

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

112

**CM-27197-CII-2017 in/and
FAO-8263-2017 (O&M)
Date of Decision : 05.02.2018**

The New India Assurance Company Limited Appellant

Versus

Smt. Janak Dulari and others Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. R.C. Gupta, Advocate
for the appellant.

AJAY TEWARI, J. (ORAL)

CM-27197-CII-2017

For the reasons recorded, the application is allowed. Delay of 45 days in filing the appeal is condoned.

RSA-8263-2017 (O&M)

This appeal has been filed against the award of the Commissioner under the Employees Compensation Act.

The case of the respondents was that Hemant Kumar @ Rinku was employed with the respondent No.5. He had been sent to make some payment on the motorcycle. When he was returning he met with an accident with an unidentified vehicle and died. The Commissioner allowed the claim and accepted that he was employed with the respondent No.5 and that he had died during the course of his employment but since the income could not be satisfactorily established held his wages to be that of an unskilled

labourer and awarded compensation on that basis.

Counsel appearing for the appellant-insurance company has argued that this is entirely concocted story because of the following reasons:-

- i) The person who lodged the FIR at one stage had stated that he knew the deceased and at another stage had stated that he did not know the deceased.
- ii) The employment had not been proved. The claimants had not been able to establish that the deceased proceeded on a job which had been assigned to him by the employer.
- iii) The case of the claimants could not be covered under the policy which was taken out by the respondent No.5.

As regards the argument that it was a concocted story, it may be mentioned here that even if it is held that the evidence led by the claimants was not of the strongest kind yet in the wake of the fact that no evidence at all was led by the appellant, it has to be held that the preponderance of probability fell on the side of the claimants.

As regards the argument that the policy would not extend, this argument has been rightly considered and rejected by the Commissioner by holding that the arguments sought to be raised on the basis of the judgment *Nangamma and other vs. United India Insurance Company Ltd., 2009 ACJ 2020* would not be applicable in the present case because the deceased was not a borrower of the vehicle. He was driving it in the capacity of an employee on official duty.

Consequently, the appeal is dismissed being devoid of merit.

No costs.

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

February 05, 2018
ashish

(AJAY TEWARI)
JUDGE

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