

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

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FAO No.2760 of 2019 (O&M)

Date of decision: 29.04.2019

Iffco Tokio General Insurance Company Ltd.

... Appellant

Versus

Ganpat and anr

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

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

REKHA MITTAL, J. (Oral)

The present appeal directs challenge against order dated 31.12.2018 passed by the Commissioner, Rewari under the Employees Compensation Act, 1923 whereby compensation has been assessed on account of death of Khillu in the course of employment on the fateful day of 06.08.2016 when the deceased was allegedly working as conductor on bus No.RJ-18PB-1071 on monthly wages of Rs.10,000/-.

Counsel for the appellant has challenged the impugned order by raising few fold submissions. It is argued that there is no clear and cogent evidence available on record with regard to employment of deceased on the bus aforesaid, owned by Sandeep Choudhary respondent No.1 therein. To bring home her contention, it is argued that Ajeet Kumar RW1, driver of the aforesaid bus was examined and he deposed that the deceased was not working as conductor on the aforesaid bus. Another submission made by counsel is that neither driving licence, if any, possessed by driver of the aforesaid bus nor route permit was produced on record, therefore, insurance company is entitle to have right of recovery against the insured even if the claimant's plea for grant of compensation is affirmed.

To assail quantum of compensation, the sole submission made by counsel is that the Commissioner has applied factor of 184.17 on the basis of age of the deceased to be 40 years recorded in the postmortem report but as a matter of fact, in the postmortem report, age of the deceased is mentioned as 46 years.

Sh. Sandeep Choudhary, employer of deceased Khillu did not appear in the witness box to counter testimony of the witness(s) examined by the claimant that the deceased was working as conductor on bus No.RJ-

18PB-1071. The Commissioner, while dealing with issues No.1 to 3 jointly has noticed that perusal of statement of RW1 shows that he came under employment of respondent No.1 in December, 2016 while the accident occurred on 06.08.2016. He also stated that he was not the only driver and there were 11 persons working with respondent No.1. Counsel for the appellant has not disputed these factual observations in view of testimony of RW1 examined to rebut evidence of the claimant with regard to employment of the deceased as conductor on the aforesaid bus. In this view of the matter, appellant cannot derive any advantage to its contention from the testimony of RW1 to dispute factual finding with regard to relationship of employee and employer between the deceased and respondent No.1 therein.

The controversy with regard to non-production of driving licence or route permit is squarely covered against the insurance company in the light of judgment of this Court **New India Assurance Company Limited VS. Bawa Singh and another, FAO No. 993 of 1996 and other connected cases, decided on 27.3.2019.**

So far as challenge to quantum of compensation is concerned, perusal of copy of postmortem report made available during course of hearing would reveal that age of the deceased has been recorded to be 40 years and accordingly, the Commissioner has assessed his age at 40 years. Counsel for the appellant has failed to apprise, if the insurance company has adduced any evidence to counter age of the deceased recorded in the postmortem report. That being so, findings of the Commissioner applying an appropriate factor on the basis of age of deceased to be 40 years cannot be faulted with.

No other point has been raised.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed in limine. As the appeal has been decided on merits, application for condonation of delay is of academic relevance.

29.04.2019

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No