



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

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Date of decision : 28.07.2025

1. FAO-4902-2009 (O&M)

Bhateri and others

..... Appellants

versus

The Escort Ltd. and others

..... Respondents

2. **FAO-4125-2008**

Bhateri and others

..... **Appellants**

versus

The Escort Ltd. and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Paul S. Saini, Advocate
Ms. Alisha Rai, Advocate and
Ms. Gunjan Nahata, Advocate
for the appellant in FAO-4125-2008 and
for respondent No.3 in FAO-4902-2009

Mr. Ashwani Bakshi, Advocate
for respondents No.1 and 2 in FAO-4902-2009 and
for respondents No.5 and 6 in FAO-4125-2008.

PANKAJ JAIN, J. (Oral)

CM-8192-CII-2024

This is an application for fixing the actual date of hearing and to dispose off the main case.

For the reasons mentioned in the application, the same is allowed. Main case is taken on board today itself for final disposal.



Main case

1. These are cross-appeals filed against the order passed by Commissioner under the Workmen's Compensation Act Circle Sonipat-1.
2. FAO No.4902 of 2009 has been filed by the claimants. FAO No. 4125 of 2008 is at the behest of the insurance company.
3. The claimants seek enhancement claiming that the income of the deceased has been wrongly taken as Rs.2557.84/-. As per the minimum wages notified by the State Government under the Minimum Wages Act, 1948 whereas it ought to have followed notification issued by Central Government under Section 4(1)(B) i.e. Rs.4,000/-. Further grievance of the claimants is against the period for which interest has been granted. As per the claimants, they are entitled for interest on the compensation @ 12 % per annum for the period commencing from 30 days after the date of accident i.e. 30 days after 29.10.2003 till the date of actual realization. Further it has been claimed that nothing has been awarded as penalty under Section 4-A of the Act.
2. Insurance company disputes its liability claiming that the insurance policy was issued in favour of the M/s. Escorts Ltd., whereas the deceased was found to be employee of respondent No.4 i.e. Charan Leasing and Finance (P) Ltd. Further plea is that the policy being a transit policy, M/s. Escorts Ltd. i.e. the insurer was required to furnish declaration prior to transition of tractors.
3. Mr. Bakshi who appears for M/s. Escorts Ltd. submits that the declaration as required was submitted and so has been held by the Commissioner. Reference is being made to RW-2/A.



4. The claimants are seeking compensation on account of death of Bira @ Beer Singh, who was employed as Driver and died at the age of 35 years. As per the claimants, deceased was employed by respondent No.5 and 6. He was on his duty and was driving tractor on 29.10.2003 at 10.30 p.m. when it met with accident after a joint of tractor broke down from the hook while going from Ahmedabad to Nagpur, resulting in death of Beer Singh. The claimants accordingly sought compensation under the Workman's Compensation Act, 1923.

5. The claim was contested by the employer claiming that the Commissioner at Sonipat lacks jurisdiction. It was also denied that the deceased was employee of respondent No.5 and 6 or that he died during the course of employment. Reliance was being placed upon agreement dated 22.04.1999, whereby C&F agents M/s. Charan Leasing and Finance (P) Limited were responsible for injury/loss of life of employees engaged by them.

6. Insurance company also contested the claim denying the liability on the ground that deceased was not employee of respondent No.5 and 6 and that the vehicle cannot be said to be insured at the time of accident for want of declaration as required under transit policy.

7. On the basis of the pleadings, the claim filed by the claimants was put to trial framing following issues:-

1. *Whether the present claim application is not maintainable as the same has not been filed in accordance with the provisions of the Act?*
2. *Whether this court has no jurisdiction to try the present claim application?*
3. *Whether there was no relationship of employer and employee in between the parties or in between deceased and*



the respondent?

