

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

FAO No.3729 of 2013(O&M)

Date of decision: 6.3.2020

EITA Logistics Ltd.

.....Appellant

VERSUS

Smt. Bati and others

.....Respondents

CORAM: **HON'BLE MRS. JUSTICE REKHA MITTAL**

Present: Mr. R.S. Narang, Advocate for the appellant.

Mr. J.S. Randhawa, Advocate for respondents No.1 to 4.

Mr. Subhash Goyal, Advocate for respondent No.5.

REKHA MITTAL, J.

Challenge in the present appeal has been directed against order dated 25.04.2013 passed by the Commissioner Faridabad under Employees' Compensation Act, 1923 (in short 'the Act') whereby compensation has been allowed in regard to death of Mahipal in the course of employment as driver on truck No.HR-38-R-4776 of the appellant.

The Commissioner awarded Rs.7,58,240/- towards compensation and Rs.3,03,296/- towards penalty i.e. 40% of compensation assessed in the case.

Counsel for the appellant has assailed the impugned order primarily on two counts. It is argued that Mahipal was not a regular employee of appellant and he had been working with the appellant – company trip-wise and paid on the basis of Kilometers covered during a

particular trip. For this purpose, reliance has been placed upon agreement dated 14.04.2012 purported to be executed between the appellant and Mahipal Singh marked as Ex.R1 (Annexure A-4). Another submission made by counsel is that the Commissioner awarded penalty on the premise that the appellant had denied relationship of employer and employee but the appellant is competent to contest the application on factual and legal grounds, in accordance with law.

Counsel representing the respondents/claimants, on the contrary, has supported the impugned order with the submission that the appellant denied relationship of employer and employee with the sole object to wriggle out of its liability to pay compensation to the victim family. It is further argued that once it is established that the appellant is employer of the deceased and liable to discharge its obligation qua payment of compensation, it is rightly held liable to pay penalty for failure to pay compensation within 30 days from the date of occurrence, without any justifiable reason.

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

Be that as it may, as per plea of the appellant, Mahipal was engaged as a driver on the aforesaid truck, in view of terms and conditions contained in the agreement dated 14.04.2012. The mere fact that the appellant – company has adopted a modus to pay the driver trip-wise and kilometers covered in a particular trip, it cannot be construed that Mahipal was not a regular employee of the appellant or to say that he was a casual employee of the appellant- company. There is nothing on record suggestive of the fact that besides working for the appellant – company as

a driver on aforesaid truck, Mahipal was working either as a driver or otherwise with any other person. It is also not plea of the appellant that sometimes Mahipal had been driving the truck in question or at other times some other person was driving the aforesaid truck on behalf of the appellant – company. In this view of the matter, I find it difficult to accept contention of the appellant that Mahipal is not covered within the definition of 'employee' under the Act or the appellant has wrongly been fastened with liability to pay compensation. However, counsel for the appellant has not made any submissions to challenge the criteria adopted for computing compensation.

Coming to the issue of liability to pay penalty, it may be correct to say that merely because a person has denied relationship of employer and employee, it would invite the penal consequence of payment of penalty. Nevertheless, denial of relationship as such certainly indicates intention of the employer to escape liability to pay compensation, envisaged under the Act. Indisputably, the appellant did not deposit compensation within the stipulated period of 30 days from the date of accident. The Commissioner is competent to impose penalty upto 50% of compensation in case the compensation is not deposited by the employer within the prescribed period. The proceedings before the Commissioner are summary in nature. It is a benevolent social legislation to provide compensation to the victim or victim family. As the appellant-company, held to be employer of the deceased, failed to deposit compensation in compliance with the provisions of the Act without justifiable reason, imposing penalty for the said default cannot be faulted with.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed with costs.

MARCH 6, 2020

‘D. Gulati’

(REKHA MITTAL)

JUDGE

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