IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 3508 of 2019(O&M)

Date of decision: 30.5.2019

IFFCO TOKIO General Insurance Co. ltd. …..Appellant

VERSUS

Mukesh Devi and others .....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Ms. Swati Batra, Advocate for the appellant.

REKHA MITTAL, J. (Oral)

CM No.12435-CII of 2019

Prayer in this application is for condoning delay of 34 days in filing the appeal.

Heard.

In view of averments made in the application supported by an affidavit of Mr. Rajiv Ranjan, Authorized Signatory of IFFCO Tokio General Insurance Co. ltd., the application is allowed. Delay of 34 days in filing the appeal stands condoned.

Disposed of accordingly.

FAO No.3508 of 2019

The present appeal directs challenge against order dated 28.12.2018 passed by the Commissioner, Rewari under the Employees' Compensation Act, 1923 (in short 'the Act') whereby compensation has been assessed on account of death of Bhim Singh while working on vehicle No.HR-45-AT-9438 owned by Parveen – respondent No.5.

Counsel for the appellant has assailed the award by making few submissions. It is argued that Mukesh Devi, widow of the deceased appeared in the witness box but failed to produce any documentary evidence with regard to employment of Bhim Singh as a driver of offending vehicle. In addition, it is submitted that driving licence of Bhim Singh has not been produced on record that could have been the best evidence with regard to Bhim Singh working as a driver on a transport vehicle.

Another submission made by counsel is that income of the deceased has been assessed at Rs.8000/- per month but there is no documentary evidence on record to support findings of the Commissioner in this regard. The last submission made by counsel is that as driving licence of Bhim Singh was not produced on record, it can be inferred that Bhim Singh did not possess driving licence, therefore, the insured is guilty of violating the terms and conditions of the policy on the basis whereof the insurance company can press for right of recovery against the insured after payment of compensation to the claimants.

I have heard counsel for the appellant, perused the paper-book particularly the order impugned.

Counsel for the appellant, in response to a query, would fairly inform that Parveen – respondent No.5 (alleged employer) appeared in the witness box and in his cross examination he admitted that Bhim Singh – deceased was working as a driver of aforesaid vehicle owned by him. If the employer has not maintained any record with regard to employment and payment of emoluments to Sh. Bhim Singh, the respondents/claimants cannot be condemned for non-producing of documents in this regard. This apart, once Parveen has admitted employment of the deceased with him and in absence of any contrary evidence led by the insurance company, findings of the Commissioner accepting relationship of employer and employee between Parveen and Bhim Singh cannot be faulted with.

The non-production of driving licence of Bhim Singh would not entitle the insurance company to press for right of recovery when examined in the light of judgment of this Court **New India Assurance Company Ltd. Vs. Bawa Singh and another, FAO No.993 of 1996 and other connected cases, decided on 27.03.2019.**

The Commissioner has assessed income of Bhim Singh at the rate of Rs.8000/- per month. When the case is examined in the light of notification issued by the State of Haryana fixing minimum wage at the relevant time, income assessed by the Commissioner cannot be said to be on higher side, warranting intervention.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed in limine.

MAY 30, 2019 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned : yes/no
Whether reportable : yes/no