

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O. No.7180 of 2010 (O&M)

Date of Decision: 19.01.2015

New India Assurance Co. Ltd.

....Appellant

v.

Sh. Sammat Singh and others

....Respondents

CORAM: HON'BLE MS. JUSTICE NAVITA SINGH

Present: Mr. Ashwani Talwar, Advocate for the appellant.

Mr. Parveen Kumar Garg, Advocate for respondents No.1 to 5.

Navita Singh, J.

C.M. No.30804-CII of 2010

Since the parties are ready to argue on merits and also the other side has no serious objection, the application is allowed and delay of 301 days in filing the appeal is condoned.

CM stands disposed of.

F.A.O. No.7180 of 2010

This appeal is filed against the order passed by the Commissioner under the Workmen's Compensation Act (Act for short) granting compensation to the tune of Rs.4,11,900/- to respondents No.1 to 5.

Counsel for the appellant argued that the Commissioner under the Act erred in assessing the income of the deceased as Rs.4,000/- per month though the employer (respondent No.6 herein) had appeared as his own witness and had stated in his examination-in-chief that he was paying Rs.2,000/- per month to the deceased who was his driver. No cross-examination was conducted on that point. The salary as stated by the employer should be taken to be admitted in view of the above fact. It would, however, be seen that Shamsheer Singh, witness of the claimants

stated that the deceased was earning Rs.5,000/- per month which was also the case of the claimants, though there was no documentary proof.

The Commissioner observed that though the employer had stated that the salary of the deceased was Rs.2,000/- per month, yet in the absence of any document to that effect, his version could not be taken on face value. It was admitted case that the deceased used to travel to other States and the Commissioner held that it was not believable that the driver was being paid only Rs.2,000/- per month though he used to remain away for days at a stretch. The salary of the deceased was thus taken to be Rs.4,000/- per month.

Documentary proof was not produced by either party but there appears to be no mistake in the finding of the Court of Commissioner under the Act, that in 2002 when the accident occurred, the salary of deceased-driver could not have been a meager amount of Rs.2,000/- per month. Counsel for the appellant also stated at the time of arguments that the deceased, at the relevant time, was going towards Assam from Panchkula/Chandigarh and he met with an accident somewhere in Bihar. It is, therefore, clear that the deceased used to take the truck of respondent No.1 to far lying States and it is, therefore, not believable that the monthly salary of the deceased was only Rs.2,000/-. The employer would in any case give a lesser amount to reduce the liability.

In view of the above, the appeal is dismissed.

(NAVITA SINGH)
JUDGE

January 19 , 2015
renu

Whether to be referred to the Reporter? Yes/No.