IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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FAO-5357-2022 (O&M)
Date of decision : 12.09.2024

United India Insurance Co. Ltd. **...... Appellant**

versus

Santosh and others **...... Respondents**

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. D.R. Bansal, Advocate
for the appellant.

Ms. Ritu Choudhary, Advocate for
Mr. J.S. Saneta, Advocate
for respondent No.1.

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

1. Challenge is to the award dated 16.08.2022 passed by Commissioner under Employees Compensation Act, 1923.

2. Claimants filed petition under Section 4 of the 1923 Act seeking compensation on account of death of deceased Joginder Singh @ Yoginder Singh who was in employment of respondent No.4 as a driver for truck bearing no. HR-63B-2182.

3. Deceased is stated to have died during the course of employment while on duty at Forbesganj (Bihar).

4. Commissioner framed following issues:-

> 1. Whether the accident has occurred during and out of the course of employment of respondent no.1?
> 2. Whether the applicants are entitled to the amount of claim as claimed in the application, if so to what amount?
> 3. Relief."

5. Commissioner held that the deceased died during the course of employment and held claimants entitled for compensation to the tune of Rs.5,84,800/- alongwith interest @ 12% per annum.

6. Counsel for the appellant while assailing the impugned order submits that the policy was only to cover motor vehicular accident and was not to be utilized for indemnifying the insured for Employees Compensation Act as well. Thus, the claim under Employees Compensation Act cannot be passed against the insurer.

7. During the course of arguments, counsel for the appellant was asked to show insurance policy. He has produced the same. The same is taken on record as mark 'X'. Certificate of insurance shows that the same was applicable from 24.12.2016 till midnight of 23.12.2017. Date of death of the deceased is 19.05.2017. Thus, on the day of accident, insurance was in vogue.

8. The policy is commercial vehicles package policy. IMT 28 which is part of the policy reads as under:-

> **"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 100/- 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."

9. From above, it is clear that IMT 28 quoted in the policy itself provided that in consideration of an additional amount of Rs.100/- notwithstanding anything to the contrary contained in the policy the insurer undertook to indemnify the insured against the insured's legal liability under the Workmen's Compensation Act, 1923, Fatal Accidents Act, 1855 or at Common Law and subsequent amendments of these Acts in respect of personal injury to any paid driver and/or conductor and/or cleaner engaged in the service of insured in such occupation in connection with the vehicle insured.

10. Details of the premium paid tabulated on the certificate read as under:-

(DUPLICATE)

SCHEDULE PREMIUM (IN ₹)					
OWN DAMAGE			**LIABILITY**		
Basic premium on Vehicle and Accessories					
A. Basic – OD	₹	9,238.50	B. Basic – TP	₹	24,708.00
Total	₹	9,238.50	**Total**	₹	24,708.00
Less :			**Add:**		
No Claim Bonus 25%	₹	2,309.63	Compulsory PA for Owner Driver	₹	100.00
Sub Total (Deductions)	₹	2,309.63	LL to Paid Driver IMT 28	₹	100.00
Gross OD(A)	₹	6,929.00	**Sub Total (Additions)**	₹	200.00
			Gross TP (B)	₹	24,908.00
			Gross OD & TP: (A) + (B)	₹	31,837.00

11. The break up of the premium tabulated shows that the compulsory PA for owners/driver of Rs.100/- was received by the insurer. Thus, insurer in the present appeal cannot shy away from indemnifying the insured claiming that the policy was under Motor Vehicles Act and not Workmen's Compensation Act/Employees Compensation Act, 1923.

12. As a sequel of the aforesaid discussion, present appeal is dismissed being without merit as there is no question of law much less substantial question of law involved which is pre-requisite to maintain appeal under Section 30 of the 1923 Act.

13. Ordered accordingly.

(PANKAJ JAIN)
JUDGE

12.09.2024
Dinesh

Whether speaking/reasoned : Yes
Whether Reportable : No