

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

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**CM-15442-CII-2017 in/and
FAO-5050-2017 (O&M)
Date of Decision : 20.02.2018**

The New India Assurance Co. Ltd.

..... Appellant

Versus

Smt. Bholan Bibi and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Ms. Vandanaa Malhotra, Advocate
for the applicant-appellant.

AJAY TEWARI, J. (Oral)

CM-15442-CII-2017

For the reasons recorded, the application is allowed. Delay of 279 days in filing the appeal is condoned.

FAO-5050-2017 (O&M)

This appeal has been filed by the insurer against an award passed by the Commissioner under the Employees' Compensation Act in the claim which was filed by the widow, daughter and the mother of the deceased-Bashir Mohd.

In the claim the claimants had stated that the deceased was working as Cleaner of the truck with the respondent No.4. On the date in question, the diesel pump of the truck was faulty and the respondent No.4 had sent him on his motor cycle to bring a mechanic and on the way he was

hit by an un-known vehicle and died. The FIR to this effect was also recorded at Police Station Kiratpur Sahib on the statement of respondent No.4. The Commissioner accepted the claim and took the salary @ Rs.8,000/- per month and awarded compensation of Rs.9,84,798/-.

Two arguments have been raised by the counsel for the appellant. The first argument is that since Bashir Mohd. did not die while he was on the truck it could not be held that he was died during the course of his duty. In my opinion, this argument can not be accepted. A perusal of the facts clearly shows that he was acting in the course of his employment when he went at the asking of the owner of the truck to fetch a mechanic.

The second argument raised by counsel for the appellant is that the Commissioner has erred in taking the income of Rs.8,000/- per month since at that time the minimum wages was Rs.6,616/-. In my opinion, the minimum wages for cleaner who knows how to drive a motor cycle can not be taken to be an unskilled labour.

Appeal is dismissed. No costs.

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

February 20, 2018
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(AJAY TEWARI)
JUDGE

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No