

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

(115)

FAO-2961-2020 (O&M)

Date of Decision: November 10, 2020

Iffco-Tokio General Insurance Company Limited .. Appellant

Versus

Angoori and others .. Respondents

(Through video conferencing)

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Amit Goyal, Advocate, for the appellant.

HARSIMRAN SINGH SETHI, J.(ORAL)

Present appeal has been filed challenging the order passed by the Commissioner, under Employee's Compensation Act, 1923, Sonapat dated 20.07.2020 by which, the compensation of Rs.10,95,286/- has been granted to the respondents under the Workmen's Compensation Act.

Learned counsel for the appellant argues that the deceased was not employed by respondent No.6 herein and as the deceased was not on duty at the time of the accident, no compensation could have been granted to respondents No.1 to 5 after the deceased Ishwar Singh died on 19.03.2016, keeping in view the provisions of Employee's Compensation Act, 1923.

Learned counsel for the appellant relies upon the provision of Section 3 of the Workmen's Compensation Act, 1923 to contend that the employer's liability for paying the compensation will only arise in case, the accident or the injury suffered by the employee arises out of and is in course of the employment.

I have heard learned counsel for the appellant.

Learned counsel for the appellant though contends that the death of Ishwar Singh took place while he was on his private visit but concedes that before the Commissioner, the employer i.e. Respondent No.6 conceded that Ishwar Singh was his employee and was on duty at the time of the accident. Learned counsel for the appellant has not been able to show this Court anything contrary to make good his submission that the accident never occurred during the course of employment as deceased was not the employee of respondent No.6.

Once, the employer has admitted the factum of employment of Ishwar Singh and also the fact that Ishwar Singh was on duty at the time of his accident, the insurance company has no locus to challenge the same. Furthermore, even before the authority under the Employee's Compensation Act, the appellant-insurance company was a party and had full right to cross examine the employer, in case they felt that the accident did not occur during the course of employment or there was no master and servant relationship between the deceased and the employer. Admittedly no such plea was raised during the examination of respondent No.6 i.e employee.

Learned counsel for the appellant places reliance upon the DDR of the accident to contend that the family members of the deceased were accompanying him at the time of accident. Merely some family members were travelling with the deceased at the time of the accident, does not infer that the deceased was not acting in pursuance to the employment at the time of the accident. The mere presence of the family members in the vehicle at the time of accident, will not give a presumptive right to the insurance company to contend that the accident happened during the private

visit of the deceased employee and not during the course of employment unless and until allegation is corroborated by evidence produced on record.

Keeping in view the above facts, once a finding of fact has been recorded that the deceased was the employee of respondent No.6 and had suffered the accident during the course of his employment, the assertion of the appellant-insurance company that deceased was not the employee of respondent No.6 or accident did not happen during the course of the employment, cannot be accepted and that too in the absence of any evidence/fact controverting the finding of the said facts recorded by the authorities above.

No ground is made out to interfere in the order passed by the Commissioner, Employee's Compensation Act, Sonapat dated 20.07.2020.

Accordingly, the present petition is dismissed.

As the main petition is dismissed, application i.e. CM-9772-CII-2020 is also dismissed.

November 10, 2020
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

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