

In the High Court of Punjab and Haryana at Chandigarh

Date of Decision:27.3.2019

FAO No. 993 of 1996(O&M)

New India Assurance Company Limited

---Appellant

vs.

Bawa Singh and another

---Respondents

FAO No. 894 of 2018(O&M)

Bajaj Allianz General Insurance Company Limited and another

---Appellants

vs.

Ram Singh and another

---Respondents

FAO No. 1241 of 2018(O&M)

Reliance General Insurance Company Limited

---Appellant

vs.

Jasbir Kaur and others

---Respondents

FAO No. 1485 of 2018(O&M)

Magma HDI General Insurance Company Limited

---Appellant

vs.

Smt. Abida and others

---Respondents

FAO No. 1871 of 2018(O&M)

Reliance General Insurance Company Limited

---Appellant

vs.

Sh. Kuldeep Singh and another

---Respondents

FAO No. 1882 of 2018 (O&M)

FAO No. 993 of 1996(O&M)

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PARAMJIT KAUR SAINI
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I attest to the accuracy and
integrity of this document

New India Assurance Company Limited

---Appellant

vs.

Smt. Santosh and others

---Respondents

FAO No. 8520 of 2014(O&M)

New India Assurance Company Limited

---Appellant

vs.

Smt. Maiman and others

---Respondents

FAO No. 7437 of 2017(O&M)

Oriental Insurance Company Limited

---Appellant

vs.

Wahid and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Paul S.Saini, Advocate and
Mr. Vipul Sharma, Advocate
for the appellant in FAO-1882 of 2018

Mr. S.S.Sidhu, Advocate
for the appellant in FAO-7437 of 2017

Mr. Rajan Bhargava, Advocate
for Mr. Vishal Aggarwal, Advocate
for the appellants in FAO Nos. 894 and 1485 of 2018

Ms. Bhupinder Kaur, Advocate for
Mr. Sanjeev Kodan, Advocate
for the appellant in FAO-1871 and 1241 of 2018

Mr. Rajan Bansal, Advocate
for respondent No. 1 in FAO-1871 of 2018

Mr. Naresh Kumar, Advocate for
Ms. Neha Jain, Advocate
for respondent No. 1 in FAO-993 of 1996

Mr. Ashish Gupta, Advocate
for respondents No. 1 to 7 in FAO- 1485 of 2018
for respondents No. 1 to 8 in FAO-8520 of 2014
for respondent No. 1 in FAO- 7437 of 2017
Amicus curiae for claimants in FAO-1882 of 2018

Mr. Vinod Gupta, Advocate
for the appellant in FAO- 8520 of 2014 and 993 of 1996

Mr. Vikas Chaudhary, Advocate
for respondent No. 7 in FAO- 1882 of 2018

Mr. H.S.Dhandi, Advocate
for respondent No. 2 in FAO-7437 of 2017

Rekha Mittal, J.

This order will dispose of FAO Nos. 993 of 1996, 8520 of 2014, 894, 1241, 1485, 1871, 1882 of 2018 and 7437 of 2017 as identical questions of law and fact are involved for adjudication. For facility of reference, facts are taken from FAO No. 1882 of 2018.

The primary question involved in the appeal is that if the injured/deceased employee happens to be driver but he either does not possess a driving licence or licence possessed by him is found to be fake, whether the insurer can escape liability to pay compensation or press for right of recovery against the insured after payment of compensation to the claimant(s).

