113 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.443 of 2021 (O&M)
Date of Decision:27.05.2021

The New India Assurance Company Limited …Appellant

Versus

Shanti Devi and another …Respondents

FAO No.444 of 2021 (O&M)

The New India Assurance Company Limited …Appellant

Versus

Man Singh and others …Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Ajay Singla, Advocate
for the appellant (in both cases).
(Presence marked through Video Conference)

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ARUN MONGA, J. (ORAL)

C.M No.4795-CII of 2021 in FAO No.443 of 2021
C.M. No.4798-CII of 2021 in FAO No.444 of 2021

Vide these applications, Annexures A-1 to A-3 in C.M. No.4795-CII of 2021 and Annexures A-1 to A-5 in C.M. No.4798-CII of 2021 are sought to be placed on record by seeking exemption to file certified copies thereof.

For the reasons stated therein, applications are allowed as prayed for. Aforesaid annexures are taken on record.

C.M. No.4794-CII of 2021 in FAO No.443 of 2021
C.M. No.4797-CII of 2021 in FAO No.444 of 2021

For the reasons pleaded in the applications, the same are allowed. Delay of 5 days in filing the appeals is condoned. Disposed of accordingly.

Main appeal

1. Two appeals bearing **FAO No.443 of 2021** and **FAO No.444 of 2021** filed by The New India Assurance Company Limited under the Employee's Compensation Act, 1923 (here-in-after called as `the Act') are being disposed of vide the instant common order. Both arise from the same accident which occurred on 06.05.2019 resulting in death of two employees, leading to filing of two separate claims .

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2. Impugned in the appeals are two separate orders, both dated 27.01.2021 passed by the learned Commissioner, Gurugram under Employee's Compensation Act, 1923. Vide one, claimants of deceased victim/employee Pawan Kumar, working as a driver at the relevant time, have been awarded a total compensation of Rs.10,80,003/- and vide second order, claimants of other deceased victim Pankaj, employed as cleaner, have been awarded Rs.10,92,680/- (amounts are inclusive of the interest component as well as other expenses including funeral etc.).

3. Facts and record is being referred from FAO no.443 of 2021. Learned counsel for the appellant vehemently argues that the objection of the Insurance Company with regard to the territorial jurisdiction was given a complete short shrift by the learned Commissioner while rendering the award. On a court query qua merits of case, he submits that no doubt as per the evidence adduced by the claimants (LRs of the deceased), the deceased had indeed suffered fatal injuries from the accident, which eventually led to their death. However, he argues that the said accident did not take place in course of employment.

4. Having heard the arguments of learned counsel for the appellants and on perusal of the impugned award viz-a-viz the other record appended with the appeal, I do not find any grounds worthy of interference.

5. The arguments are sans any substance, both the preliminary objection as well as merits of the case for the reasons stated herein after.

6. First, qua the objection raised on territorial jurisdiction. Admittedly, proceedings were instituted in Gurugram on the basis of the Aadhar cards of the deceased issued in Gurugram. The very purpose of issuance of Aadhar cards *inter alia* is two fold ;

(i) to establish the identity of a citizen of the country;

(ii) to ascertain ordinary place of residence.

I see no reason as to why a genuinely issued Aadhar cards was not to be believed by the competent authority/compensation commissioner, unless of course, proved otherwise, which the insurance company did not. Basis thereof, victims were treated as residents of Gurugram and thus conferring jurisdiction on the Gurugram Commissioner to entertain the claim petitions. There is nothing wrong in adopting that said approach.

7. On a pointed query, learned counsel for the appellant(s) informs that the Insurance Company did not adduce any independent evidence to establish its objection that the deceased victims did not either belong to or reside within the territorial jurisdiction of Gurugram. In the premise, the learned

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Commissioner rightly over ruled the preliminary objection territorial jurisdiction. He was fully justified in proceeding with the matter having *prima facie* convinced himself on the basis of Aadhar cards issued to the deceased.

8. Next, the arguments on merits *inter alia* contending that the accident did not taken place in course of the employment are equally *insipid*, to say the least. Admittedly, a truck insured with the appellant-Insurance Company, being driven by the deceased in course of their employment had a tyre burst, while it was on way to the proposed destination as per employer's instructions. It is but natural that in normal course of prudence, both employees would take appropriate steps for the requisite repair/replacement to proceed further to their destination. By no stretch can one possibly say that getting the requisite repairs of the truck and/or its parts to proceed to the destination would not be a call of duty. It was in course thereof, while going on a two wheeler, deceased were hit by another vehicle (car) that led to their unfortunate demise arising out of the fatal injuries, as already noted aforesaid. The accident thus clearly took place in course of the employment of the victim/s. To be noted, there seems to be no dispute with regard to the fatal injuries suffered and the occurrence of accident, which led to the death of victim employee.

