



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

107

**FAO-6138-214 (O&M)
Date of decision : 10.07.2025**

The Oriental Insurance Co. Ltd.

..... Appellant

versus

Usman and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. D.P. Gupta, Advocate
for the appellant.

Mr. Shivam Sharma, Advocate
for respondent No.1.

PANKAJ JAIN, J. (Oral)

1. Challenge is to the order dated 26.02.2014 passed by Commissioner, Mewat under Employee's Compensation Act, 1923 whereby claim petition filed by the claimant-respondent No.1 seeking compensation on account of injuries suffered by him while working as Driver under employment of respondent No.2 has been allowed.

2. Counsel for the appellant-insurance company has drawn attention towards findings recorded by the Commissioner on issue No.1 regarding relationship of employer-employee. He submits that despite the fact that the precise argument was raised and issue was framed, the learned Commissioner completely ignored the evidence on record in form of the admission made by the claimant himself and answered issue No.1 wrongly in favour of the claimant. He has drawn attention of this Court to testimony of AW-1, Usman-the claimant.



3. *Per contra*, counsel for the respondent submits that even though claimant admitted to be employee of DMR Company, he further testified that he was employed as Driver on vehicle bearing No.HR-38-J-8101 which was owned by respondent No.2. He thus submits that Commissioner has rightly answered issue No.1 in favour of claimant.

4. I have heard counsel for the parties and have carefully gone through the records of the case.

5. In order to appreciate the rival contention, it will be apt to peruse testimony of claimant AW-1. He in his cross-examination stated as under:-

“It is stated that I am presenting my affidavit Ex.AW1/A in my evidence, which may perused in my evidence.

x x x by Shri Ajay Panchal (Advocate) R-2. The DL is available with me in form of identity. I used to work in DMR Company. I had been working in this Company for last about 6 years. This company (DMR) is Trucks Company of vehicle ownership. The office of this Company is in Transport Nagar, Delhi. I do not know the No. of this Company. I know the phone No. of Company. The phone No. of this Company is 989407742. The Company has not issued appointment letter to me. I have gone to office of Company. Now, the address of Company is not in my notice. My signatures were not taken on attendance register there. I used to work as Driver in vehicle bearing registration No.HR 38J8101 of Company. Every month, I was getting a salary of Rs 6000/-. I used get salary in cash. They used to give me salary at home. On 07.09.2009, I met with accident near Agar in M.P. At the time of accident, Sajid was with me. Sajid did not sustain any injury at the time of accident. He was seated beside me on conductor side in vehicle, whereas I was driving the vehicle. Another Driver Resham got me admitted in hospital. I do not know the name of that hospital. First of all, I remained admitted in Agar for 5 days and thereafter I remained admitted in Nursing Home, Palwal for 2 days. There came expenditure of about 2,00,000/- rupees in my treatment. The bills of



treatment are available with me, which I will give to my Counsel. When I walk, the 'Paali' of my right leg does not work and my right hand does not (Unintelligible). I do not do any work at home i am useless I am living with my mother, wife and 4 children. I have 2 Biswas land on which my house is constructed. It is incorrect that I was not working in vehicle bearing No HR 38 J 8101 and I had gone with some another Driver for roaming/travel, it is incorrect that at the time of accident, (unintelligible...) truck was being driven by second Driver Sajid. It is incorrect that I was not working as Driver in truck No.HR 38 J 8101, nor was I taking the monthly salary of 6000/- rupees. The name of owner of truck No.HR 38 J 8101 is Harender Kaur. I have kept on meeting with Harender Kaur Defendant No.1 time and again. She used to meet me in Company. Harender Kaur is aged about 60 years. On the day of accident, the police had recorded my statement in hospital. I do not remember the number of second vehicle which carried out the accident. I had got registered the police report. It is incorrect that the expenditure of 2,00,000/- was not made in my treatment. It is incorrect that I am completely in fit condition and I do not have any physical disability. It is incorrect that I am not aged about 28-29 years. It is incorrect that I am in connivance with the Defendant No.1 and I have got prepared the false case for causing losses to the Insurance Company and taking my claim. It is incorrect that I have got registered the false/fake F.I.R in connivance with Agar, MP Police. It is incorrect that I am recording the false statement.”

6. From the aforesaid testimony of the claimant, it is evident that AW1 explicitly and unambiguously admitted that he was employed by DMR Company as Driver and was working under their employment. From the memo of parties, it is evident that DMR Company was not impleaded. Commissioner, however, while returning finding on issue No.1 wrongly relied upon ratio of law laid down by Supreme Court in the case of **Maghar Singh vs. Jashwant Singh, 1997 ACJ, 517** to hold that even in the absence of letter of appointment or documentary



evidence, the relationship of employer-employee can be ascertained from the evidence on record.

7. In the considered opinion of this Court, the Commissioner misplaced reliance upon ratio of law laid in *Maghar Singh's case (supra)*. In the present case, it is not a case wherein there is no evidence. The claimant himself in his cross-examination had admitted that he was employed with DMR Company and not with respondent No.2, the Commissioner ought to have considered the said evidence and adjudicated accordingly.

8. In view of admission made by the claimant himself, this Court finds that the finding recorded by the Commissioner with respect to claimant being employee of respondent No.2 cannot be sustained and is hereby set aside.

9. In view of above, the impugned order passed by the Commissioner cannot be sustained.

10. Accordingly, the present appeal is allowed. Order dated 26.02.2014 passed by Commissioner, Mewat under 1923 Act is set aside. Amount deposited be remitted back to the appellant.

11. Ordered accordingly.

12. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

10.07.2025
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No