IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM-8231-CII-2019 in/and
FAO-1946-2017
Decided on : 26.08.2022

National Insurance Company Ltd. ... Appellant

Versus

Smt.Simran & others ... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present:- Mr.D.P.Gupta, Advocate, for the appellants.

Mr.S.R.Chaudhary, Advocate,
for the applicant-respondent No.1.

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G.S. Sandhawalia, J. (Oral)

CM-8231-CII-2019

Application has been filed for release of the awarded amount to the applicants without furnishing security.

With the consent of counsels for the parties, the main appeal is taken on Board today itself.

CM stands disposed of.

FAO-1946-2017 (O&M)

The present appeal arises out of the award of the Commissioner under the Employee's Compensation Act, 1923 (for short, the 'Act') dated 26.12.2016 vide which a sum of Rs.6,66,998/- had been directed to be paid along with interest @ 10% per annum from the date of the accident i.e. 01.06.2011 to the claimants-respondents.

Counsel for the Insurance Company has submitted that the substantial question of law which would arise for consideration is firstly that the deceased-Phool Singh was the son of the employer-Sat Pal and therefore, there was no positive material to show that there was a relationship of employer-employee, to bring the case within the ambit or jurisdiction of the Commissioner under the Act. Secondly, it is argued that the licence of the deceased was of a Light Motor Vehicle and admittedly, he was driving an ambulance and therefore, it is contended that he was not authorized to drive the said vehicle as it was not a valid driving licence and the ambulance being a transport vehicle. Therefore, the finding on issue No.4 that the deceased had a valid driving licence is wrong.

In the considered opinion of this Court, the arguments raised are not sustainable. Firstly, the wife of the deceased stepped into the witness-box and stated in affirmative qua the relationship of the employer-employee. Merely because the plea taken was that the father was the employer would not be a ground as such to come to any implied conclusion that the father cannot employ the son. It is not disputed that the death was on account of a road accident while coming back from Gorakhpur, U.P. where the deceased-Phool Singh had gone while driving his Omni vehicle while dropping a patient. It was a positive case that he was employed as a driver in the said vehicle. The wife-Simran had given her affidavit and was duly cross-examined. She stated that she and her children were living separately independently on the first floor of the house whereas the father-in-law used to stay on the ground-floor. It has also come on record that the father-in-law had divorced his wife. It is thus apparent that the father-in-law was living alone and was not staying with his son and daughter-in-law on the first floor. The father also appeared in the witness-box and was duly cross-examined and denied any such suggestion that the son was not the employee.

Merely because there was relationship of father and son and employer-employee would not be a ground to hold adversely on the ground that there was no employment inter se. Reliance has been rightly placed upon the judgment of the Uttarakhand High Court in **United India Insurance Company Ltd. Vs. Baljeet Kaur & another 2008 (20) SCT 234** wherein also interference was not done while noting that the employer was the driver of the vehicle of the father.

Reliance can also be placed upon the judgment of the Karnataka High Court in **New India Assurance Company Ltd. Vs. Gajanan D.Dengi & another 2008 (4) SCT 505**, wherein it was noticed that it was not uncommon amongst the business family to engage their own kith and kin on employment for doing the business or commercial activity. Therefore, the legal relationship of employer-employee could always be a consideration in kind especially while referring to the rural life-style where a person employs family members for the purpose of running tractor-trailer etc. Similar view was also taken by the Karnataka High Court in **Oriental Insurance Company Ltd. Vs. Ramesh & another 2016 ACJ 519**. In such circumstances, this Court is of the considered opinion that the findings recorded by the Commissioner does not suffer from any infirmity on this account.

Regarding the second argument of issue No.4 that the deceased did not had a licence to drive the vehicle, it is to be noticed that the vehicle in question as per the records was a Maruti Omni Van and would be covered under the Light Motor Vehicle's definition and the licence was valid for LMV also which would be clear fro the statement of Mandeep, Data Entry Operator of the RTO who had been produced before the Commissioner to prove the licence.

Counsel for the claimants has placed reliance upon the judgment of the Apex Court in **Mukund Dewangan Vs. Oriental Insurance Company Limited, 2017 (14) SCC 663**, wherein it has been held that a Light Motor Vehicle as defined under Section 2(21) of the Act would include a transport vehicle. Therefore, the argument raised by counsel for the Insurance Company that the licence was not valid to drive a Maruti Omni Van is also without any basis.

Resultantly, keeping in view the above, no substantial question of law arises in the present appeal which would warrant interference by this Court under the Act. Accordingly, the present appeal is dismissed being devoid of any merit. The amount of compensation deposited with the Commissioner shall be disbursed to the claimants-respondents.

Since the main case is decided, pending application(s) if any stands disposed of.

August 26, 2022 **(G.S. SANDHAWALIA)**
sailesh **JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No