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

FAO No.3294 of 2024 (O&M)
Date of decision : 17.09.2024

Shriram General Insurance Company Ltd. ....Appellant

Versus

Fakru and others ...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Punit Jain, Advocate
for the appellant.

<u>PANKAJ JAIN, J. (ORAL)</u>

CM No.11803-CII of 2024

This is an application filed under Section 5 of Limitation Act seeking condonation of delay of 14 days in filing the instant appeal.

For the reasons recorded in the application, this Court is satisfied that the applicant/appellant has made out a sufficient cause for condonation of delay.

Consequently, the present application is allowed. The delay of 14 days in filing the instant appeal is hereby condoned.

FAO No.3294 of 2024 (O&M)

Insurance Company is in appeal.

2. Claim application was filed by the dependants of Swahleen son of Fakru, aged 23 years who was working as cleaner/conductor on an insured vehicle owned by respondent No.3. Swahleen lost his life while travelling in insured vehicle on 14th of February, 2023 from Manesar, Gurugram to Patna, Bihar. As per the claim application, the tyre of the vehicle got punctured. While deceased was changing tyre, an unknown vehicle came from back side and hit the deceased leading to his death.

3. The employer/respondent No.3 admitted the relationship, salary and the accident. However, claimed that the applicants are not entitled for compensation. Appellant/Insurance company filed separate written statement raising various objections on the claim petition.

4. On the basis of the pleadings of the parties, Commissioner framed the following issues :

> "1. Whether the relationship of employer and employee do exists between the deceased and respondent No.1 at the time of accident?
>
> 2. Whether the applicants are entitled to the compensation as claimed in the claim application? If so what amount and from whom?
>
> 3. Relief."

5. Answering issues in favour of the applicants, Commissioner held them entitled to compensation of Rs.16,62,625/- only along with interest @ 12% on compensation amount from the date of accident i.e. 14th of February, 2023 till the date of order.

6. The only plea raised by the counsel for the appellant is regarding liability of the Insurance Company. While referring to insurance policy which has been appended to the appeal as Annexure A-1, Mr. Puneet Jain, Advocate, counsel for the appellant submits that there being no premium paid to cover death/injury caused to the cleaner, Commissioner erred in holding the Insurance Company liable. He submits that the premium paid was only *qua* PA Coverage for owner and paid driver. No extra premium was charged to cover the cleaner and thus the Insurance Company was not liable to indemnify the insurer. In order to support his contention, he relies upon ratio of law laid down by Supreme Court in the case of **Ramashray Singh vs. New India Assurance Company, AIR 2003 Supreme Court 2877.**

7. I have heard counsel for the appellant and have carefully gone through the records of the case.

8. The issue raised by the appellant only relates to the interpretation of Insurance Policy. The Policy contains schedule of premium. The tabular form of schedule of premium as per the policy reads as under:

SCHEDULE OF PREMIUM			
A. OWN DAMAGE		**B. LIABILITY**	
OD TOTAL	4794.00	BASIC TP COVER	43950.00
TOTAL PREMIUM	49159.00	ADD :GR 36A-PA FOR OWNER DRIVER	315.00
ADD : IGST 18.00%	938.00	ADD : Legal Liability Coverages For Paid Driver	100.00
ADD : IGST 12.00%	5274.00	**TP TOTAL**	44365.00
PREMIUM AMOUNT	55371.00		

9. As per the aforesaid schedule, premium has been paid *qua* the following liabilities :

(i) Basic Third Party Cover;
(ii) Extra premium has been paid for PA Cover for Owner and Driver, and
(iii) Further additional premium has been paid for Legal Liability Coverages for Paid Driver.

10. Terms of policy further provide that the policy is subject to IMT-28, IMT-40, IMT-7 and IMT-21.

11. IMT-17 and IMT-28 read as under :

"IMT 17. PERSONAL ACCIDENT COVER TO PAID DRIVERS, CLEANERS AND CONDUCTORS : (Applicable to all classes of vehicles)

In consideration of the payment of an additional premium, it is hereby understood and agreed that the insurer undertakes to pay compensation on the scale provided below for bodily injury as hereinafter defined sustained by the paid driver/cleaner/conductor in the employ of the insured in direct connection with the vehicle insured whilst mounting into dismounting from or traveling in the insured vehicle and caused by violent accidental external and visible means which independently of any other cause shall within six calendar months of the occurrence of such injury result in :-

Details of Injury	Scale of Compensation
i) Death	100%
ii) Loss of two limbs or sight of two eyes or one limb and sight of one eye	100%
iii) Loss of one limb or sight of one eye	50%
iv) Permanent Total Disablement from injuries other than named above	100%

Provided always that

(1) compensation shall be payable under only one of the items (i) to (iv) above in respect of any such person arising out of any one occurrence and total liability of the insurer shall not in the aggregate exceed the sum of Rs......…..* during any one period of insurance in respect of any such person.

(2) no compensation shall be payable in respect of death or injury directly or indirectly wholly or in part arising or resulting from or traceable to (a) intentional self injury suicide or attempted suicide physical defect or infirmity or (b) an accident happening whilst such person is under the influence of intoxicating liquor or drugs.

