

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

104

FAO-141-1991

Date of decision : 02.09.2024

Balwant Singh**..... Appellant****versus****M/s. Pala Singh and another****..... Respondents****CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. Kapish Singla, Advocate for
Mr. Ashit Malik, Advocate
for the appellant.

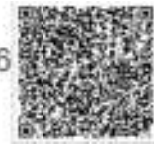
Mr. Neeraj Khanna, Advocate for
Mr. Ravinder Arora, Advocate
for respondent No.2.

PANKAJ JAIN, J. (ORAL)

1. Present appeal is directed against order dated 07.11.1990 passed by Commissioner Workmen's Compensation, Kurukshetra dismissing the claim petition filed under the Workmen Compensation Act, 1923 (now re-named as Employees Compensation Act, 1923).

2. Claimants filed claim application seeking compensation on account of death of Amarjit Singh son of Balwant Singh claiming that he was employed as a truck driver bearing truck No.HYM 3085 with opposite party No.1. On the fateful day, i.e. on 05.05.1985, he was on duty. The truck was loaded. The same turned turtle and went into the pit. The deceased Amarjit Singh was crushed to death under the truck.

3. The employer i.e. opposite party No.1 opted not to appear and was proceeded ex-parte. The claim was contested by the insurer. It is not denied



that the truck was insured. However, it was claimed that since as per the contents of the FIR, it is evident that the deceased was travelling as a passenger and not the driver of the truck, he did not die during the course of employment.

Commissioner framed following issues:-

- “1. Whether M/s Pala Singh Joginder Singh, truck owner was insured with the insurance Co. (M/s Oriental Insurance Co.)? (OPR)
2. Whether the claimant are entitled for the amount claimed in the claim application, If so, to what effect. (OPA)
3. Relief.”
4. Commissioner held that since the accident did not occur in due course of employment, thus the claimants are not entitled for compensation.
5. Counsel for the appellant while assailing the impugned order passed by the Commissioner submits that FIR No.86 dated 05.05.1985 was lodged with respect to factum of accident and death of the deceased. It has been proved on record that he died in accident. Insurance of the truck is not disputed. Thus, the Commissioner erred in dismissing the claim petition.
6. Mr. Khanna in support of the award passed by the Commissioner submits that since the deceased was travelling as a passenger and not as a driver, whole of the claim put forth by the claimants stands falsified and the Commissioner rightly dismissed the claim petition.
7. I have heard counsel for the parties and have carefully gone through the records of the case
8. The accident dated 05.05.1985 is not in dispute. It is not in dispute that the deceased Amarjit Singh aged 24 years lost his life in the said accident.

It is also not in dispute that the truck was insured.



9. Sole question that arises for the consideration of this Court is:

(i) Whether the deceased died during and in the course of employment as contemplated under Section 3 of the 1923 Act?

10. The first version is forthcoming is recorded in FIR No.86 dated 05.05.1985. A bare perusal thereof would reveal that indeed Amarjit Singh was not driving the truck. However, at the same time, it is not disputed that he was travelling in the truck sitting besides his employer. The best person to explain the presence of Amarjit Singh in the truck was respondent No.1-the insurer. He opted not to appear and was proceeded ex-parte and Mr. Khanna cannot dispute that respondent No.1 rather appeared as AW-4 to support the claim and admitted the factum of relationship between employer and employee. Thus overwhelming evidence to prove that deceased was employed as driver, merely for the reason at the relevant time it was employer who was driving vehicle with employee sitting beside him, their relationship does not come under cloud.

11. Thus, in these circumstances, this Court finds that the Commissioner erred in rejecting the claim petition holding that the accident did not happen in due course of employment. Thus, the findings returned by Commissioner are hereby reversed. It is a case of death. The compensation that is payable to the claimant on account of death of Amarjit Singh who at the time of death was 24 years of age is as under:-

$$\frac{700}{50} \times 218.47 = 76,464.5/-$$

12. Appeal stands allowed. The amount calculated shall carry interest as per the statute. Respondent No.1 shall pay 30% per cent penalty from the date



of filing of the case i.e. 18.07.1985.

13. Ordered accordingly.

(PANKAJ JAIN)
JUDGE

02.09.2024

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Whether speaking/reasoned : Yes

Whether Reportable : No