

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

-.-

FAO 1776 of 1997 (O&M)

Date of decision: 14.03.2019

National Insurance Co Limited

.....*Appellant*

Versus

Surjit Singh and others

.....*Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Suvir Dewan, Advocate
for the appellant

Mr. C B Goel, Advocate
for respondent No.2

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Rekha Mittal, J. (Oral)

Challenge in the present appeal is directed against order dated 08.05.1997 passed by the Commissioner under the Workmen Compensation Act, Rewari Circle, Rewari whereby compensation has been assessed on account of death of Joginder Singh alias Billa son of the claimant/respondent.

Counsel for the insurance company would urge that the appeal has been preferred primarily on three counts. It is argued that the occurrence in question took place on 08.06.1992 and at that time, admissible wage was Rs.1,000/- per month but the Commissioner has assessed wage at the rate of Rs.1,600/- per month. The Commissioner has imposed penalty and the insurance company has been fastened with liability to pay penalty as well in absence of any special contract between the

insured and insurer for discharging liability to pay penalty also. Another submission made by counsel is that the driving licence possessed by the deceased was found to be fake, therefore, the insurance company has wrongly been fastened with liability to pay compensation.

Counsel representing respondent No. 2, on the contrary, has urged that the insurance company cannot escape its liability to pay compensation as the insured appeared in the witness box and deposed that he had seen the licence of Joginder Singh alias Billa while engaging him as driver on Truck bearing No. DL IG 3931 and as such, he has not committed violation of the terms and conditions of the insurance policy. In support of his contention, he has relied upon judgments of Hon'ble the Supreme Court ***United India Insurance Company Limited vs. Lehu, 2003(2) R.C.R. (Civil) 278*** and ***Pepsu Road Transport Corporation vs. National Insurance Company Limited, 2013 (4) R.C.R. (Civil) 273.***

Counsel for respondent No. 2, on a pointed query, has not disputed that admissible wage at the relevant time was Rs.1,000/- per month, in view of statutory provisions. Accordingly, compensation is assessed to the tune of Rs. 83,192/- [1,000 x 207.98 x 40/100]. The insurance company is not liable to pay penalty in absence of any special contract between the insured and insurer. That being so, findings of the Commissioner imposing penalty upon the insurance company are legally untenable and accordingly set aside.

This brings the Court to the issue of driving licence possessed by Joginder Singh alias Billa that was found fake. The insured appeared in the witness box and deposed that he had seen driving licence of Joginder

Singh alias Billa at the time of engaging him as a driver. When the case is examined in the light of judgment of Hon'ble the Supreme Court in ***Pepsu Road Transport Corporation's case (supra)***, the insurance company can neither escape its liability to pay compensation nor can press for right of recovery after payment of compensation to the claimant.

No other point has been raised.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

14.03.2019

Mohan Bimbora/PARAMJIT

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No