

Harpal Singh Vs Jai Bhagwan @ Chhotu and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Nov. 17, 2010

Hon'ble Judges: Hemant Gupta, J

Bench: Single Bench

Judgement

Hemant Gupta, J

1. Challenge in the present revision petition is to an order dated 5.8.2008 passed by the Commissioner under Workmen"s Compensation Act,

1923, Kurukshetra whereby the Insurance Company has been deleted from the array of the parties.

2. Respondent Nos. 1 and 2 filed a claim petition before the Commissioner under the Workmen"s Compensation Act, 1923 claiming

compensation on account of the death of their son Mukesh Kumar during the course of employment. Respondent No. 3 was impleaded as the

Insurance Company with whom the offending vehicle was insured including the liability arising out of the death of a driver during the course of

employment.

3. On an application filed by Insurance Company, the name of the Insurance Company has been ordered to be deleted from the array of the

parties for the reason that Mukesh Kumar was not the driver in fact one the Satish Kumar was the driver.

4. Learned Counsel for the Petitioner contends that the question whether Mukesh Kumar or Satish Kumar is the driver is the question which is

required to be decided on the basis of the evidence to be led by the parties and not on the basis of averments made in the pleadings. By virtue of

an order passed by the Commissioner on 5.8.2008, all the issues regarding the indemnification of the Insurance Company stands settled though the

parties were yet to lead evidence.

5. I find the contention of the learned Counsel for the Petitioner to be meritorious. The person who was driver of the offending vehicle is required

to be decided after opportunity is given to the parties to lead evidence. Such question cannot be decided on the basis of pleadings. Therefore, the

order passed by the Commissioner under the Workmen"s Compensation Act, 1923 is set aside. The liability of the Insurance Company shall be

decided at the time of final decision of the claim petition.

6. Revision stands disposed of accordingly.