Counsel representing the appellant-insurance company would argue that as driver did not possess a valid and effective driving licence, insurance company can not be saddled with liability to pay compensation to the claimant(s). In support of his contention, reference has been made to judgment of Hon'ble the Supreme Court **Gottumukkala Appala Narasimha Raju and others vs. National Insurance Company Limited**

and another 2007(2) RCR (Civil) 294 wherein it has been held that an insurer, having regard to sub Section (2) of Section 149 of the Act (MV Act) would ordinarily, have limited defence as provided for therein. The defence of an insurer in a proceeding under the 1923 Act (Employees Compensation Act) would be unlimited and all the defences which are available to the employer would be available to it. It is vehemently argued that since the defences in proceedings under the Employees Compensation Act, 1923 (in short “the 1923 Act”) available to the insurer are unlimited viz-a-viz the ones under the Motor Vehicles Act, 1988 (in short “the 1988 Act”), the insurance company can not be held liable to pay compensation if it is proved that the driver was not having a valid or/and effective driving licence at the time of occurrence.

Counsel representing the respondent(s), on the contrary, has refuted contention of insurance company with the submissions that the provisions of chapter XI of the 1988 Act are not applicable to the provisions under the 1923 Act, therefore, the insurance company can not escape liability by raising any defence available under Section 149(2) of the 1988 Act. In support of his contention, he has relied upon Full Bench decision of the Orissa High Court **M/s National Insurance Company Limited vs. Panibudi Chulia and others 2006(3) RCR (Civil) 670**. Further reference has been made to judgment of Hon'ble the Supreme Court **Jaya Biswal & Ors. Vs. Branch Manager, IFFCO TOKIO General Insurance Company Ltd. & another 2016(1) RCR (Civil) 1003** to contend that 1923 Act is a welfare legislation enacted to secure compensation to the poor workmen who suffered injuries at their place of

work and the same is clear from perusal of the pre-emble, statement of object and reasons of the Act.

In addition, another issue raised by counsel for the insurance company is that factor applied for computing compensation is incorrect as the deceased was approximately 40 years of age when examined in the light of testimony of his widow as she stated that her marriage with deceased was performed 20/22 years back in her statement recorded in the year 2017 though her husband died in September 2014.

Counsel representing the claimants, on the other hand, has supported findings of the Commissioner with regard to age of the deceased to be 33 years and factor applied in view thereof. It is further argued that in the post mortem report, age of the deceased is mentioned as 30 years but the Commissioner assessed his age at 33 years on the basis of plea of the claimants.

I have heard counsel for the parties and perused the paper book.

There is no dispute that Hon'ble the Supreme Court in **Gottumukkala Appala Narasimha Raju and others' case (supra)** has held that defence of an insurer in proceedings under the 1923 Act would be unlimited and all the defences which are available to the employer would be available to it. However, counsel for the insurance company has failed to point out if the employer can raise a defence that since the employee was not holding a licence or driving licence possessed by him is not valid or effective, he is not liable to pay compensation either under the 1988 Act or 1923 Act. In this view of the matter, the insurance company can not derive any advantage to its contention from the aforesaid observations in the

referred authority.

Counsel for the insurance company, in response to a pointed query, would fairly inform that he has not been able to lay his hands on a judgment of Hon'ble the Supreme Court in which any obiter observations much less ratio decendi has been laid down that insurance company can escape liability to pay compensation under the 1923 Act on the premise that injured/deceased was not holding a valid licence or defence available to the insurer under Section 149(2) of the 1988 Act is also available even in proceedings under the 1923 Act despite absence of any such provision in the said act. On the contrary, the Full Bench of Orissa High Court in **M/s National Insurance Company Limited vs. Panibudi Chulia and others' case (supra)**, on a detailed consideration of the provisions of the aforesaid two Acts answered the reference made by the Single Judge, reads thus:-

“Whether in absence of a provision alike Section 149 of the 1988 Act, the Commissioner for the 1923 Act cannot be directed to determine the issue between the insurer and insured regarding allegation of violation of policy conditions and to proceed for recovery of the amount so paid to the third party from the insured.”

