
(2011) 08 P&H CK 0026
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. No. 2623 of 2010 (O and M)

United India Insurance Company Limited	APPELLANT
Vs	
Smt. Anguri Devi and another	RESPONDENT

Date of Decision : 04-08-2011

Acts Referred:

Workmens Compensation Act, 1923 — Section 4A

Citation : (2011) 164 PLR 708 : (2012) 2 RCR(Civil) 47

Hon'ble Judges : Mohinder Pal, J

Bench : Single Bench

Judgement

Mohinder Pal, J.—This appeal has been filed by United India Insurance Company Limited (hereinafter referred to as "the Insurance Company") against the order/award dated 27.11.2009 passed by the Commissioner under Workmen's Compensation Act, 1923, Jind Circle (hereinafter referred to as "the Commissioner"). The claimant-respondent No. 1 herein, i.e. wife of deceased Hawa Singh, who was admittedly working as a Driver on truck bearing registration No.HR-06GA-0274, belonging to respondent No.2-Balwan Singh, was held entitled to the compensation to the tune of Rs. 2,71,120/- along with interest at the rate of 12 per cent per annum i.e. Amounting to Rs. 65,070/- from the date of accident to the date of order. It was further ordered that the Insurance Company shall deposit the amount of Rs. 3,36,190/- within 60 days from the date of award failing which further interest at the rate of 15% was ordered to be charged on the whole amount. The above compensation was awarded by taking the salary of the deceased-workman as Rs. 4,000/- per month and age as 55 years after relying upon the post-mortem report, as the claimant could not produce the proof of age as 43 years. As regards penalty u/s 4-A of the Act, a show cause notice was ordered to be issued to owner of the truck directing him to explain why the penalty should not be imposed upon him.

2. Hawa Singh (deceased), aged about 43 years, was admittedly working as a Driver on the aforesaid truck, belonging to respondent No.2. On 19.8.2007,

Hawa Singh along with owner Balwan Singh (respondent No.2) and cleaner were going to Delhi. At about 12.30 (night) when the truck reached near Bhadoch, Balwan Singh-owner of the truck directed Hawa Singh to stop the truck on road side/"katcha" road. While Hawa Singh was parking the truck on "katcha road", the truck turned turtle. Due to the accident of the truck, Hawa Singh-driver sustained serious- injuries while discharging his duties and died at the spot. Hawa Singh had died while on duty and during the course of employment. The death of Hawa Singh had taken place due to the accident of the truck while he was parking it on the road side/"katcha" road. Balwan Singh (respondent No.2), owner of the vehicle in question, in his written statement before the Commissioner, admitted that Hawa Singh (deceased) was employed by him as driver and was on duty at the time of his death. The vehicle in question had been insured with the Insurance Company.

3. I have heard learned counsel appearing for the appellant-Insurance Company and learned counsel appearing for respondent No.1.

4. Learned counsel for the appellant has raised two fold arguments. It has been submitted that the dependent of the deceased has failed to prove that the deceased was working as a Driver of the truck insured with the Insurance Company. So, in absence of master and servant relationship the Insurance Company is not liable to pay the compensation amount. Secondly, it has been submitted that the Commissioner has awarded interest from the date of accident which is against the law laid down by the Hon'ble Supreme Court in Kamla Chaturvedi Vs. National Insurance Co. and Others, Learned counsel has also referred the judgment of the High Court of National Insurance Company Limited Vs. Sarojamma and Others,

5. On the other hand learned counsel for respondent No.1 has controverted these arguments by referring to the arguments recorded in the order of the Commissioner, according to which the relationship of master and servant is proved.

6. I have given my thoughtful consideration to the submissions of both the sides. Issue No.1 deals with the relationship of master and servant between owner of the truck and the deceased. While appearing in the Court, the Insurance company has admitted that truck was insured with them for a period from 7.8.2007 to 6.8.2008 which covers the date of accident/date of death of the deceased. It is apparent from the award passed by the Commissioner that it has been incorporated in the insurance policy that premium for two employees under the Act has been taken at the time of issuing insurance policy. Once the truck has met with an accident and was being driven by the husband of the claimant, I do not find any reason to deny the submissions made by learned counsel for the claimant that there was master and servant relationship between the deceased and the owner of the truck. Otherwise, also the Insurance Company cannot dispute the employment of the deceased once the same is not disputed by the owner of the vehicle.

7. In view of the admitted position that the deceased workman was an employee of respondent No.2 and died during the course of employment while giving duty at the truck mentioned above, owned by respondent No.2, which was insured with the Insurance Company, I do not see any ground warranting interference in the impugned award so far as award of compensation to the dependent of the workman is concerned as the amount of compensation i.e. Rs. 2,71,120/- is not at all on the excessive side. However, the claimant will be entitled to interest at the rate of 9 per cent per annum instead of 12 per cent per annum as awarded by the Commissioner from 27.12.2009 i.e. after one month of the award which was rendered on 27.11.2009. The impugned Award is modified to the extent indicated above.

With these observations, the petition stands disposed of accordingly.