9. Re accident vis-a-vis employment, Learned Commissioner specifically framed the issue with regard to the accident having occurred in course of employment (*Issue no.2; Whether the accident occurred out of and in the course of employment*?). After perusal of the evidence, he rendered his findings against the appellant-Insurance Company giving reasons as below :-

> "*9. The A.R. of the respondent No.2 argued that there is no proof that the deceased was the employee of the respondent No.1 and therefore, there was no relationship of employee and employer between the deceased and the respondent No.1 and the accident was not occurred during the course of employment and therefore, the claim application is not maintainable ?*
>
> *10. On the other hand, the A.R. of the applicants relied upon statements of PW-1, PW-2 and documents Ex.P-1 to P-7 and argued that the deceased was working as driver on the alleged vehicle of respondent No.1 and on 6.5.2019, when he was going to purchase tyre for dumper, met with an accident in the area of P.S. Farah, District Mathura, due to which he received serious injuries and died in the way to hospital and therefore, there was relationship of employee and employer between the deceased and the respondent No.1 and the accident was occurred during the course of employment and the claim application is maintainable and the applicants are entitled to compensation.*
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> *11. A perusal of statements of PW-1, PW-2 and documents Ex.P-1 to P-16 (especially FIR Ex.P-1 and PMR Ex.P-4) shows that the deceased was working as Driver on the alleged vehicle*

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of respondent No.1 and met with an accident on 6.5.2019 during the course of employment and died on the spot.

12. In the authority Maghar Singh vs Jashwant Singh, 1997 ACJ-517, it was held by Hon'ble Supreme Court that claimant did not possess any letter of appointment or any documentary evidence for payments received by him for the work done – Evidence that the machine which the claimant was operating was that of respondent. Whether the claimant was a workman under the respondent and the accident arose out of and in the course of employment – Held yes.

13. In view of the above discussion and in the absence of any contra evidence, I hold that there was relationship of employer and employee between the respondent No.1 and the deceased and the deceased was died due to accident on 6.5.2019 during the course of employment of respondent No.1. Both these issues are decided accordingly, in favour of the applicant."

10. The aforesaid finding qua the accident having taken place in course of employment is thus based on the evidence adduced by the claimants, while on the other hand, not only there was none adduced by the appellant Insurance Company but even otherwise as observed by the learned Commissioner, there was nothing contrary on the record to disbelieve the evidence adduced by the claimants. I do not, therefore, agree with the learned counsel for the appellant that the impugned award suffers from any infirmity and/or is illegal and thus unsustainable.

11. There is another aspect of the matter which needs mention i.e. the non-involvement of the insured vehicle in the accident and thus the Insurance Company being not liable, as has been strenuously argued by the learned counsel for the appellant Insurance Company. This contention is also not tenable and is being noted only to be rejected. Once it has come on record that the vehicle insured had connection with the death of the workmen, though indirect, but their cause of death had a direct proximity with their employment, it is completely insignificant whether at the time of accident, the insured vehicle was in use at a public place or not and/or the same was directly operational or involved therein or not. In this context, reference may be had to Section 147(1) of the Motor Vehicles Act, 1988, which reads as under :-

"*147. Requirements of policies and limits of liability – (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which –*

(a) is issued by a person who is an authorized insurer;
and

(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2) –

(i)against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods

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or his authorized representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;
(ii)against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place;
Provided that a policy shall not be required –
(i)to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923) in respect of the death of, or bodily injury to, any such employee –
(a)engaged in driving the vehicle,
or
(b)if it is a public service vehicle engaged as conductor of the vehicle or in examining tickets on the vehicle,
or
(c)if it is a goods carriage, being carried in the vehicle,
or
(ii)to cover any contractual liability
Explanation : For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place."

(emphasis supplied)

12. A perusal of the proviso (i) of Clause (b) of sub-section (1) of Section 147 *ibid* leaves no manner of doubt that even if the vehicle insured is not involved in the accident, the Insurance Company is regardless liable in respect of bodily injury sustained by an employee arising out of and in the course of his employment under Workmen's Compensation Act 1923, which includes death arising out of any such bodily injuries. To that extent, there is an exception carved out in the said section.

13. The employment of both the victims as driver and cleaner has been duly proved before the learned compensation commissioner. As noted above, driver of the vehicle and, if the vehicle is a goods carriage, an employee being carried in the vehicle are both entitled to seek compensation. The compensation commissioner, therefore, rightly entertained the claim petitions filed before him.

14. Learned counsel for the appellant(s) has relied upon an Apex Court judgment in ***Mumtaj Bi Bapusab Nadaf and others vs United India Insurance Company and others***[1] and another judgment of Rajasthan High

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[1] 2010(10)SCC 536

Court in ***New India Assurance Company vs Gouri Shankar and others***[2]. Both these cases relied upon by the learned counsel for the appellant(s) do not help in furtherance of the cause of the appellant/s, in any manner and are thus of no avail. In the Supreme Court judgment, the Insurance Company was held not liable for compensation since the finding therein was that the accident which led to the death of workmen did not occur in the course of their employment and the insured vehicle was also not found to be directly involved in the accident. There was thus no proximity between the cause of death with the employment or the vehicle. In Rajasthan Judgement *(supra)*, the matter was merely remanded for fresh consideration by the Compensation Commissioner primarily on the ground that the learned Judge held therein that while passing the award, the Compensation Commissioner had not gone through the facts of the case.

15. As an upshot of aforesaid, since I have already held that the accident took place in course of employment of victims/employees, the claimants are fully entitled to seek compensation under the Workmen's Compensation Act, 1923.

16. Dismissed.

(ARUN MONGA)
JUDGE

May 27, 2021
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No

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[2] Case Law Finder Doc Id # 714970