

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

**FAO (ECA) No. : 81 of 2015  
Decided on: 31.8.2015**

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Bajaj Allianz General Insurance Company Ltd.  
...Appellant  
Versus  
Pinki Devi and others. ...Respondents.

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**Coram:**

**Hon'ble Mr. Justice Rajiv Sharma, Judge.**

**Whether approved for reporting?<sup>1</sup> Yes**

**For the Appellant : Mr. Jagdish Thakur, Advocate.**

**For the Respondents : Mr. R.K. Sharma, Sr. Advocate with  
Mr. Amit Kumar Dhumal, Advocate for  
respondent Nos. 1 to 3.**

**Mr. Sat Prakash, Advocate for respondent  
No.4.**

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**Justice Rajiv Sharma, Judge.**

This appeal is instituted against the award dated 28.5.2014 rendered by the Commissioner under Employee's Compensation Act, 1923, Chamba in case No. 533/13.

2. "Key facts" necessary for the adjudication of this appeal are that respondent Nos. 1 to 3 instituted a petition for the grant of compensation under section 22 of the

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<sup>1</sup> Whether reporters of the local papers may be allowed to see the judgment? Yes

Workmen Compensation Act against the appellant as well as respondent No.4 with the averments that Sampuran Singh was a workman. He was employed by respondent No.4 as a Driver on tipper No. HP-73-0999. The vehicle met with an accident on 21.4.2010, as a result of which, deceased received multiple injuries on his person. He died on the spot. Matter was reported to the police vide FIR No.106/2010 dated 22.4.2010. Deceased was 37 years of age. He was earning Rs. 5,000/- per month.

3. Petition was contested by appellant as well as respondent No.4. According to respondent No.4, vehicle was registered with the Insurance Company with effect from 15.11.2009 to 14.11.2010. It is also admitted that late Sampuran Singh was employed by respondent No.4. Factum of accident has also been admitted. According to the reply filed by the appellant, deceased was not holding valid and effective driving licence.

4. Claimants filed rejoinder. Issues were framed by the Commissioner on 3.12.2012. Award was made in favour of the claimants on 28.5.2014.

5. Mr. Jagdish Thakur, learned counsel for the appellant, on the basis of the substantial questions of law framed, has vehemently argued that conditional order of payment of penalty by his client is contrary to the provisions of Workmen Compensation Act, 1923.

6. Mr. R.K. Sharma, learned Senior Advocate and Mr. Sat Prakash have supported the award dated 28.5.2014.

7. I have heard the learned counsel for the parties and have gone through the pleadings and award carefully.

8. Accident has taken place on 21.4.2010. Deceased was employed as Driver by respondent No.4 on tipper. AW-1 Pinki has led her evidence by way of affidavit Ex.AW-1/A. She has proved legal heirs certificate mark 'X'. She has reiterated the averments contained in the petition. AW-2 Varun Sharma has proved postmortem report Ex.AW-2/A. AW-3 MHC Raj Kumar has proved FIR Ex.AW-3/A. RC is Ex.R-1/A, Driving Licence is Ex.R-1/B and Insurance is Ex.R-1/C.

9. Respondent No.4 has admitted that the deceased was working as a Driver and employed by him. He died in accident on 21.4.2010. Appellant has not led any tangible

and convincing evidence that deceased was not possessing valid and effective driving licence. Age of the deceased, as per post-mortem report was 40 years. FIR is Ex. AW-1/A. Claimants have led tangible evidence to establish that deceased died during the course of employment with respondent No.4. There was relationship of employee and employer between deceased and respondent No.4. The vehicle was insured with appellant with effect from 15.11.2009 to 14.11.2010. The accident has taken place on 21.4.2010.

10. Learned Commissioner has correctly assessed the income of deceased and applied proper factor of 181.37. However, she has passed the conditional order whereby she has ordered that the award amount be deposited within 30 days from the date of passing of this award, failing which appellant and respondent No.4 were made liable to deposit 50% of the amount by way of penalty. The penalty amount has to be paid by the employer and not by the insurance company. Moreover, the notice is also required to be issued to the employer before the imposition of penalty.

11. Accordingly, in view of the analysis and observation made hereinabove, the appeal is partly allowed. The award made by the Commissioner is upheld whereby a sum of Rs. 4,10,582/- has been awarded in favour of the claimants, however, conditional order to deposit 50% of the amount by way of penalty by the appellant and respondent No.4 is set aside. Pending application(s), if any, also stands disposed of. No costs.

**(Justice Rajiv Sharma),  
Judge.**

31.8.2015

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