

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2834 of 2012 (O&M)

Date of Decision:04.02.2015

The Employees State Insurance Corporation and another

....Appellants

Versus

Surjit Kaur and another

....Respondents

CORAM: HON'BLE MS. JUSTICE NAVITA SINGH

Present: Mr. Adarsh Malik, Advocate for the appellants.

Mr. R.K. Chauhan, Advocate for respondent No.1.

Mr. Jatinder Nagpal, Advocate for respondent No.2.

NAVITA SINGH, J.

1. The appeal is against the order passed by Civil Judge (Senior Division), Hoshiarpur, whereby petition filed under Section 75 of the Employees State Insurance Act was allowed. The appellants assailed the impugned order on the ground that Surjit Singh, husband of present respondent No.1, had not died while on duty and rather he was not on duty on the relevant day. The trial Court held that the deceased was present in the premises of the employer where he had fallen down and died and as such death occurred during the course of employment.

2. Counsel for the appellants argued that on 1.7.2007 and 2.7.2007, the deceased was not on duty and was rather absent. On the fateful day, instead of reporting for the duty at 8.00 am, he came to the factory premises at 2.00 pm. He did not, therefore, go for work nor he was assigned any work on that day. He went to the place of employment for some reason other than work and was meeting his friends and colleagues. He, therefore, did not die during the course of employment.

3. The employer produced Bhupinder Singh who stated from record that deceased was not on duty on 2.7.2007. He had rather worked upto 30.6.2007 and was absent on 1.7.2007 and 2.7.2007. This is vouchsafed from Ex.D2, which was reply given by the employer to the legal notice sent by widow of the deceased. It was also stated by the witness that the duty time started at 8.00 am but deceased entered the factory premises at 2.00 pm on the relevant day and at that time factory was observing lunch hours. He met a few other workers and after talking to them, went out. However, when he reached near the Administrative Block, he suddenly fell down. It is clear from the evidence that the deceased had not met with any accident at the place of work. He may have suffered cardiac arrest because apparently he suddenly fell down without any external reason.

4. It was rightly argued by counsel for the appellants that simply because Surjit Singh happened to be inside the factory premises and died due to failure of the heart or some other reason, it could not be concluded that he was on duty and had met with an accident during the course of employment. It was neither an accident nor the death occurred during the course of employment.

5. In the cross examination, Bhupinder Singh stated that Surjit Singh was working those days in the morning shift from 8.00 a.m. to 4.00 pm and lunch time was observed from 2.00 pm to 3.00 pm. It was not even suggested to the witness that the deceased was not absent on 1.7.2007 and 2.7.2007 and that he was on duty since morning on the day he died. It was also not suggested that the deceased had not reached the factory during lunch break. The suggestion put was that he had died as a result of accident, which was denied.

6. Ex.D1 is copy of order passed by the Authority under the Payment of Gratuity Act and before that Authority also, the employer had taken the plea that Surjit Singh was absent on 1.7.2007 and 2.7.2007 and had gone to the factory

during lunch hours. It is, therefore, the consistent stand of the appellant that the deceased was absent on 2.7.2007.

7. The contention on behalf of the respondents that he was not intentionally marked present on the fateful day to avoid liability is not acceptable because if Surjit Singh had joined duty at 8.00 am as was the routine, he would have been marked present in the morning itself. Entry is made at the gate in all factories but no such record was summoned by the claimant to show that he had entered the factory at the commencement of duty hours. The widow appearing as PW1 said that her husband had gone to duty at 7.30 am and had reached the factory on time. How she had personal knowledge is not explained. Time of entry could have been proved from the register at the gate but as already mentioned above no such evidence was produced. Even if the deceased had left the house, his wife could not be sure about the time when he entered the place of work.

8. Copies from the attendance register were produced as Ex.D3 from April 2007 to July 2007. The deceased was absent on 24.4.2007, 5 and 6.5.2007, 13.5.2007, 22.5.2007, 8.6.2007, 18.6.2007, 21.6.2007, 23.6.2007, 27.6.2007, 28.6.2007, 29.6.2007 and for the entire month of July. Since he died on 2.7.2007, he could not be marked present after that. In any case, he was absent on 1.7.2007 and 2.7.2007. The record maintained in the regular course was produced with names of other employees above and below the name of the deceased. On the contrary, there was no evidence on behalf of the claimants besides the statement of his widow to counter the documentary evidence.

9. Ajmer Singh, PW2 was certainly an introduced witness who said that he was living in the neighbourhood of the deceased. How he was able to say that Surjit Singh had gone to the factory at 7.30 am on 2.7.2007 is not comprehensible. How a person living next door could be so sure about the time is not explained.

10. It was, therefore, proved before the court below that Surjit Singh had not died during the course of employment and had also not met with any accident, much less an accident related to employment. The court passing the impugned order gravely erred in holding so and passed an illegal order.

11. The appeal is allowed. The order dated 24.1.2012 passed by Civil Judge (Senior Division), Hoshiarpur, exercising the power of Employees State Insurance Court, is set aside. The petition filed by respondent No.1 stands dismissed.

(NAVITA SINGH)
JUDGE

04.02.2015

Ishwar

Whether to be referred to reporter: Yes