

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

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**FAO-2393-2018 (O&M)
Date of Decision : 2.5.2018**

United India Insurance Company Limited

..... Appellant

Versus

Santosh and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Varun Mittal, Advocate for
Mr. Vikas Mohan Gupta, Advocate
for the appellant.

AJAY TEWARI, J. (Oral)

This appeal has been filed against the award dated 27.2.2018 of the Commissioner passed under the Employees' Compensation Act, 1923 awarding compensation for the death of Satbir.

The case of the claimants was that deceased was employed as cleaner/helper with the respondent No.4. While the truck was on a trip to Rajasthan it met with an accident near Sirohi resulting in the death of the deceased. The respondent No.4 was duly served but chose not to appear. In the evidence the respondent No.1-claimant appeared and testified about the employment of her husband. Her testimony coupled with the death of a person in the truck persuaded the Commissioner about the employment and compensation was awarded.

Counsel for the appellant-Insurance company has argued that employment has not been proved. As per him, it was the duty of the claimants to produce on record either some document of employment or at least to examine the respondent No.4 because in the absence of any document he was the only person who could certify about the employment.

In my opinion, the argument is misconceived. No doubt if the respondents No. 1 to 3 had produced a written contract of employment and if the respondent No.4 had appeared and had also testified that the deceased was an employee and (may be) produced some other documentary evidence to that effect, the case of the respondents would have been proved beyond reasonable doubt but it cannot be forgotten that the standard of proof required under the Workmen's Compensation Act is not that which is required under criminal trial that is to prove a fact beyond reasonable doubt, but the Commissioner has to weigh the preponderance of probability. In the present case, it is not disputed by the counsel for the appellant that the death took place in the accident in Sirohi. This itself gave rise to a presumption that the deceased was an employee in the truck because a truck is not a passenger vehicle. Moreover, the sworn testimony of the respondent No.1, unshaken by cross examination, would further tilt the probability in favour of the claimant and the creation of unrealistic doubts would not displace the case of the claimants.

Learned counsel has further argued that the Commissioner has wrongly recorded that the respondent No.4 appeared and admitted the fact of employment. Even if this wrong recording is there, it would not tilt the preponderance of probability in favour of the appellant.

Consequently, the appeal is dismissed.

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

2.5.2018
anuradha

(AJAY TEWARI)
JUDGE

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