

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

Date of Decision:-11.09.2017

FAO No.1007 of 2005(O&M)

New India Assurance Company Ltd.

.....Appellant.

Versus

Smt. Hazara & Ors.

.....Respondents.

AND

FAO No.3857 of 2005(O&M)

Fatima.

.....Appellant.

Versus

Kotak Mahindera/Kohinoor Transport & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. Neeraj Khanna, Advocate for the Appellant
in FAO No.1007 of 2005(O&M).

Mr. Barjinder Singh, Advocate for the appellant
in FAO No.3857 of 2005(O&M).

None for the respondents in both appeals.

JASWANT SINGH, J (ORAL)

This common order shall dispose of both the aforesaid appeals,
one filed by the Insurance Company and the other by the alleged
claimant/sister of the deceased employee Farooq, under Section 30 of The

Workmen Compensation Act 1923, as they arises out of one and the common award.

The conceded facts are that Farooq @ Fakkrudin was employed as a cleaner on Insured Truck bearing registration no.GJ-01-B 7860 and died due to the motor vehicular accident on 01.02.2002, involving the aforesaid truck. The mother Smt. Hazara and sister-Fatima of deceased Fakkrudin filed a claim petition under The Workmen Compensation Act. The relationship of the employer i.e. owner of the truck and the deceased employee was not denied. The fact of the accident having occurred during the course of employment of the deceased employee and the insured owner was established and being covered under the Insurance Policy was also not in dispute.

The claimants had claimed that the deceased employee was getting a salary of Rs.3,000/- per month and Rs.50/- as daily allowance on the days of trips undertaken on the offending truck.

Learned Commissioner, Gurgaon in the light of the unamended provisions in Explanation II to Sub Section 1 of Section 4 of the Employees Compensation Act, 1923, existing prior to 18.01.2010 providing for a maximum of Rs.4,000/- was wages of a deceased employee, adopted the monthly salary of Farooq @ Fakkrudin as Rs.4000/- by applying the appropriate factor as per Schedule IV and granted the compensation of Rs.3,33,820/- along with costs of Rs.2000/-, burial expenses Rs.2500/- and interest at the rate of 12% per annum from the date of accident till the date of order i.e. Rs.76,000/- vide impugned judgment dated 30.12.2003 while allowing the claim petition of the mother only. The liability was held to be joint and several and in view of the valid insurance policy the vicarious

liability of the insurance company was involved. It was further directed that if the insurance company failed to deposit the amount of awarded compensation within 60 days from the date of order, then the interest at the rate of 15% per annum from the date of accident till realization of the awarded amount of compensation would be paid by the insurance company. Hence the present two appeals, one filed by the insurance company and other filed by the sister-Fatima of the deceased employee Farooq @ Fakkrudin, whose claim for apportionment of compensation was declined, being not dependent on the deceased employee.

The grievance of the Insurance Company is that the statutory rate of interest at the rate of 12% per annum has been proved to be paid from the date of accident, rather than payable w.e.f. the date of the award, whereas the claim of the sister-Fatima is that it has been wrongly concluded that she was not dependent on her deceased brother on the ground that she was married.

Counsel for the insurance company concedes that in the light of the pronunciation of Hon'ble Supreme Court in **Oriental Insurance Company Ltd. Vs. Siby George 2012(4) RCR (Civil) 617** mandating the apportionment of statutory compensation from the "date of accident", nothing really survives in the appeal filed by the insurance company.

Counsel for the claimant has not been able to refer to any evidence on record to show that the findings that the claimant Fatima, being married, was not entitled to apportionment of awarded compensation are perverse. Therefore, even the claim petition filed by Fatima is devoid of merit.

In view of the aforesaid circumstances, both the

aforementioned appeals are hereby dismissed.

(JASWANT SINGH)
JUDGE

September 11, 2017
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>