(3) such compensation shall be payable only with the approval of the insured named in the policy and directly to the injured person or his/her legal representative(s) whose receipt shall be a full discharge in respect of the injury of such person. Subject otherwise to the terms exceptions conditions and limitations of this policy. "

IMT-28. LEGAL LIABILITY TO PAID DRIVER AND/OR CONDUCTOR AND/OR CLEANER EMPLOYED IN CONNECTION WITH THE OPERATION OF INSURED VEHICLE (For all Classes of vehicles.)

In consideration of an additional premium of Rs. 25/- notwithstanding anything to the contrary contained in the policy it is hereby understood and agreed that the insurer shall indemnify the insured against the insured‟s legal liability under the Workmen's Compensation Act, 1923 , the Fatal Accidents Act, 1855 or at Common Law and subsequent amendments of these Acts prior to the date of this Endorsement in respect of personal injury to any paid driver and/or conductor and/or cleaner whilst engaged in the service of the insured in such occupation in connection with the vehicle insured herein and will in addition be responsible for all costs and expenses incurred with its written consent.

Provided always that

(1) this Endorsement does not indemnify the insured in respect of any liability in cases where the insured holds or subsequently effects with any insurer or group of insurers a Policy of Insurance in respect of liability as herein defined for insured"s general employees;

(2) the insured shall take reasonable precautions to prevent accidents and shall comply with all statutory obligations;

*(3) the insured shall keep record of the name of each paid driver conductor cleaner or persons employed in loading and/or unloading and the amount of wages and salaries and other earnings paid to such employees and shall at all times allow the insurer to inspect such records on demand.

(4) in the event of the Policy being cancelled at the request of the insured no refund of the premium paid in respect of this Endorsement will be allowed.

Subject otherwise to the terms conditions limitations and exceptions of the Policy except so far as necessary to meet the requirements of the Motor Vehicles Act, 1988.

*In case of Private cars/ motorised two wheelers (not used for hire or reward) delete this para."

12. In view of above, once the insurance policy is subject to IMT-28 and additional premium has been paid for a Paid Driver separately from the premium for the PA Cover of Owner Driver. Evidently, the insurance policy shall cover liability arising out of personal injury to any Paid Driver/

Conductor/Cleaner engaged in the service of the insured in such occupation in connection with the insured vehicle.

13. Reliance placed upon the law laid down in **Ramashray Singh**'s case (supra) is misplaced. Apex Court while interpreting the policy involved in the said case came to the conclusion that no premium was paid separately for the cleaner which is not so in the present case. Rather the instant case would be covered by the ratio of law laid down by the Supreme Court in the case of **Mangilal Bishnoi vs. National Insurance Company Limited (2022) 11 SCC 758** wherein while interpreting the import of IMT-17, Supreme Court held as under:

> "**5**. Learned counsel also refers to India Motor Tariff 17 issued under the provisions of the Insurance Act, 1938. As per such endorsement, the insurance company has agreed to indemnify any claim of personal injury to any paid driver or cleaner or persons employed in loading or unloading but in any case, not exceeding seven in number including driver and cleaner while engaged in service of the insured. The relevant clause reads as under:
>
> > "IMT- 17 legal liability to person employed in connection with the operation and or maintain and / or unloading of goods carrying commercial vehicle in consideration of payment of an additional premium it is hereby under stood and agreed that notwithstanding anything contained herein to the contrary the company shall indemnify the insured against his legal liability under the workmen's compensation act, 1923 and subsequent amendment of that act prior to the date of this endorsement the fatal accident act 1855 or at common law in respect of personal injury to any paid driver or cleaner of persons employed in loading/

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> or unloading but it any case not exceeding seven in number including driver and cleaner whilst engaged in the service of the insured in such occupation in connection with the goods carrying commercia! vehicle and will in addition be responsible for ail cost and expenses incurred with its written consent."

> **6**. xxx
>
> **7**. We have heard learned counsel for the parties and find that the High Court has accepted appeal on a make-believe argument that Cleaner or Helper engaged by the employer are engaged in two different duties and that a Helper is not covered by the insurance policy. The High Court has recorded a finding that admittedly deceased was a Helper. In the absence of any clear demarcation of duties of a Helper or a Cleaner and in view of the fact that Helper and Cleaner are interchangeably used, therefore, declining claim for the reason that deceased was engaged as a helper and not Cleaner is wholly unjustified. Additionally, the employer sought indemnification of five other employees engaged in loading or unloading activities by paying extra premium. It was for the insurance company to cross examine the witnesses produced by the claimant or by the owner to prove the fact that deceased was not engaged in loading or unloading activities. We find that the High Court has drawn a distinction between Helper and a Cleaner when none existed.
>
> **8**. Consequently, the order of the High Court is set aside to the extent the Insurance Company was absolved of its responsibilities to pay the amount of compensation so as to indemnify the employer. However, the order regarding payment of interest @12% p.a. does not warrant any interference."

14. In view of above, the plea raised by counsel for the appellant sans merit and deserves to be rejected. Keeping in view the provision of Section 30 of the Act of 1923 involvement of substantial question of law in

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the appeal is *sine qua non* to maintain the appeal. There being no question of law involved much less a substantial question of law, this Court does not find any reason to interfere in the well reasoned order passed by the Commissioner.

15. In view of above, finding no reason to interfere in the instant appeal, the same is ordered to be dismissed.

16. Pending application(s), if any, shall also stand disposed off.

September 17, 2024 **(Pankaj Jain)**
Dpr **Judge**

Whether speaking/reasoned : Yes

Whether reportable : Yes