The Full Bench, in para 6 of the judgment has held, quoted hereunder:-

“From the discussion made by the Apex court in the aforesaid case it is clear that the Motor Vehicles Act, 1988 and Workmen's Compensation Act, 1923 are self-contained Codes. Section 143 in Chapter X of the Motor Vehicles Act, 1988 only relates to certain claims under Workmen's Compensation Act, 1923. Section 143 of the M.V.Act, 1988 provides that the

provisions of Chapter X shall also apply in relation to any claim for compensation in respect of death or permanent disablement of any person under the Workmen's Compensation Act, 1923 resulting from an accident of the nature referred to in sub-section (1) of Section 140. Section 140 in Chapter X only relates to 'no fault' claim. Therefore, the Apex Court in the aforesaid judgment in para 22 observed that Section 143 of the 1988 Act makes a provision that 1923 Act is applicable only in a case arising out of 'no fault' liability as contained in Chapter X of 1988 Act. The Court further held that the provision of Section 143, therefore, cannot be said to have any application in relation to a claim petition filed under Chapter XI thereof. In paras 23 and 24 of the judgment the Apex Court held that Section 167 of the 1988 Act statutorily provides for an option to the claimant stating that where the death of or bodily injury to any person gives rise to a claim for compensation under the 1988 Act as also the 1923 Act, the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of those Acts but not under both. Section 167 of the 1988 Act contains a *non obstante* clause providing for such an option notwithstanding anything contained in the 1923 Act. In paras 22 and 35 of the judgment, the Apex Court having laid down that under the 1988 Act if the driver of the vehicle has no licence, the insurer shall not liable to indemnify the insured and that in a given situation the Accident Claims Tribunal having regard to its rights and liabilities *vis-a-viz* the third person may direct the insurance company to meet the liabilities of the insurer permitting it to recover the same from the insured and that the 1923 Act does not envisage such a situation, we are of the view that the decision rendered in the case of ***Oriental Insurance co. Ltd. v. Akadasi Das, (2003(96) Cut LT 126)*** has not been correctly decided.”

Counsel for the insurance company has failed to cite any contrary judgment by any other High Court much less Punjab and Haryana High Court. In view of enunciation laid down in **M/s National Insurance Company Limited vs. Panibudi Chulia and others' case (supra)**, there is no merit in contention of the insurance company that either the insurance company can escape liability to pay compensation or can press for right of recovery against the insured after payment of compensation to the claimant (s). Accordingly, the aforesaid question is answered against the insurance company and in favour of the claimants and private respondent (employer of the deceased).

With regard to computation of compensation, the sole submission made by counsel for the insurance company is with regard to age of the deceased and factor applied on the basis thereof. As per plea of the claimants/respondents, Shamsher was 33 years old at the time of occurrence. In the post mortem report, the deceased is stated to be 30 years. Age recorded in post mortem report is in contradiction to plea of the claimants. There is nothing on record suggestive of the fact as to on what basis, age of the deceased has been recorded in the post mortem report. In the given circumstances, the Commissioner has rightly refused to rely upon age of the deceased mentioned in the post mortem report.

The widow of the deceased appeared in the witness box to support cause of the claimants. In her cross examination recorded in the year 2017, she would depose that her marriage with Shamsher Singh was performed 20-22 years back meaning thereby that they were married sometime in the year 1995-1997. If the deceased is held to be 18 years of

age at the time of marriage, he would be approximately 37 years of age.

Accordingly, admissible factor for computing compensation is 192.14

After applying factor of 192.14, compensation payable to the respondents

comes to Rs. 7,68,560/-[8000 x 50% x 192.14]. Accordingly, compensation

awarded by the Commissioner is reduced to the extent of Rs.2,31,674/-

(10,00,234-7,68,560). As such, findings of the Commissioner with regard to

compensation are modified in the aforesaid terms.

In view of what has been discussed hereinbefore, the aforesaid

appeals are disposed of. However, compensation allowed to respondents in

FAO No. 1882 of 2018 is modified to the aforesaid extent.

(Rekha Mittal)
Judge

27.3.2019

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Whether speaking/reasoned: Yes

Whether reportable : Yes/No