



IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

FAO (MVA) No.4016 of 2013

Reserved on: March 21, 2025

Date of Decision: July 15, 2025

Rishi Raj

....Appellant.

Versus

Ram Krishan and others

..Respondents.

*Coram:**The Hon'ble Mr. Justice Vivek Singh Thakur, Judge.**Whether approved for reporting?¹ Yes*

For the Appellant:

Mr.Bimal Gupta, Senior Advocate, with
Mr.Trigun Singh Negi, Advocate, vice
Ms.Kusum Chaudhary, Advocate.

For the Respondents:

None for respondents No.1 and 2.

Ms.Seema Sood, Advocate, for respondent
No.3.Vivek Singh Thakur, J.

This appeal, under Section 173 of the Motor Vehicles Act, 1988 (in short 'M.V. Act') has been preferred by claimant-Rishi Raj against Award dated 22.04.2013, passed by Motor Accident Claims Tribunal(II) Mandi, District Mandi, H.P., in Claim Petition No.73 of 2006, titled as *Rishi Raj vs. Ram Krishan and others*, whereby claimant has been held entitled for compensation to the tune of ₹2,13,000/- alongwith interest @ 7.5% per annum from the date of filing petition till realization of whole amount from respondents No.1 and 2 (driver and owner) jointly and severally by

¹ Whether reporters of the local papers may be allowed to see the judgment?

considering claimant a gratuitous passenger instead of Conductor-cum-Manager of the offending vehicle (Truck), but rejecting the claim of the claimant for compensation of ₹20,00,000/-, considering his income @ ₹3000/- per month instead of claimed monthly income of ₹8000/- per month.

2. Appeal has been preferred on two counts that compensation awarded by the MACT is on extremely lower side and assuming his income as ₹3000/- per month, instead of ₹8000/-, is contrary to the material placed on record, and further that keeping in view the age of the claimant, details of expenses placed on record and disability suffered by the claimant, as well as applying multiplier of 17 instead of 16, amount of compensation deserves to be enhanced. Further that, claimant has been wrongly considered as gratuitous passenger instead of Conductor-cum-Manager despite no rebuttal on this count by the respondents, rather there is admission of owner and driver that claimant was engaged as Conductor-cum-Manager of the Truck.

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

4. Though claimant while appearing as PW.1, in his examination-in-chief, by way of affidavit, has claimed that he was receiving salary from respondent No.2 @ ₹8000/- per month plus ₹100/- per day as expenditure. However, no documentary proof related thereto has been placed on record.

5. It is also apt to record that though the claim of the claimant with respect to his monthly income cannot be rejected only for non production of any documentary proof of salary or

monthly income on record, but at the same time, such claim should be corroborated by surrounding circumstances as well as other evidence on record, oral or documentary.

6. In present case, in reply to the Claim Petition, respondents No.1 and 2 have admitted claim of the claimant that he was getting ₹8000/- per month, with further averments that claimant had also loaded his apple boxes by paying freight, but at the same time, it is also apt to record that none of these respondents had appeared as a witness in the Court to depose on oath that claimant was being paid ₹8000/- per month plus ₹100/- per day as expenditure. Pleadings of the reply are not substantiated by any evidence, oral and/or documentary.

7. Admittedly, respondent No.2-Krishan Lal is real brother of claimant. In his statement, claimant has stated that he was getting ₹8000/- per month as salary and ₹100/- per day, but owner, despite the fact that he is real brother of the claimant, did not appear in the witness box to substantiate plea taken in the reply to the Claim Petition as well as to prove the plea that claimant was not only Conductor-cum-Manager of the Truck, but also travelling in the Truck as owner of the goods by loading his apple boxes in the Truck.

8. In the Claim Petition, in examination-in-chief, of claimant Ex.PW.1/A or in cross-examination, it is not case of the appellant-claimant that some apple boxes were belonging to him and irrespective of being serving as a Conductor-cum-Manager of the Truck, he was also travelling in the Truck alongwith his goods, i.e. boxes of apple. Though, respondents No.1 and 2 have tried to

introduce story in their reply, but none of them had appeared in the witness box to substantiate such plea. Claimant as PW.1, did not assert himself as owner of the goods. Owner and driver of the vehicle did not lead any evidence to prove the same. Therefore, for absence of pleadings in the Claim Petition as well as in deposition of claimant as PW.1, and also for not leading any evidence by respondents No.1 and 2 to substantiate such plea taken in their reply to the Petition, I am of the considered opinion that it has not been proved that Rishi Raj was travelling in the Truck as owner of the goods.

9. Plea of the claimant in the Petition as well as in his deposition is that he was travelling in the Truck as a Conductor-cum-Manager. He has admitted that Log Book was being filled up by his brother and sometimes by him, but the same was not available with him. In the Petition, in examination-in-chief as well as in cross-examination, plea of the claimant is consistent, but at the same time, he has also admitted that he was not having licence of Conductor at the relevant point of time. Therefore, even if it is considered that he was engaged as a Conductor-cum-Manager in the Truck, but for want of requisite licence for engaging as Conductor, he cannot be considered entitled for receiving benefit by treating him as Conductor of the Truck.

