In the High Court of Punjab and Haryana at Chandigarh

FAO No. 2804 of 2015(O&M)
Date of Decision:10.12.2018

National Insurance Company Limited

---Appellant

vs.

Dewan Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr.R.C.Gupta, Advocate
for the appellant
Mr. Tejinder Joshi, Advocate
for respondent No. 3 and 4
Mr. Jagdish Manchanda, Advocate
for respondent No. 5

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Rekha Mittal, J.

CM No. 8695-CII of 2015

Prayer in this application is for condoning delay of 49 days in filing the appeal.

In view of averments made in the application and arguments advanced by counsel for the applicant, application is allowed and delay of 49 days in filing the appeal stands condoned.

Disposed of accordingly.

FAO No. 2804 of 2015

The present appeal has been directed against order dated

28.11.2014 passed by the Commissioner under the Employee's Compensation Act, 1923 (in short "the Act") whereby compensation has been awarded on account of death of Mohinder Singh in an application filed by his unfortunate parents.

The plea of claimants is that Mohinder Singh aged about 25 years was employed as Roller Operator for the last six months by the respondents at a salary of Rs. 9000/- per month plus residential accommodation and food. The respondents purchased policy bearing No.361300/41/11/860000081 for the period 25.1.2012 to 24.7.2012. Mohinder Singh met with an accident on 21.6.2012 while performing duty on the Roller as he suddenly fell from the Roller and died at the spot. The incident was witnessed by Manoj Kumar, Anand Tyagi and Md. Sirazuddin. The applicants prayed for compensation to the tune of Rs. 15,00,000/- with interest @ 12% per annum from the date of accident till realization and penalty of Rs. 7,50,000/-.

The Commissioner, on a detailed consideration of materials on record and in the light of rival submissions made by counsel for the parties answered issues No. 1 to 4 in favour of the claimants/applicants and they were awarded compensation of Rs. 8,67,640/- which was held to be joint and several liability of respondents No. 1 to 4 therein being the principal employer, employer and insurer.

Counsel for the insurance company has assailed the impugned order primarily on three counts. The first submission made by counsel is that the roller on which Mohinder Singh was statedly working as operator was not insured with the appellant-insurance company but a policy of insurance under the Act was obtained by M/s Kanwar Enterprises Private Limited respondent No. 5. The second submission made by counsel is that Mohinder Singh did not possess a valid licence to drive the Roller as his licence has been proved to be fake, in view of evidence led by the insurance company, therefore, the insurance company is not liable to pay compensation.

Another submission made by counsel is that interest @ 12% per annum has been allowed from the date of accident in place of 30 days after expiry of date of accident, therefore, the award is liable to be modified accordingly.

Counsel for different sets of respondents have supported findings of the Commissioner awarding compensation qua death of Mohinder Singh, to be paid jointly and severally by the principal employer, employer and insurer.

Indisputably, respondent No. 5 obtained policy of insurance under the Act and had insured the risk of injury or death of skilled, semi skilled and unskilled workers. Counsel has not disputed factual findings that Mohinder Singh was working as driver with M/s Kanwar Enterprises Private Limited/insured. The deceased being a roller operator would fall within the category of skilled worker and as such injury or death of Mohinder Singh would be covered within the scope of policy obtained by respondent No. 5 and issued by the appellant insurance company. In this view of the matter, contention raised by the insurance company that the insurance policy does not cover death of Mohinder Singh, is patently misconceived and accordingly rejected.

The second contention with regard to driving licence of Mohinder Singh, as per the settled position in law, the policy for deciding liability under the Act is to be construed strictly. Counsel for the insurance company has failed to point out any such condition in the policy whereby injury or death of a skilled worker particularly that of a driver would not be covered in case he is not holding a valid licence. In this view of the matter, insurance company cannot derive any advantage to its contention from the factum that licence possessed by Mohinder Singh was found to be fake.

With regard to payment of interest, plea raised by the insurance company is meritorious when examined in the light of relevant provisions of Section 4(A)(3)(a) of the Act as interest @ 12% is payable 30 days after the accident till its realization. Accordingly, the order impugned is modified to the effect that simple interest @ 12% per annum on compensation amount of Rs. 8,67,640/- shall be payable from 30 days after the accident till its actual realization.

For the foregoing reasons, the appeal stands disposed of. However, the insurance company would be at liberty to file an appropriate application in case it finds that the claimants have obtained compensation qua death of Mohinder Singh under any other statute.

(Rekha Mittal)
Judge

10.12.2018
paramjit

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