IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1859 of 2019(O&M)
Decided on:23.07.2019

United India Insurance Company Limited
.....Appellant

versus

Charanjit Singh and another ....Respondents

CORAM : HON'BLE MR.JUSTICE DR.RAVI RANJAN

Present: Mr.Rajesh K. Sharma, Advocate,
for the appellant.

Mr.Sagar Aggarwal, Advocate,
for the respondent no.1/caveator.

DR.RAVI RANJAN, J. (Oral Judgment)

CM-15166-CII-2019

This application has been filed for placing on record complete statements (examination-in-chief) of Charanjit Singh and Ram Lubhaya as Annexure A-2 and A-3, respectively.

Having regarding the averments made in the application, the same is allowed and the aforesaid documents are taken in record as Annexures A-2 and A3.

FAO No.1859 of 2019

This appeal has been preferred by appellant-United India Insurance Company assailing the Judgement and Award of the Commissioner in application, bearing ECC No.12 of 2011 filed under Employee's Compensation Act, 1923, by which he has allowed the claim application moved for grant of compensation by the applicant/Driver, holding the respondent no.2-Insurance Company liable to pay compensation of a sum of Rs.1,94,740/- to the applicant as the vehicle was insured with the Insurance Company and the accident took place when he was trying to alight from after stopping the truck tanker which the he was driving and in the meantime another vehicle came and struck him. It has been urged on behalf of the applicant before the Commissioner that on the same day he was admitted to hospital with serious injuries in which bone of his left leg below the knee was fractured and he also lost his three teeth. Accordingly, a compensation of Rs.4 Lakh was sought by him.

2. The Commissioner has allowed the claim application and allowed the compensation amount of Rs.1,94,740/- alongwith interest at the rate of 12% per annum to be calculated from 07.04.2011 till the date applicant receives it.

3. The Award has been assailed on diverse grounds by the appellant-respondent no.2/Insurance Company. The first and foremost ground is that the injured/claimant has not been able to prove the employee and employer relationship between him and respondent no.1. It is contended that no appointment letter or any document showing any consignment having been handed over for delivery to some other point was produced by the applicant. Therefore, on mere statement made on behalf of the employee that his employer is M/s Lubhaya Oil Carriers, should not have been accepted. The Commissioner has held that the employee has stated as above in his examination and has withstood the test of cross-examination merely stating that he was driving a vehicle of M/s Lubhaya Oil Carriers. Though he has not produced any document showing his appointment or engagement as a driver but the Commissioner has come to the conclusion that in all such cases the drivers are not necessary engaged

upon issuance of appointment letter or letter of engagement and being part of unorganised sector, they are usually hired by the employer only on monthly payment basis without creating any document. However, at least there is one document which would tilt the case in favour of the respondent-claimant, i.e. Ex.AZ which is an identity card issued by the IOC which bears the name of the driver, i.e., the claim applicant, and the truck tanker has been shown to be belonging to the M/s Lubhaya Oil Carriers.

Learned counsel for the appellant by producing that document shows that the identity card (Ex.AZ) appears to be issued with respect to some other oil carrier, however, the Commissioner has said that there has been the signature of Ram Lubhaya, therefore, it would be very difficult to discard the document.

Learned counsel for the appellant has submitted that this signature has been denied by the respondent no.1 to be of Ram Lubhaya, however, the question would be as to whether only denial would be enough to prove otherwise? If the respondent no.1 was seriously raising the issue that signature was not his, then he could have requested the Court to get his signature and signature on the document concerned compared by an expert which has not been done by him. At this stage this limb of argument cannot be accepted.

In my view, this clinches the issues and answers the issue of employee and employer relationship raised by the appellant. In the presence of such documents the employer cannot escape from the liability for payment of compensation under the Employee's Compensation Act, 1923. This is well settled that in such type of summary proceedings the strict of proof of beyond all reasonable doubts is not required to be put as the cases are to be decided on basis of preponderance of probabilities. Ex.AZ raises a strong probability and tilts the case in favour of the claimant.

4. The second issue raised by the appellant-Insurance Company is that the claimant/respondent no.1 could not prove that he was victim of accident when he was on duty while driving the truck tanker of the M/s Lubhya Oil Carrier as no FIR was lodged or even there was not any DDR entry by the police. In my view, such limb of argument is also not tenable. In such types of matters, it is not necessarily required that there should be some First Information Report (FIR) or at least there should be DDR report of the police. According to the claimant, after the accident, he was taken to the hospital where he was treated and all the medical reports have been brought on record as Ex.A-7 to A-55. The claimant has stated in his cross-examination that though he did not say the number of the vehicle which hit him at the time of alighting from the truck but he had stated before the doctor that he met with such accident. Once those unimpeachable documents showing his treatment for fractured leg and loss of three teeth are there and there is no other version on behalf of the respondent as to how such injuries could have been received by the applicant/claimant due to which he had suffered 30% disablement, in my opinion the said submission would not be tenable.

5. As a last resort, learned counsel for the appellant has raised the issue that the appellant-Insurance Company had brought on record the verification report of the District Transport Office, Hoshiarpur, which shows that infact the licence was not issued in favour of the claim applicant rather it was issued in the name of one Ram Lal. The document is in the form of screen shot. However, learned counsel appearing for the

caveator/respondent has informed that this document has been brought on record alongwith a letter of the Insurance Company which would not be admissible in evidence as it has not been produced or proved by any employee of the District Transport Office authorised for that purpose. I find force in the submission made on behalf of the caveator as the document was required to be proved by the authorised employee of the concerned District Transport Office. Being merely a screen shot of mobile phone alongwith verification report which has also not been produced or proved by any authorised officer from the District Transport Office, it would not be possible to hold that the driver was not having a valid licence.

6. Having regard to the aforesaid discussion, I am of the view that the appellant-Insurance Company could not make out a case warranting interference of this Court in the Award prepared by the Commissioner, under Employee's Compensation Act, 1923.

In the result, this appeal is dismissed.

(DR. RAVI RANJAN)
JUDGE

July 23, 2019
dharamvir

Whether speaking/reasoned: Yes
Whether Reportable : Yes