

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO No.2639 of 1996
Date of decision: 25.03.2015

Santosh Kumari and others

....Appellants

Versus

Secretary Department of Health, Government of Haryana,
Chandigarh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE K.C. PURI.

Present: None for the appellants.

Mr. Gaurav Bansal, AAG, Haryana.

K.C. PURI J. (Oral)

This is an appeal directed against the award dated 24.06.1996, passed by the Commissioner under the Workmen's Compensation Act, Sonapat, vide which the petition for grant of compensation in respect of death of Rajinder was accepted and a sum of Rs.77,856/- was granted.

The present appeal has been preferred for enhancement of compensation and as such, other facts need not be narrated. The accident, in which Rajinder has died, had taken place on 11.12.1992. The salary of the deceased was Rs.2565/- per month and the learned Commissioner under the Workmen's Compensation Act, has taken the income of the deceased as

Rs.1,000/-, in view of explanation II of Section 4 of the Workmen's Compensation Act, 1923. So, by taking 40% of relevant factor, the amount was calculated as Rs.77,856/-.

In the grounds of appeal, the award has been challenged on two grounds that income of the appellant should have been taken as Rs.2565/- per month and on that income the amount should have been granted by multiplying the relevant factor. In order to properly appreciate the facts at the relevant time, Section 4 of the Workmen's Compensation Act, 1923 is reproduced as under :-

Amount of Compensation-

(1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely:—

(a) Where death results from the injury an amount equal to [fourty per cent] of the monthly wages of the deceased workman multiplied by the relevant factor; or an amount of [eighty thousand rupees]], whichever is more;

(b) Where permanent total disablement results from the injury an amount equal to [fifty per cent.] of the injured workman multiplied by the relevant factor; or an amount of [ninety thousand rupees]], whichever is more;

So, according to explanation, the wages has to be taken as Rs.1,000/- and an amount of Rs.77856/- has been rightly calculated by the Commissioner under the Workmen's Compensation Act, 1923. The other ground of challenge is

regarding grant of interest and penalty by invoking the provision of Section 4(a) of Workmen's Compensation Act, 1923 (hereinafter mentioned as 'the Act'). In order to properly appreciate the facts, the said provision is reproduced as under:-

Compensation to be paid when due and penalty for default-

(1) Compensation under section 4 shall be paid as soon as it falls due.

(2) In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts, and, such payment shall be deposited with the Commissioner or made to the workman, as the case may be, without prejudice to the right of the workman to make any further claim.

(3) When any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner may direct that, in addition to the amount of the arrears, simple interest at the rate of six per cent per annum on the amount due together with, if in the opinion of the Commissioner there is no jurisdiction for the delay, a further sum not exceeding fifty per cent, of such amount, shall be recovered from the employer by way of penalty.

The learned Commissioner has not allowed the interest nor has allowed the penalty. The learned counsel for the respondent has stated at the bar that award was passed on 24.06.1996 and the amount of compensation of Rs.77856/- was

disbursed to the claimant on 10.10.1996. He has further submitted that the claimant has been allowed employment on compassionate ground, so she is not entitled to the interest and penalty.

I have considered the said submission but do not find any force in that submission. Admittedly, as discussed above, the death has taken place on 11.12.1992 and the employer was legally bound to make the payment within one month when it fell due. Admittedly, the said amount was not paid. So, the learned Workmen's Commissioner has committed an error by not allowing the interest and penalty. The mere fact that claimant has been given amount is not a ground to scuttle, the claim of claimant regarding interest and penalty. So, by invoking the provision of Section 4(a) referred to above. The claimants-appellants are held entitled to claim 50% as penalty which comes to Rs.38928/-. The claimant is also entitled to claim interest @ 6% per annum from 11.01.1993 till payment. However, the respondent shall be liable to pay interest on the amount of Rs.77856/- up to 10.10.1996, when the payment was made.

The appeal is partly accepted to the extent mentioned above.

(K.C. PURI)
JUDGE

25.03.2015
yakub