

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

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FAO Nos.2519 of 2011 and 4082 of 2010 (O&M)

Decided on : 03.03.2017

Miss Arti and others

... Appellants

Versus

Narinder Kumar and another

.. Respondents

CORAM : HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present:- Mr.R.C.Gupta, Advocate for the appellants
in FAO No.4082 of 2010 and
for respondent No.2 in FAO No.2519 of 2011.

G.S.Sandhawalia, J. (Oral)

CM No.8601-CII of 2010 in FAO No.2519 of 2011

This application has been filed under Section 5 of the Limitation Act, read with Section 151 CPC for condoning the delay of 223 days in filing the present appeal.

In view of the averments made in the application that funds had to be arranged for filing the appeal, which is supported by an affidavit of Saroj wd/o Jasmer Singh, and the fact that sufficient cause has been shown therein, CM is allowed and delay of 223 days in filing the appeal is condoned.

CM NO.8600 CII of 2011 in FAO No.2519 of 2011

This application has been filed under Section 149 of CPC read with Section 151 of CPC for making the deficiency in the court fee.

The application is allowed as the deficiency of court fee has been made good.

FAO Nos.2519 of 2011 and 4082 of 2010

This order shall dispose of both the appeals i.e. FAO Nos.2519 of 2011 and FAO No. 4082 of 2010, by a common order as

both have arisen out of the same impugned order dated 31.03.2010. The facts have been taken from FAO No.2519 of 2011, filed by the claimants.

Vide order dated 31.03.2010, the Commissioner had granted a sum of Rs.2,74,995/- as compensation on account of death of Jasmer Singh, who was driver of the vehicle, employed with respondent no.1-Narinder Kumar. The accident had taken place on 30.10.2005, and it was stated that the deceased was of 25 years old, and compensation of Rs.10 lakhs was prayed for. The factum of the accident and the employment was admitted by respondent No.1-owner of the vehicle, and that the deceased was getting Rs.2000/- per month, excluding Rs.50/- per day, as out of station allowance.

The appellant-Insurance Company, in FAO No.4082 of 2010, had denied the liability on the ground that there was no existence of relationship of employer and employee, and that, no intimation has been sent. The claimants examined Satbir Singh, the conductor as AW1, who was present along with the deceased, on the day of accident who also deposed about the factum of accident and the fact that Jasmer Singh was getting Rs.4000/-. Wife of the deceased, namely, Saroj was examined as AW-2, and she could not provide any documentary evidence with regard to the wages of her husband. The Insurance company had produced the policy Ex.R-2, which was tendered into evidence.

Resultantly, keeping in view the evidence of Satbir Singh, conductor, who was also present with the deceased on the fateful day, and in the absence of any documentary evidence, it was rightly held that there was no proof that there was no relation inter se employer and

deceased. On account of no documentary evidence having been produced regarding the salary of the deceased, the minimum wages as fixed by the State government, was taken into consideration. Accordingly, Rs.2620/- per month was assessed as monthly wages, and the age of the deceased was assessed of 29 years, as per the post mortem report, Ex. AW-2, while awarding compensation.

Counsel for the Insurance Company has vehemently argued that driving license was a forged document, and therefore, the liability should be fastened upon the owner. As noticed, no such pleadings were ever made before the Commissioner, and nothing has been brought on record to show that the license was forged document. In absence of any pleading and evidence as such, it cannot be accepted that at the stage of first appeal in which only the issue of substantial question of law is to be entertained a fresh factual matrix can be allowed to be raised and accordingly, it deserves rejection, at the very outset.

The claimants have sought enhancement, and are well justified on account of the fact that interest has only been awarded, @ 12% p.a. on the condition that, it would be paid within 30 days. As per statute, amount would fall one month after the date of accident which happened on 30.10.2005. The award in question was passed much later, after almost 4-1/2 years on 31.03.2010, and therefore, claimants are entitled for interest element.

This matter has already been settled by the Apex Court in ***Ved Parkash Garg Vs. Premi Devi and others*** (1997) 8 SCC 1, ***Oriental Insurance Company Ltd. Vs. Siby George*** 2012(4) SCT 299 and

Saberabibi Yakubhai Shaikh Vs. National Insurance Co. Ltd. (2014) 2, SCC 298.

Accordingly, the appeal filed by the Insurance company is dismissed, and another one filed by the claimants, is allowed. The amount of interest at the rate of 12% p.a, be paid on the awarded amount, by the Insurance company from one month after the date of accident, which shall be paid within a period of two months from the date of receipt of the certified copy of the order. The amount shall be deposited with the commissioner for disbursal to the claimants.

Counsel for the Insurance company has stated that show cause notice has already been issued for the penalty.

In view of the judgment passed by Apex Court in ***Ved Parkash Garg's (supra)***, penalty is to be fastened upon the owner. It will be open to the Insurance company to take its defence in the penalty proceedings, if they have not been finalized.

[G.S.Sandhawalia]
Judge

03.03.2017
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Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No