

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

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FAO No.4762 of 2016 (O&M)
Date of Decision: October 26, 2016

Food Corporation of India and another

...Appellants

Versus

Shimla Devi and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. K.K. Gupta, Advocate
for the applicants-appellants.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the order dated 14.03.2016 passed by the Commissioner under the Employee's Compensation Act, 1923, Sirsa, whereby the claim petition preferred by the respondents, has been accepted and a compensation amounting to ₹7,99,000/- along with interest at the rate of 6% totalling ₹9,71,584/- has been awarded to be paid within a period of 30 days, failing which the liability to pay interest at the rate of 6% per annum from the date of award till realisation has also been awarded.

2. It is the contention of learned counsel for the appellants that the Commissioner has not taken into consideration the fact that from 25.07.2012, a new policy was introduced, according to which the employees, who were employed with the contractor, were to be paid according to the work performed by them, if they had not work, they were not entitled to any payment. Deceased-Sukhdev Singh, husband of respondent No.1 was appointed on 25.07.2012 when he was included in the scheme and prior thereto, he was working with the contractor for FCI. He contends that as per the said policy, it is only for the period he works and the quantum of work done by him which determined the amount of wages,

he would be entitled to and there was no fixed amount. He on this basis contends that the compensation, as has been calculated and awarded by the Commissioner taking the wages to be ₹10,000/- per month at the time of accident, cannot be accepted. He, however, admits that the age of the deceased was 48 years. Prayer has thus been made for setting aside the award passed by the Commissioner under the Employee's Compensation Act, 1923, Sirsa.

3. Briefly the facts of the case which are not in dispute are that deceased-Sukhdev Singh was working on 10.09.2012, the date on which he died while on duty because of heart attack. He was being shifted to C.H.C. Dabwali but on the way to the hospital, he died. Report No.28 dated 10.09.2012 was recorded, where it was mentioned that he had been getting ₹10,000/- per month and was aged about 47 years. As per the evidence produced by the claimants, it has been brought on record that the deceased was working for/with the FCI for the last 20 years. With the introduction of the scheme on 25.07.2012, he was being paid on the principle of 'no work no pay' and the quantum of work done by him determined his wages. In view of these admitted facts, an objection which now survives as has been put forth by the counsel for the appellants, is that the quantum of wages which have been assessed and consequently the compensation, cannot sustain.

4. Apart from this, a question which has been raised by the counsel for the appellants is that prior to the introduction of the scheme on 25.07.2012, the deceased cannot be said to be a direct employee of the FCI, rather he was an employee of a contractor and, therefore, the liability, if any, would be of the contractor for the prior period.

5. These contentions of the counsel for the appellants cannot be accepted. Firstly dealing with the plea with regard to the factum of the employer being the contractor of the deceased. It is an admitted position that the appellants-Food Corporation of India had engaged the contractors, who had further engaged labourers, who had been doing the loading and unloading work for the FCI. Since FCI is the principal employer, it cannot be said that there would be no relationship between the deceased and/or no liability of the FCI as such. However, since the accident had taken place admittedly after the introduction of the scheme on 25.07.2012 i.e. on 10.09.2012, the liability straightaway comes upon the FCI. What has been tried to be and has been proved by the respondents is that the deceased was earlier also employee and performing the work for the FCI, although through a contractor and, therefore, the principal employer was the FCI. This shows that he had been working with the FCI or for the FCI for a long period of 20 years.

6. As regards the assessment which has been made of the salary per month, the pleadings which have been made and the evidence which has been projected, especially report No.28 dated 10.09.2012 as also the statement of the witnesses, the assessment which has come to ₹10,000/- per month does not appear to be on the higher side. Nothing has come on record to suggest that deceased-Sukhdev Singh was not regularly working with or for the FCI. Even after the introduction of the scheme dated 25.07.2012, nothing indicates that the deceased was not fit, rather what has come in the statement of Krishan Kumar AW-1 is that he had been working with the FCI for the last 20 years and that from 25.07.2012 although he did not exactly know the days and the dates on which he had worked but he

had been continuously working. This clearly shows that he was otherwise having good health prior to the unfortunate incident which has occurred, where he died because of a heart attack. There is no evidence on record indicating that he had not been keeping good health prior thereto which could give an assumption that there was irregularity in the working with regard to the attendance of deceased-Sukhdev Singh. The assessment of ₹10,000/- per month appears to be fully justified and reasonable which has been assessed by the Commissioner. Rest of the parameters have been taken into consideration as per Schedule IV of Section 4 of the 1923 Act and accordingly the compensation has been assessed, which cannot be faulted with.

7. In view of the above, finding no merit in the appeal, the same stands dismissed.

8. In the light of the dismissal of the appeal, the application for stay i.e. CM No.16330-CII of 2016, stands disposed of as infructuous.

October 26, 2016
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No