

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

FAO No.4014 of 2014 (O&M)

Date of decision: 23.10.2018

Maya Devi and others

... Appellants

Versus

Sanjeev Kumar

... Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. H.S. Sullar, Advocate
for the appellants.

REKHA MITTAL, J. (Oral)

The present appeal directs challenge against order dated 13.06.2012 passed by the Commissioner under Employees Compensation Act, 1923 whereby application filed by the claimants for grant of compensation on account of death of Rakesh Kumar has been dismissed.

The facts relevant for disposal of present appeal are that as per case of the appellants, Rakesh Kumar was working as a driver on Mahindra Pick Up bearing No.HR-37-B-7454 at salary of Rs.4000/- per month with the respondent. On 23.06.2007, the respondent directed him (Rakesh Kumar) to bring malba from the NCC Public School to put the same in a pit in the saw mill of the respondent. The deceased went to school on a rehri and found no malba in the ground of the school. On the roof of the school, a pipe was lying and the deceased picked up the pipe for placing the same in its place. The pipe struck against electric wire hanging over the school

and the deceased was electrocuted and received multiple burn injuries. He was taken to Civil Hospital and later shifted to Government Medical College and Hospital, Sector 32, Chandigarh for treatment but he died in the hospital on 27.06.2007. The deceased was 40 years old and he died due to an accident which took place during course of his employment with the respondent.

The respondent filed reply and in turn denied relationship of employer and employee between them. The deceased was doing his own business of keeping buffaloes and selling milk. The deceased had never worked with him as a driver.

The controversy between the parties led to framing of the following issues:-

1. Whether there is a relationship of employer and employee between the deceased Sh. Rakesh Kumar and the respondent? OPA
2. Whether the deceased Sh. Rakesh Kumar has died due to an accident which has taken place during the course of his employment with the respondent? OPA
3. Whether the applicants are entitled for the amount of compensation being dependents of the deceased Sh. Rakesh Kumar? If so, how much amount? OPA.
4. Relief.

To prove their case, one of the appellants Smt. Maya Devi appeared in the witness box and they examined Desh Raj AW2 and Shiv Chand AW3.

To rebut evidence of the appellants, the respondent appeared in

the witness box and examined R.D. Dhiman RW2. The appellants examined Sh. Mahesh Kumar, ASI, Police Station Kurukshetra AW4 in rebuttal.

Having heard counsel for the parties in the light of materials on record, the Commissioner answered issues No.1 and 2, taken up jointly against the appellants and resultantly the application for compensation was dismissed without deciding issue No.3.

Counsel for the appellants would urge that the deceased was working as a driver with the respondent at Mahindra Pick up bearing No.HR-37-B-7454. The respondent deputed him to bring malba from premises of NCC Public School situated just opposite to his saw mill and as the deceased sustained injuries while performing his duties on directions issued by his employer, the respondent has wrongly been exonerated of liability to pay compensation by negating plea of the appellants that there was no relationship of employer and employee between the respondent and Rakesh Kumar (since deceased). It is further argued that proceedings before the Commissioner are summary in nature and do not admit strict principles of law of evidence to be applied. According to counsel, the mere fact that the appellants did not produce the driving licence possessed by the deceased is not sufficient to reject their claim that the deceased was working as a driver with respondent and had sustained injuries during the course of employment.

I have heard counsel for the appellants, perused the paper book and records.

The plea of appellants that the deceased was working as a driver with the respondent on his Mahindra Pick up bearing No.HR-37-B-7454 does not find corroboration from any documentary evidence. The appellants have failed to produce on record copy of driving licence, if any, possessed by the deceased. The Commissioner, on a detailed consideration of facts elicited in testimonies of the witnesses examined by the claimants and respondent had held that the appellants could not prove relationship of employer and employee between Rakesh Kumar and the respondent. Counsel for the appellants has failed to convince this Court that findings of the Commissioner on this aspect suffer from an error much less illegality that would call for intervention.

This apart, as per case of the appellants, the deceased was employed as a driver with the respondent. He was deputed to bring malba from the premises of NCC Public School. There is no evidence available on record that respondent was ever authorised by NCC Public School to remove malba from their premises. It is not plea of appellants that the deceased was directed to go on roof of the school and to collect malba from there. On the contrary, the plea is that the deceased did not find any malba in the ground of school. If the deceased on his own had climbed roof of the school and picked up a pipe lying there for placing it at a proper place and the pipe struck against electric wire resulting in electrocution, it is difficult to uphold plea of the claimants that injuries sustained by the deceased have a remote nexus with the course of his employment, in order to fasten

liability to pay compensation upon the respondent. Examined from any angle, I do not find an error much less perversity in the impugned order warranting intervention.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. As the appeal has been decided on merits, application for condonation of delay is of academic relevance only.

23.10.2018
ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:	Yes / No
Whether reportable:	Yes / No