

**IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA.**

**FAO NO.623 of 2003**

**Judgment Reserved on: 23.4.2007**

**Date of Decision: 30.4.2007**

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**Manmohan Singh** ..... **Appellant**

**Versus**

**Jaspal Singh & another** ..... **Respondent.**

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**Coram**

***The Hon'ble Mr. Justice Kuldip Singh, Judge***

**Whether approved for reporting? No.**

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**For the Appellant : Mr. Ramakant Sharma, Advocate.**

**For respondent No.2: Mr. Ashwani K. Sharma Advocate**

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**Kuldip Singh, J**

This appeal is against the order dated 28.10.2003 passed by Commissioner, Workmen's Compensation(SDM), Nalagarh, District, Solan in case No.3/2002. The parties in the judgment are referred in the same manner as in the impugned order.

The brief facts are that applicant Manmohan Singh filed Claim Petition under the Workmen's Compensation Act, 1923 for grant of compensation on account of injuries sustained by him while performing his duty as co-driver on Truck No.HP-12-3161 under the employment of respondent No.1 Jaspal Singh. The truck was insured with Oriental Insurance Company-respondent No.2. It has been alleged that applicant was drawing Rs.2500/- P.M. salary plus Rs.50/- per day expenses.

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**Whether reporters of Local Papers may be allowed to see the Judgment? Yes**

The further case is that on 5.8.2001 Amarjeet Singh and applicant as drivers were in the truck and when the truck reached near village Banerh the same went out of control due to brake failure. The applicant Manmohan Singh along with Cleaner tried to put gutka before the tyres but suddenly the gutka slipped off the tyres and struck with force on the left leg of applicant Manmohan Singh resulting fracture in **tibia** and **fibula** bones. He was taken to Nalagarh hospital and then to Saket hospital for treatment. He has given his date of birth 2.1.1952

The respondent No.1 filed reply and admitted the accident. He has submitted that the truck was insured with the respondent No.2 and liability to pay compensation, if any, is of respondent No.2.

Respondent No.2 filed reply and has submitted that applicant and respondent No.1 are brother and the application is collusive. The applicant is not a workman but was traveling as unauthorized passenger in the truck. The said truck was not being driven by applicant and he has concocted a false story.

The Commissioner while discussing issue No.1 has held that applicant is workman but under issue No.2 has returned the finding that applicant did not sustain injuries while discharging his duty and, under issue No.3, has held that applicant is not entitled to any compensation. No finding has been returned on issue No.4 regarding validity of license in view of finding on issue No.2.

I have heard learned counsel for the parties and have also gone through the record.

The appeal has been admitted for hearing on following substantial questions of law:-

1. *Whether the claim for compensation under the Workmen's Compensation Act can be dismissed when the factum of employment and accident as well as injuries and consequent disability therein had been admitted by the respondent?*

2. *Whether impugned order is sustainable when the workmen had proved all things necessary for grant of compensation under S.3, 4,4A of the Workmen Compensation Act?*

**Substantial questions of law 1 and 2:-**

The learned counsel for the applicant has submitted that the Commissioner has misconstrued and mis-interpreted the pleadings and evidence on record in returning the finding that applicant has not sustained injuries during the course of employment with respondent No.1. He has submitted that respondent No.2 has not denied the presence of applicant in the truck at the time of accident. He has also submitted that admittedly the applicant has suffered injuries which are not self inflicted. The respondent No.2 in the cross-objection of applicant has specifically taken a stand that the applicant has sustained injuries while ploughing field by a tractor, but no evidence to that effect has been led by respondent No.2. There is overwhelming evidence on record to show that the applicant was co-driver on the truck and he sustained injuries while he was on duty. It is also the case of the applicant that the Commissioner has not properly appreciated the statement of PW-3, Avtar Singh. The applicant is entitled to compensation under the Act. Lastly it has been submitted that some very important documents though placed on the file in original by applicant but have not been proved inadvertently and therefore, an opportunity may be given to the applicant to prove these documents by remanding the case.

The learned counsel for the respondent No.2 has supported the impugned order and has submitted that the Commissioner has rightly come to the conclusion that the applicant was not a driver on the truck and he did not sustain any injury during the course of his employment.

The applicant in the application for compensation has given in detail in what capacity he was on the truck at the time of accident and how he suffered

the injuries while he was putting gutka before the tyres when the truck went out of control due to failure of brakes. The respondent No.1, owner of the truck has admitted that the applicant was engaged as driver on truck No.HP-12-3161. He has also admitted that applicant has suffered injuries during the course of his employment. The respondent No.2 has filed the reply, in which presence of the applicant at the time of accident has been specifically admitted.

