

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

FAO No.5560 of 2018(O&M)

Date of decision: 6.12.2018

Reliance General Insurance Co. Ltd.Appellant

VERSUS

Mubeen and anotherRespondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Sanjeev Kodan, Advocate for the appellant.

REKHA MITTAL, J.

The present appeal directs challenge against order dated 29.06.2018 passed by the Commissioner under the Employee's Compensation Act, 1923 (in short 'the Act'), Nuh whereby compensation has been awarded in respect of injuries sustained by Mubeen in an occurrence dated 22.01.2015 when he was allegedly on duty as additional driver on vehicle No.AP-28-TC-3924, admittedly insured with the appellant- insurance company.

Counsel for the appellant has assailed liability of the insurance company primarily on two grounds. It is argued that the claimant/respondent No.1 failed to adduce sufficient much less cogent evidence to establish relationship of employer and employee between the claimant and Sarna Transport Corporation Pvt. Ltd. Another submission made by counsel is that Mubeen did not supply complete particulars of driving licence, if any possessed by him, therefore, insurance company has been denied an opportunity to verify correctness and validity of licence and

as such the insurance company is entitled to be exonerated of liability to pay compensation.

The plea of the injured/claimant is that on 22.01.2015, when he was on duty on the aforesaid vehicle along with another driver and when they reached near village Bajwa P.S. Ramgarh, Alwar, Rajasthan on their way to Delhi, the aforesaid vehicle was hit by another vehicle due to which he sustained serious injuries including fractures on his right leg. He was taken to CHC Ramgarh and thereafter to Mittal Hospital Alwar and he spent Rs.4,00,000/- on his treatment.

Sarna Transport Corporation Pvt. Ltd. did not cause appearance and was proceeded against ex parte. As Sarna Transport Corporation did not file reply to contest claim of the injured qua relationship of employer and employee between them, the averments raised by the claimant, in this regard, remain unchallenged and un-rebutted. There is nothing on record suggestive of the fact that the insurance company raised a plea of collusion between the claimant and alleged employer. In this view of the matter, un-rebutted and unchallenged testimony of claimant is sufficient to establish plea of the injured that he was employed as a driver by respondent No.1. I would hasten to add that proceedings before the Commissioner are summary in nature and do not attract the strict principles of law of evidence to be applied. As such, contention raised by the appellant to challenge findings of the Commissioner accepting plea of relationship of employer and employee between the claimant and Sarna Transport Corporation cannot be faulted with.

This brings the Court to the second contention with regard to driving licence of Mubeen. Mubeen appeared in the witness box to establish his plea for grant of compensation. Counsel for the appellant made available a photocopy of statement of Mubeen recorded by the Commissioner. In his cross examination, he would state that he is illiterate and his driving licence was lost at the time of occurrence. He has further disclosed that his driving licence bears No.7102 and the same was got issued from Licensing Authority, Nuh. The insurance company did not examine a witness of Licensing Authority, Nuh in order to prove that no licence in the name of Mubeen was issued by the said authority in the year 2013. That being so, insurance company has failed to discharge its obligation to prove that Mubeen did not possess a licence, therefore, the insurance company can escape liability to pay compensation in the light of terms and conditions of insurance policy, to be construed strictly.

No other point has been raised.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed in limine.

DECEMBER 6, 2018

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no