

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

204

FAO No.4369 of 2008

Date of Decision: April 01, 2016

Smt. Gurcharan Kaur and others

...Appellants

Versus

Kamal Kumar and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. V.S. Rana, Advocate
for the appellants.

Mr. J.S. Chatrath, Advocate
for respondent No.2.

AUGUSTINE GEORGE MASIH, J. (ORAL)

In this appeal enhancement of the amount of compensation is prayed for by the claimants, whereby the Commissioner, Workmen's Compensation Act, 1923, Karnal, by its award dated 07.04.2008 has assessed the total compensation at ₹4,58,022/- taking the monthly wages of deceased Charanjit Singh alias Gurcharan Singh at ₹3,500/- per month and ₹40/- per month as diet money.

2. It is the contention of learned counsel for the appellant that the monthly wages have wrongly been assessed at ₹3,500/-, especially when a specific assertion has been made in the claim petition that he was getting an amount of ₹4,200/- wages per month which fact although has been denied by respondent No.1-Kamal Kumar, the employer, and has asserted that it is ₹3,500/- but the said respondent has not appeared before the Commissioner and deposed in support of the written statement, whereas in the case of the claimants, Gurcharan Kaur widow has appeared as AW-1 and specifically asserted that the wages were ₹4,200/- per month and has also withstood the

test of cross-examination, where such a specific question was put to her but nothing was found contrary to what has been asserted by her in examination-in-chief. He on this basis contends that the assessment of the wages of the deceased is on the lower side and the same requires to be enhanced to ₹4,000/- per month which is the maximum provided under the provisions of Employee's Compensation Act, 1923.

3. None has put in appearance on behalf of respondent No.1, the employer despite service.

4. Counsel for respondent No.2 asserts that the employer, who is the best judge, has specifically denied the wages to be ₹4,200/- and has positively asserted the same to be ₹3,500/- per month. The Commissioner has, therefore, rightly accepted the same and proceeded to assess the wages at ₹3,500/- which do not call for any interference by this Court.

5. I have considered the submissions made by learned counsel for the parties and with their assistance, have gone through the impugned award as also the records of the Court below.

6. From the perusal of the claim petition as also the evidence led by the claimants, especially the statement of Gurcharan Kaur widow of the deceased, it is apparent that the wages asserted by her, were ₹4,200/- per month of the deceased, who was a truck driver and died in an accident which fact is not disputed by the respondents. She had even been cross-examined on this aspect but nothing has come out which would shatter her plea. The employer, although, had asserted that the wages were ₹3,500/- per month but he has chosen not to appear before the Commissioner nor has any other evidence been led which would show that

the wages of the deceased were ₹3,500/- per month.

7. Keeping in view the above fact as also the maximum cap on the wages under the Employee's Compensation Act, 1923, the wages of the deceased Charanjit Singh alias Gurcharan Singh, are assessed at ₹4,000/- per month and the award is accordingly modified.

8. The Commissioner is directed to calculate the compensation and interest taking the wages at ₹4,000/- per month within a period of two weeks from the date of receipt of the certified copy of this order and intimate the same to the respondents forthwith.

9. The respondents shall deposit the amount of compensation so assessed and communicated by the Commissioner, within a period of two months from the date of receipt of said communication which shall be disbursed then to the claimants within one month thereafter.

10. The appeal is allowed in above terms.

11. Registry is directed to forthwith send the copy of this order along with the received records to the Commissioner, Workmen's Compensation, Karnal, for compliance.

April 01, 2016
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE