No.1 and 2, it is not uncommon that private persons in India are employed Drivers etc. without any written contract of appointment. Learned counsel for the appellant is not in a position to deny these facts.

As per learned counsel for the claimants the allegation that it was a two seater jeep or that the deceased was the first cousin of the employer can also not be taken to be conclusive evidence that the employment has not been proved in the face of the unflinching testimony of the claimants. Learned counsel for the appellant has then argued that the deceased allegedly had two licences and the reports of both the transport authorities was that the licences were fake.

Learned counsel for the respondents No.1 and 2 has argued that by merely placing on record the report it can not be proved and that somebody has to come and prove the same.

I find merit in this argument. In the circumstances, the appeal has to be dismissed. As regards the issue that a wrong statement was made when the appeal was admitted and thereby stay was obtained it is clarified that the Insurance Company would pay 2% extra interest as costs from the period one month after the date of the incident till the disbursal.

Appeal stands dismissed.

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

(AJAY TEWARI)
JUDGE

21.03.2018
Pooja sharma-I

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No