

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

**FAO No.2955 of 2012 (O&M)  
Date of Decision: April 20, 2015**

**Smt. Raj Rani**

**.... Appellant**

**vs.**

**Jagdish Kumar and another**

**.... Respondents**

**CORAM: HON'BLE MR. JUSTICE KULDIP SINGH**

**Present:** Mr. Ashwani Bakshi, Advocate for the appellant.

Mr. Ashok Jindal, Advocate for respondent No.1.

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment?*
- 2. To be referred to the Reporters or not?*
- 3. Whether the judgment should be reported in the Digest?*

**Kuldip Singh J.(Oral)**

This is appellant-claimant's appeal against the order dated 28.02.2012 passed by the Commissioner under the Employees Compensation Act at Yamunanagar-I, vide which a compensation of ₹4,13,338/- (rupees four lac thirteen thousand three hundred thirty eight only) was awarded in favour of the applicant (appellant herein) against the respondents with interest @ 9% per annum after one month of the date of accident i.e. 06.03.2009 till the payment.

The claimant dissatisfied with the order, has come up in the present appeal.

The brief facts, which need to be noticed for the purpose of disposal of the present appeal are that deceased Rahul was

working as a Cleaner with respondent No.1 on a truck bearing registration No.HR-61-0722. On 06.02.2009, Rahul alleged to have been killed by Parmod Kumar, driver, when he tried to prevent the driver from committing the theft of the truck.

I have heard learned counsel for the parties and have also carefully gone through the case file.

Learned counsel for the appellant has argued that in this case, on the basis of postmortem report, the age of the deceased was taken to be 26 years at the time of the accident, whereas the mother and the maternal uncle of the deceased stated that he was 20 years of age. In this case, neither date of birth certificate nor any other documentary evidence regarding proof of age of the deceased was produced. Therefore, the age as per the postmortem report was relied upon.

I am of the view that since in the postmortem, the exhaustive examination of the dead body is conducted, therefore, the Commissioner was justified in taking into consideration the age of the deceased as 26 years as per report of the postmortem.

The next contention is that the diet money was paid to the Cleaner but the same was not taken in consideration by the Commissioner.

It comes out that the owner was examined as witness. Though he stated that diet money was paid, but did not state as to

how much diet money was paid. Therefore, in the absence of specific amount of diet money, the same was rightly not taken into consideration by the Commissioner.

Further contention of learned counsel of the appellant is that though interest @ 9% per annum after one month of the date of accident i.e. 06.02.2009 till the realization of the amount as provided under Section 4 of the Employees Compensation Act, 1923 and subsequently vide separate order a penalty of ₹5,000/- was also awarded but the penalty is inadequate.

It comes out that subsequent separate order of granting ₹5,000/- as penalty has not been challenged in the present appeal. Therefore, the same cannot be taken to be under challenge.

In view of the matter, I do not find any illegality or infirmity in the impugned order.

The present appeal is accordingly dismissed.

**April 20, 2015**  
sarita

**(KULDIP SINGH)**  
**JUDGE**