

FAO-2846 of 2020 (O&M)

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

FAO-2846 of 2020 (O&M)
Date of Decision: 10.09.2020

The New India Assurance Company Ltd.

...Appellant

Versus

Amandeep and others

....Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present:- Mr. Rajneesh Malhotra, Advocate,
for the appellant.

Mr. Sagar Aggarwal, Advocate,
for the caveators.

DEEPAK SIBAL, J. (ORAL)

Case taken up through Video Conferencing.

Through the instant appeal filed by the Insurance Company, challenge is made to the order dated 04.02.2020 passed by the Commissioner in the proceedings initiated by the respondents under the Employees' Compensation Act, 1923 (for short 'the Act').

The facts, in brief, which are required to be noticed for adjudicating the present appeal are that Bimal Chander was employed as a driver with Rajinder Singh. On 19.09.2015 Bimal Chander was driving Rajinder Singh's truck bearing registration No.PB-07-Q-8093 and when he reached in the area of Basa Theog near Chetu Dhaba in the jurisdiction of Police Station Theog, District Shimla, the truck suddenly stopped. Bimal

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Chander asked his cleaner to put a wooden block behind the tyres of his truck so that it may not roll down but the truck continued rolling back and after hitting Bimal Chander fell in a roadside gorge. Due to this accident Bimal Chander died at the spot.

Since according to the claimants/respondents Bimal Chander died during the course of his employment as driver of Rajinder Singh's truck, which was duly insured, they filed proceedings under the Act before the Commissioner seeking therein compensation of ₹10,00,000/- along with interest and penalty. Notice of the application was issued to Rajinder Singh as well as the Insurance Company who contested the claimants' case.

On the basis of pleadings of the contesting parties the Commissioner framed the following issues: -

- “1. Whether Sh. Bimal Chander died during the course of his employment as driver on Truck No.PB-07-Q-8093 owned by respondent No.1? OPA*
- 2. Whether the claim application is not maintainable in the present form? OPR 2.*
- 3. Whether Bimal Chander alleged driver of Truck No.PB-07-Q-8093 was not holding any valid and effective driving licence to drive the vehicle at the time of alleged accident? OPR 2.*
- 4. Whether the present application has been moved in collusion with respondent no.1? OPR 2*
- 5. Whether the Truck No. PB-07-Q-8093 was being plied without route permit and fitness certificate at the time of alleged accident? OPR 2*
- 6. To what amount of compensation the applicants are entitled to and from whom? OPA.*
- 7. Relief.”*

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On the strength of the pleadings of the parties and evidence led by them, all the issues were decided in favour of the respondent-claimants. Resultantly, they were held entitled to compensation @ ₹5,98,680/- along with interest at the rate of 12% per annum w.e.f. 19.10.2015 i.e. one month after the date of the incident. The shares of each of the respondent-claimants were also determined. Such order passed by the Commissioner is impugned through the present appeal.

Learned counsel for the appellant submitted that Bimal Chander's driving licence was fake and therefore, the owner of the truck, namely, Rajinder Singh should be made liable to pay the assessed compensation. Without prejudice to the afore submission, it is submitted that the income assessed by the Commissioner is on the higher side and not based on any evidence.

The first submission of the learned counsel for the appellant with regard to liability under the impugned order being only of the owner of the vehicle in question on the ground that Bimal Chander's driving licence was fake is liable to be rejected in view of no evidence/law shown to this Court to counter the findings recorded in the impugned order that there was overwhelming evidence led by the claimants with regard to renewal of Bimal Chander's driving licence which had been done after verifying/checking the record of the old driving licence as also in view of the undisputed fact that the original driving licence of Bimal Chander had been issued from the office of DTO, Hoshiarpur with all subsequent renewals also by the same licensing authority.

The relevant findings by the Commissioner in this regard are as

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under: -

*“.....A perusal of cross-examination of Dalip Kumar RW-2 reveals that whenever the licencing authority renews a driving licence, it is only done after verifying and checking the record of old driving licence. It is not in dispute that the original driving licence of the deceased was also issued the office of DTO, Hoshiapur and the subsequent renewals were also made by the same Licencing Authority. In such a scenario, where the driving license is only renewed after checking the old record, it cannot be believed that the original could be fake, as in such a situation there could be no possibility of renewal of licence. I am strengthened with the view taken by Hon'ble Punjab and Haryana High Court in **United India Insurance Co. Ltd. Vs. Amarjit Singh & Ors. FAO No.664 of 2010, decided on 16.02.2010.**”*

Further, in the light of the statement made by Rajinder Singh before the Commissioner that before employing Bimal Chander he had taken his driving test, the appellant-Insurance Company cannot be absolved of its liability. In this regard the following observations of the Supreme Court in **PEPSU Road Transport Corporation v. National Insurance Company, (2013) 10 SCC 217** can be usefully referred to: -

“8. In a claim for compensation, it is certainly open to the insurer under Section 149(2)(a)(ii) to take a defence that the driver of the vehicle involved in the accident was not duly licensed. Once such a defence is taken, the onus is on the insurer. But even after it is proved that the licence possessed by the driver was a fake one, whether there is liability on the insurer is the moot question. As far as the owner of the vehicle is concerned, when he hires a driver, he has to check whether the driver has a

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valid driving licence. Thereafter he has to satisfy himself as to the competence of the driver. If satisfied in that regard also, it can be said that the owner had taken reasonable care in employing a person who is qualified and competent to drive the vehicle. The owner cannot be expected to go beyond that, to the extent of verifying the genuineness of the driving licence with the licensing authority before hiring the services of the driver. However, the situation would be different if at the time of insurance of the vehicle or thereafter the insurance company requires the owner of the vehicle to have the licence duly verified from the licensing authority or if the attention of the owner of the vehicle is otherwise invited to the allegation that the licence issued to the driver employed by him is a fake one and yet the owner does not take appropriate action for verification of the matter regarding the genuineness of the licence from the licensing authority. That is what is explained in Swaran Singh's case (supra). If despite such information with the owner that the licence possessed by his driver is fake, no action is taken by the insured for appropriate verification, then the insured will be at fault and, in such circumstances, the insurance company is not liable for the compensation.”

No law to the contrary has been cited by learned counsel for the appellant.

So far as assessment of income of the deceased is concerned, there is found enough evidence on record in the form of statement of the owner of the vehicle in question that Bimal Chander was being paid salary @ ₹8,000/- per month. No evidence to the contrary was led by the

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appellant-Insurance Company. Even otherwise, assessment of salary @ ₹8,000/- per month to a truck driver in the year 2015 is found reasonable.

In view of the above, no merit is found in the present appeal and the same is hereby dismissed.

No costs.

September 10, 2020
R.S.

(Deepak Sibal)
Judge

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No