10. Engagement of the claimant with Truck has been admitted by respondents No.1 and 2 in reply filed on their behalf. Insurance Company, in its reply, has not specifically denied this fact, but has stated only that Insurance Company has not covered the liability arising out of bodily injury received by Conductor-cum-

Manager. No evidence has been led by Insurance Company to rebut the claim of the claimant that claimant was engaged as a Conductor-cum-Manager with the Truck. Though in cross-examination, a suggestion, put on behalf of the respondents, has been admitted by the claimant that he was not having Conductor licence, but his engagement with Truck as an employee, Caretaker, Helper or as Cleaner cannot be ruled out for the reason that respondents No.1 and 2 have admitted that claimant was engaged as an employee with the Truck, but except evasive denial, there is no rebuttal in reply filed by the Insurance Company before the MACT. The evidence led by the claimant and others.

11. Insurance Company has examined only one witness RW.1-Balbir Singh, who is Junior Assistant/Licence Clerk in the Land Registration Authority, Karsog, District Mandi, H.P. He has proved on record that driver of the vehicle was having valid driving licence and Registration of the Truck. No other evidence except tendering in evidence Insurance Policy Ex.RZ has been led by Insurance Company.

12. In absence of pleadings as well as evidence, oral and documentary, plea raised by the Insurance Company that claimant was not a person engaged by the owner is not sustainable.

13. Learned counsel for Insurance Company has canvassed that claimant and owner of the Truck (respondent) are real brothers and, therefore, there is no possibility of relationship of employee and employer between respondent No.2 and claimant is not sustainable.

14. Learned counsel for respondent No.2/Insurance Company to substantiate the claim that there was no relationship of employee and employer between deceased and owner of the Tractor, has referred pronouncements in *Gottumukkala Appala Narasimha Raju Vs. National Insurance Co. Ltd. and another*, 2007 ACJ 1025; *National Insurance Company Limited Vs. Lata Devi and others*, 2009 (1) Shim. LC 16; and *Oriental Insurance Company Vs. Santosh Devi and Another*, 2011 (1) Shiml. LC 280.

15. In *Gottumukkala Appala's* case the Claim Petition preferred by widow of deceased driver, who was also owner of the Tractor, was rejected by the Supreme Court on the ground that it was wholly absurd to suggest that the husband would be a "workman" of his wife in absence of any specific contract, with further observation that story of relationship of employee and employer was concocted only for the purpose of proceeding under the Act, story that husband and wife were living separately was concocted because if they had been living separately in view of certain dispute, question of husband being a workman of wife in such situation appeared to be a far-fetched one. It is noteworthy that the Supreme Court had also observed that technically it may be possible that the husband is employed under the wife but, while arriving at a conclusion, when a dispute has been raised by other side, the overall situation should have been taken into consideration. It was also observed that no documentary proof to establish the contract of employment was produced. No independent witness was examined and even the purpose for which tractor was being used, had not been disclosed and how the

accident had taken place, was also not borne out from the record of the case.

16. In given facts and circumstances of afore case, it was held that private parties joined hands amongst them for laying a claim only against the insurer and thus claim was not bona fide.

17. In aforesaid judgment, it has not been held by the Supreme Court that relationship of employee and employer was not possible between husband and wife and the Claim Petition was rejected in the given facts and circumstances.

18. In *Lata Devi's case* deceased driver Chaman Lal was co-owner of tractor involved in the accident and he always remained the owner and even insurance was also purchased in his name and in these circumstances, it was observed that it was highly improbable that mother and brother will engage their own son/brother as a driver as there was no evidence regarding the manner in which Chaman Lal deceased was engaged as driver by the other co-owner, and it was observed that owner cannot be treated as workman. From the facts of this case, it is apparent that this judgment is not attracted in present matter.

19. In *Santosh Devi's case*, by referring *Gottumukkala's case*, it was observed by the Court that testimony of father and mother of deceased, in absence of any other evidence, cannot be said to be evidence to prove that deceased son was workman employed by his father owner of the tractor, particularly when tractor was being used for agricultural pursuits alone.

20. Learned counsel for the appellant has placed reliance upon judgment passed by Karnataka High Court in *Oriental*

Insurance Company Ltd. Vs. Hanumant and another, 2006 ACJ 251; and *United India Insurance Co. Ltd. Vs. Prakash Shankar Gurav and another, 2006 ACJ 747.*

21. In *Hanumant's* case contention of insurer was that there cannot be a relationship of employer and employee since the deceased happened to be son of owner of the jeep, which was rejected with observation that it was not uncommon amongst the business families to engage their own kith and kin on employment for doing business or commercial activities and merely because in such a situation no wages are paid in cash it is not a ground to infer absence of a legal relationship of employer and employee, since there would always be consideration in kind computable in terms of money for the services rendered and the parties would not go for documentary material to prove payment of wages in view of peculiar family relationship and, therefore, it was observed that fact that owner of Jeep and deceased driver were father and son, was not a ground in law to negate the relationship of employee and employer under the Workman's Compensation Act.

