

FAO No. 5873 of 2015 (O&M)

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

FAO No. 5873 of 2015 (O&M)

Date of Decision: December 09, 2015

United India Insurance Company Limited

...Appellant

Versus

Mona and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

Present: Mr. Paul S. Saini, Advocate
for the appellant.

Mr. Gaurav Aggarwal, Advocate
for the caveator.

AUGUSTINE GEORGE MASI, J. (Oral):

Challenge in this appeal is to the award passed by the Commissioner under Employees' Compensation Act, Sirsa, dated 15.07.2015, by which, claim application of the widow of late Shri Naresh Kumar and her two minor children, has been allowed granting compensation amounting to ₹7,58,240/- alongwith interest at the rate of 12% per annum from the date of death of deceased Naresh Kumar i.e. 12.10.2012 till the date of award and thereafter interest at the rate of 15% per annum, if the compensation amount alongwith interest is not deposited within a period of 30 days from the date of the award.

Learned counsel for the appellant has asserted that the wages as has been assessed by the Commissioner vide its impugned award is in excess. He contends that as per the assertion of the claimants, salary of deceased-Naresh Kumar who was driver of the car which met with an accident, was ₹6,000/- per month. He contends that the travelling allowance at the rate of ₹150/- per day as has been granted by the Commissioner is without any basis as there is merely oral assertion of the widow of the deceased and there is no documentary evidence brought on record which would substantiate the same. Further contention is that even as per the written statement which has been filed by respondent No.4, namely, Sushil Bawaniwale, with whom the deceased-Naresh Kumar was employed as driver, had stated that Naresh Kumar was being paid ₹6,000/- per month as salary. The claim with regard to the travelling allowance at the rate of ₹150/- per day has been specifically denied. He, thus, contends that the assessment of this ₹150/- per day as travelling allowance is unsustainable and by deducting the same from the total compensation amount, the wages should have been taken into consideration as ₹6,000/- per month instead of ₹8,000/- per month. He, accordingly, prays that the award passed by the Commissioner under the Employees' Compensation Act, deserves to be modified to

that extent.

I have considered the submissions made by the learned counsel for the appellant and has gone through the impugned award passed by the Commissioner dated 15.07.2015 but do not find any merit in the submissions as has been raised by the counsel.

It is correct that the written statement as has been filed by respondent No.4 specifically states that the salary of the deceased Naresh Kumar was ₹6,000/- per month and that he was not granted ₹150/- per day as travelling allowance but no evidence has been produced on record by the respondents before the Tribunal except for the written statements which have been filed. Even the insurance company has also not produced any evidence who has filed the present appeal. The evidence which was brought on record was produced by the claimants which was in the form of statement of Mona-respondent No.1. In the cross-examination, which has been read over to me by the counsel for the appellant, the questions which have been put to her related to the mode of payment of the salary and the travelling allowance and there is no suggestion put to her that the said amount was not being paid to the deceased Naresh Kumar. In these circumstances, the findings as have been recorded by the Commissioner, cannot be faulted with especially when no evidence has been led by the respondents before the Tribunal in

FAO No. 5873 of 2015 (O&M)

rebuttal to the evidence as has been produced by the claimants.

Finding no merit in the present appeal, the same stands dismissed.

CM No.18473-CII-C of 2015

In view of the order passed in the main appeal, the present application for stay of execution of the impugned award, has become infructuous.

Disposed of as such.

December 09, 2015

Harish

**(AUGUSTINE GEORGE MASIH)
JUDGE**