4. *Whether the accident arose out of or in the course of employment with the respondent No.1?*

5. *Whether the present claim application is 5. bad for non-joinder of necessary parties?*

6. *Whether the present claim application is bad for mis-joinder of parties?*

7. *Whether the present claim application is maintainable as alleged by not respondent?*

8. *Whether the deceased was not driver by profession and was not having valid and effective driving licence? If so to what effect?*

9. *Whether the claimant is entitled to the amount as claimed in the present claim application or any part of that amount?*

10. *Relief.”*

8. The Commissioner after analysing evidence came to the conclusion that it stood proved that the deceased was employed by M/s. Charan Leasing and Finance (P) Ltd. i.e. respondent No.7 who worked as contractor for respondent No.5 and 6.

9. Relying upon provision as contained under Section 12 of the Act, Commissioner held that the principal employer being liable to pay compensation, the policy shall cover the loss and that the insurance company was liable to indemnify the principal employer under insurance cover.

10. Commissioner relied upon Ex. RW-2/A and found that on the second entry, 04 tractor numbers in question find mention and thus objection raised by insurer regarding lack of declaration is not sustainable.

11. Mr. Saini has assailed the findings.



12. Having heard counsel for the parties and after carefully perusing the records of the case, this Court finds that no exception can be taken to the findings recorded by Commissioner with respect to insurance of the tractors involved. Thus, the finding that the tractor was insured as per Ex.RW-2/A is hereby affirmed.

13. In the considered opinion of this Court, once the Commissioner found that the deceased was employee of respondent No.7 and relied upon Section 12 of 1923 Act, it was incumbent upon the Commissioner to hold that even though the principal employer was liable to compensate the employee, he has a right to recover the same from the contractor. Section 12 of the Act reads as under:-

“12. Contracting.-

(1) Where any person (hereinafter in this section referred to as the principal) in the course of or for the purposes of his trade or business contracts with any other person (hereinafter in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or business of the principal, the principal shall be liable to pay to any employee employed in the execution of the work any compensation which he would have been liable to pay if that employee had been immediately employed by him; and where compensation is claimed from the principal, this Act shall apply as if references to the principal were substituted for references to the employer except that the amount of compensation shall be calculated with reference to the wages of the employee under the employer by whom he is immediately employed.

(2) Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor, or any other person from whom the employee could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this section he shall be entitled to be indemnified by any person standing to him in the relation



of a contractor from whom the employee could have recovered compensation and all questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the Commissioner.

(3) Nothing in this section shall be construed as preventing an employee from recovering compensation from the contractor instead of the principal.

(4) This section shall not apply in any case where the accident occurred elsewhere than on, in or about the premises on which the principal has undertaken or usually undertakes, as the case may be, to execute the work or which are otherwise under his control or management.”

14. In view of above, the insurance company having liability to indemnify the principal employer shall step into the shoes of principal employer and pay compensation but shall have right to recover the same from the Contractor. The issue with respect to liability is decided accordingly. The insurance company shall first pay the compensation and shall have right to recover the same from the Contractor i.e. respondent No.7 and not from the principal employer i.e. respondent No.5 and 6.

15. The claimants claim that compensation is inadequate and need to be enhanced. Their claim is not disputed by the counsel representing the employer as well as insurance company. They are not in a position to dispute that the monthly wages as contemplated under Section 4 have to be as notified by Central Government under Section 4(1B). It is not in dispute that for the relevant date, Central Government notified monthly wages for the purpose of Section 4 of 1923 Act to be Rs.4,000/- per month. Accordingly, the compensation payable to the claimant shall be **Rs.4,000 x 1/2 x 197.06 = 3,94,120/-**.



16. The claimants are also held entitled for interest @ 12% for the period commencing from 30 days after the date of accident i.e. 30 days after 29.10.2003 till the date of award. They are further held entitled for interest @ 7% on the enhanced amount.
17. The interest part shall be taken care of by the insurance company subject to their recovery rights. The claimants are also held entitled quar penalty i.e. 50% of the awarded amount alongwith interest @ 12% per annum for the same period and with interest @ 7% after the date of award. The interest part shall be borne by the principal employer subject to recovery from the Contractor.
18. In view of above, present appeals are disposed off.
19. A photocopy of this order be placed on the file of other connected case.

(PANKAJ JAIN)
JUDGE

28.07.2025
Dinesh

Whether speaking/reasoned :	Yes/No
Whether Reportable :	Yes/No