On the basis of material on record and contentions raised by the parties two points emerge for determination. First whether the applicant was a co-driver on the truck at the time of accident and second whether he sustained injuries during the course of his employment with respondent No.1. The first point does not require elaborate discussion in as much as under issue No.1, the Commissioner has specifically recorded a finding that the applicant was a workman at the time of accident. This finding has not been assailed by respondent No.2 which has become final. Therefore, only contention which requires determination is whether applicant sustained injuries during the course of employment.

PW-1 is Dr. Anil Bansal, PW-2 is applicant himself who has supported his case. He has also examined PW-3 Avtar Singh, Cleaner of the truck. There is original discharge slip dated 5.8.2001 of applicant issued by CHC, Nalagarh. There is card dated 6.8.2001 of Saket Institute, Chandimandir showing examination of applicant and another card dated 31.10.2001 of the same Institute. There are many receipts of various dates of Haryana Saket Council in the name of applicant. There is another receipt of Shivam Medicos dated 24.9.2001 in the name of applicant showing some expenses. All these documents have not been proved. The learned counsel for the applicant submits that all these documents more particularly discharge slip CHC, Nalagarh dated 5.8.2001 and Saket Institute cards dated 6.8.2001 and 31.10.2001 are very important documents which have not been proved inadvertently. He prays that evidence which has already come on record along

with above referred documents which have not been proved supports the case of applicant that he has sustained injuries during the course of employment of respondent No.1 and not by ploughing field by a tractor as alleged by respondent No.2. He therefore, submitted that the case may be remanded and he may be given an opportunity to prove these documents.

The learned counsel for respondent No.2 has submitted that applicant has miserably failed to prove that he has sustained injuries in accident during the course of employment of respondent No.1. No case has been made out for remand. The applicant was given opportunity to lead evidence but for reasons best know to him he did not prove discharge slip of CHC, Nalagarh and Saket Institute cards dated 6.8.2001 and 31.10.2001 and other documents. Therefore, now the case may not be remanded for proving these documents.

The injuries sustained by applicant have not been disputed by respondent No.2. The question is whether these injuries were sustained by the applicant as stated by him or he sustained these injuries while ploughing field by a tractor as alleged by respondent No.2. In my opinion discharge slip of CHC, Nalagarh, Saket Institute cards dated 6.8.2001 and 31.10.2001 and other documents are relevant to resolve the controversy. The accident has taken place on 5.8.2001. The doctor who examined the applicant on 5.8.2001 can throw light whether the injuries sustained by the applicant are possible by hit of gutka from a tyre or these injuries can be sustained by ploughing field by a tractor. Similarly the doctor who examined applicant on 6.8.2001 and 31.10.2001 can also throw light on this question.

In the facts and circumstances of the case and in the interest of justice and without expressing any opinion how applicant suffered injuries, in my opinion, it is a fit case where an opportunity is to be given to applicant to prove discharge slip of CHC, Nalagarh dated 5.8.2001, Saket Institute cards dated 6.8.2001 and 31.10.2001, Haryana Saket Council receipts dated 6.8.2001 ( two in number) , 14.8.2001, 4.9.2001( two in number), 24.9.2001( two in

number), 31.10.2001 ( two in number) , 7.11.2001 and Shivam Medicos receipt dated 24.9.2001 which are already on record in original on the file of Commissioner. In my opinion above referred additional evidence is necessary to decide the issue whether the applicant sustained injuries during the course of employment with respondent No.1. The respondent No.2 will get an opportunity to rebut the above referred additional evidence. Thereafter the Commissioner will decide the claim petition. No doubt above referred documents by way of additional evidence can be taken on record in the appeal also. But I do not want to adopt this procedure. The parties will get the benefit of appreciation of evidence by the Commissioner in the light of these documents and this course will not deprive either party right of appeal.

In view of the above discussion, the appeal is accepted. The findings recorded by the Commissioner on issues No.2 to 4 are set aside. The case is remanded to Commissioner with a direction to permit the applicant to lead additional evidence for proving discharge slip of CHC, Nalagarh dated 5.8.2001, Saket Institute cards dated 6.8.2001 and 31.10.2001, Haryana Saket Council receipts dated 6.8.2001 ( two in number), 14.8.2001, 4.9.2001 ( two in number), 24.9.2001 ( two in number), 31.10.2001 ( two in number), 7.11.2001 and Shivam Medicos receipt dated 24.9.2001 which are already on record of the file of Commissioner in original. Thereafter the Commissioner will given an opportunity to the respondents to rebut the additional evidence and decide issues No.2 to 4 afresh and petition in accordance with law. The Commissioner is directed to decide the application by 30.9.2007. The substantial questions of law 1 and 2 referred above are disposed of accordingly. The parties through their counsel are directed to appear before

the Commissioner on 21.5.2007. The Registry is directed to send the file of the Commissioner immediately so as to reach before the date fixed. The parties are left to bear their own costs.

**( Kuldip Singh )**  
**Judge**

**April 30, 2007**  
**(sks)**