22. In *Prakash Shankar's* case, High Court has observed that father engaging his son as employee in a vehicle owned by father is not prohibited under law nor it can be said that such a situation is not normally possible, and just as in any other avocation, it is possible for a father to engage his son as employee.

23. In *Gottumukkala's* case also, it has been categorically observed by the Supreme Court that technically there is possibility that husband and wife can have relation of employer and employee. It is apt to notice that relation of husband and wife is more closer

than the relation of brother, as both of them being partners of life, in normal circumstances, cannot be expected to work as employee and employer, however, despite that it has been observed by the Supreme Court that such relationship is possible.

24. In present case, relationship between respondent No. 1 and deceased Amar Singh was that they were brothers. Employment of a brother as an employee under another brother is not an abnormal, unnatural or unexpected situation. As observed by the Supreme Court in *Gottumukkala's* case that claim of such relationship amongst the close family members is required to be established on record and the Court has to assess the veracity of such claim by taking into consideration overall situation.

25. Engaging an unemployed brother with Truck as a Attendant, Conductor, Manager, Caretaker or Cleaner, by his real brother, is not unnatural phenomena, rather it is natural for a brother to provide employment to his another brother in this Era of unemployment and every person is fighting with crises of getting employment. A stray suggestion of the Insurance Company that claimant was travelling in the Truck for excursion tour for Delhi, which has been denied, cannot be considered sufficient material to rebut the claim of the claimant that he was engaged by owner, i.e. his brother for facilitating/supervising/helping plying of Truck. In the given facts and circumstances, there is nothing on record to discard plea of the claimant that he was employed with Truck by owner of the Truck (his brother).

26. In present case, it is not the stand of Insurance Company in reply that claimant was not employee of the Truck

owner-respondent No.2. As recorded supra, Insurance Company has also not led any evidence to rebut the claim of the claimant in this regard. There is also positive evidence of Dinesh Kumar-PW.2, wherein he has deposed that he had seen the claimant serving as Conductor-cum-Manager. In cross-examination on behalf of Insurance Company, it has been suggested that claimant was going to Delhi for excursion tour, but same has been denied.

27. Taking into consideration entire un rebutted pleadings and evidence on record, I am of the considered opinion that Insurance Company has failed to rebut the claim of the claimant that he was serving at least as an employee, who may be Helper, Manager, Conductor with the Truck. There is sufficient pleading and evidence placed on record on behalf of the claimant that he was an employee of the Truck. Whereas, pleadings as well as evidence of Insurance Company is lacking on this count. Therefore, inference can easily be drawn, that if claimant not serving as a Conductor or Manager, was serving employed as Attendant or Helper or Cleaner with the Truck.

28. Plea of the claimant for enhancing the compensation by taking into consideration his monthly income @ ₹8000/- plus ₹100/- per day, is not sustainable for the reason that though claimant has pleaded his income as claimed, but neither owner has come in the witness box nor any cogent, reliable and material, either oral or documentary, is on record to substantiate claim of the claimant that his income was as claimed by him. Therefore, MACT has rightly determined the amount of compensation by taking his income @ ₹3000/- per month like a labourer. Salary of Conductor, Attendant

or Helper @ ₹3000/- per month, at relevant point of time, is just and fair salary taken for consideration to determine the compensation. Therefore, I do not find any ground to interfere in the amount of compensation awarded by MACT. For determining the liability to pay, relevant document to be considered is Insurance Cover Note, because, admittedly, claimant is not a third party and does not come in the purview statutory Insurance Policy. Therefore, in case he is covered under the Policy Ex.RZ, then only Insurance Company would be liable to pay.

29. Perusal of Insurance Policy Ex.RZ, placed on record by the Insurance Company, it is apparent that towards legal liability of employee/driver premium of ₹75/- has been paid additionally.

30. It is not a Policy only covering the liability towards Driver, but also legal liability towards employee, he may be conductor or someone else. Therefore, for liability to pay compensation to Attendant, Helper or Cleaner, has been covered in the Insurance Policy purchased by the owner of the Truck for payment of additional premium @ ₹75/- for this specific purpose and, therefore, Insurance Company is liable to indemnify respondent No.2 insured for payment of compensation to the claimant.

31. In the light of aforesaid discussion, appeal is allowed partly by maintaining amount of compensation and other amount including interest as awarded by MACT, but fastening liability upon Insurance Company to indemnify respondent No.2 owner of the Truck by making payment of compensation either by paying directly

to the claimant or depositing the same in the Registry of this Court on or before 30.09.2025. Rest Award shall remain same.

32. Appeal is partly allowed and disposed of in aforesaid terms. Pending application(s), if any, also stand disposed of.

(Vivek Singh Thakur),
Judge.

July 15, 2025
(Purohit)

High Court of HP