103 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2912 of 2015 (O&M)
Date of Decision: April 30, 2015

Magma HDI General Insurance Co. Ltd. .... Appellant

vs.

Smt. Arshida and others .... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Vishal Aggarwal, Advocate for the appellant.

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)

CM-8854-CII-2015

There is a delay of 31 days in filing the present appeal.

For the reasons mentioned in the application, delay of 31 days in filing the present appeal is condoned, subject to all just exceptions.

Application stands disposed of.

FAO-2912-2015

Challenged in the present appeal is the order dated 31.12.2014 passed by the Commissioner, under the Employee's Compensation Act, 1923 (in short 'the Act'), Mewat at Nuh (Haryana), vide which the compensation of ₹10,49,012/- (rupees ten lac forty nine thousand twelve only) was ordered to be paid to the applicant (respondent No.1 herein) on account of death of her husband Abdul Sattar @ Sattar, who was working as Clearner on the Dumper No.HR-38S-3317 belonging to respondent No.1 (respondent No.9 herein), which was insured with respondent No.2 (appellant herein). It was further ordered that the amount shall be paid within sixty days from the passing of the impugned order, failing which, the Insurance Company shall be liable to pay further interest @ 15% per annum on the whole amount of compensation from the date of order till the date of actual payment.

The contention of learned counsel for the appellant is two folds.

It has been argued that the Commissioner determined the income of the deceased to be ₹8,000/- per month without any proof and second that the interest @ 15% per annum after the expiry of 60 days is contrary to the provisions of Section 4-A of the Act.

When the income part is examined, it comes out that it is common practice that salary of the Clearner and Driver is not given by way of cheque or other instruments signifying the payment. It is always given in cash for which no record is maintained. Therefore, the Courts have to act on the basis of guess work. Assuming that minimum wages is assessed @ ₹5,500/-. It is common practice that the Driver and the Cleaner are also given extra money as daily expenses for diet etc. If the said extra income is added to the minimum wages, the effective income comes @ ₹8,000/- per month. Therefore, no fault can be found with the income assessed by the Commissioner.

Learned counsel for the appellant has further argued that in this case, the compensation amount was ordered to be paid within 60 days of the passing of the order, failing which the Insurance Company shall be liable to pay further interest @ 15% per annum on whole amount of compensation, which is contrary to the provisions of Section 4-A (3) (a) of the Act, where only interest @ 12% interest per annum cannot be awarded.

In sub clause (b) of Section 4-A(3) of the Act, 50% of such Award can be paid, if there is no justification for the delay and the same can be imposed as penalty for which separate proceedings are required.

So far as the merits of the present case are concerned, I do not find any merit in the present appeal. However, the rate of interest awarded @ 15% per annum is reduced to 12% per annum.

With the aforesaid modification, the present appeal is dismissed.

(KULDIP SINGH)
April 30, 2015 **JUDGE**
sarita