

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

FAO No. 5144 of 2018

Date of decision : 16.08.2018

The Oriental Insurance Company Ltd.

....Appellant

V/s

Mahender & anr.

....Respondents

BEFORE : HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. Ram Avtar, Advocate for the appellant.

RAJAN GUPTA J.

Present appeal is directed against the order dated 13.04.2018 passed by the Authority under the Employee's Compensation Act, 1923, Fatehabad. The deceased who was a skilled labourer was working in the night shift from 08:00 P.M. to 02:00 A.M. He was being paid ₹7,000/- per month besides a sum of ₹100/- per day on account of night shift/overtime etc. On the intervening night of 22.09.2015 at about 11.00 P.M., the deceased slipped while working on the machine. He fell on the belt of the machine and received multiple injuries on the right hand. Thereafter, he was taken to Pahwa Hospital, Fatehabad where he was operated upon. Admittedly, his right arm was amputated. The insurance company does not dispute the factual aspects. It is, however, submitted that insurance company is not liable to pay interest in terms of Clause 4A incorporated in the policy and terms and conditions thereof. This court finds the plea totally unacceptable. The insurance company cannot rely upon such Clauses incorporated in the fine print to deprive rightful claimants of compensation including the interest part. Plea that company is not liable to pay medical

expenses is also untenable and is rejected. Inequality of bargaining, power is writ large on the facts of the case. While subscribing to such a policy, insured is in fact left with no choice but to sign on the dotted line. Besides, it is known fact that it is the insurance companies which lure the general public assuring prompt service and certain ancillary benefits. If a consumer has to invoke the policy, the company tries to wriggle out by banking on loopholes and exclusion clauses. Findings himself in lurch, the consumer has to knock at the doors of the court to seek legal redress. This requires considerable effort and expense on his part. He is pitted against a corporate body, which has huge resources and expertise at its command. This situation arises when unequals enter into a contract. A duty is, thus, cast upon the courts to interfere wherever necessary and to safeguard the interests of common man, even impose exemplary costs in appropriate case.

In view of above, present appeal is without any merit and is hereby dismissed.

August 16, 2018

Ajay

(RAJAN GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No