IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.4962 of 2011 (O&M) and
Cross Objection No.93-CII-2013

Date of decision: March 23, 2017

New India Assurance Co. Ltd.

...... Appellant

Versus

Soma Devi and others

...... Respondents

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

Present: Mr. Rajneesh Malhotra, Advocate
for the appellant.

None for the cross-objectors.

Mr. A.S. Gill, Advocate
for respondent No.4.

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G.S. SANDHAWALIA, J. (ORAL)

The present appeal has been filed by the insurance company and the cross-objections have been filed by respondents No.1 to 3 who are the claimants and the legal representatives of the deceased-Kuldeep Kumar, against the order of the Commissioner dated 30.03.2011 passed under the Employee's Compensation Act, 1923 (in short one Act).

Perusal of the case file shows that the deceased-Kuldeep Kumar was employeed as a driver with respondent No.1 at a monthly wages of ₹ 4500/-. On account of a road accident on 23.12.2006, he died and the post-mortem was conducted and a DDR was also lodged on the next date at police Station Mehal Kallan, Barnala.

Keeping in view the admission of the employer to the claim petition that he was getting ₹ 4,000/- per month as salary and ₹ 500/- as diet money and the fact that the vehicle was insured with the appellant-company, the Commissioner applied the relevant factor i.e. 194.64 and keeping in view the age as 36 years and in view of the fact that the license was brought on record as Ex. P-3, a sum of ₹ 3,89,280/- was assessed. The amount was to be paid within 30 days, failing which interest was liable to pay @ 12% per annum. The claim of the claimants is regarding the interest from the date of the accident upto its realisation and also to the issue of penalty.

Counsel for respondent No.4 owner of the vehicle submitted that in cross-objections filed by the claimants claiming amount against penalty, he has been not made a party, therefore, the interest is otherwise to be paid as per settled law by the insurance company.

Counsel for the insurance company as vehmently submitted that as per Exhibit R-1, report was received from the National Detective & Consultancy Services that the deceased was working with M/s Delhi Transport Co. Partap Bagh, Jalandhar and not under Tarsem Lal-respondent No.4 who was also working with Manager in the Delhi Transport Company and he left his job in October, 2007. Accordingly, it is submitted that therefore the admission on behalf of respondent No.4 was only to benefit the claimants. However, nothing could be as such brought to the notice of this Court that the said report was duly proved by examining the author of the said report namely B.S. Sharma, Superintendent of Police (retired) who was running the National Detective in Consultancy Services, Jalandhar which gave the report on the basis of which the argument is sought to be raised.

The said report was never proved by examining the relevant witnesses and in the absence of any such witnesses and their cross examination, the report cannot be relied upon. Reliance for the same by the appellant-company is thus misplaced.

Neither the substantial question of law has as such been formulated and in view of Section 30 of the Act, the appeal would only lie on a substantial question of law. In the absence of any such proof and the evidentiary value missing of the report, the same cannot be taken into consideration as per the arguments which are now raised. Resultantly, the said argument is rejected and it is held that the conclusion by the Commissioner that the employee died in accident arising during the course of his employment is well justified keeping in view the admission by the employer.

Coming to the cross-objection, the opinion of the Court is that as per Section 4-A, statutory interest @ 12% is mandatory which is to be paid. The Apex Court in ***Oriental Insurance Co. Ltd.*** *Vs.* ***Siby George 2012(4), RCR (Civil) 617, Saberabibi Yakubhai Shaikh and others*** *Vs.* ***National Insurance Co. Ltd. and others 2014(1), RCR(Civil) 731*** and ***Jaya Biswal & others*** Vs. ***Branch Manager, IFFCO Tokio General Insurance 2016(11), SCC 201*** held that the interest is due from the date of accident. Relevant portion reads as under:-

> *"Further, an interest at the rate of 12% per annum from the date of accident, that is 19.07.2011, is also payable to the appellants over the above awarded amount. In light of the unnecessary litigation and the hardship of the appellants in spending litigation to get the compensation which was rightly due to them under the*

Act, we deem it fit to award the appellants costs as Rs. 25,000/-."

The Apex Court held that the interest amount should be paid by the insurance company, and the absence of contracting out the penalty is to be paid by the employer. However, since the employer has not been made the respondent in the cross-objection, Mr. Gill is justified in submitting that the claimants have not raised any protest as such against him that the Commissioner should initiate penalty proceedings. Resultantly, in the absence of challenge to the same, the matter is not liable to be remanded to the Commissioner for further acting on the said statutory requirement. Accordingly, the present cross-objection is partly allowed by directing the insurance company to pay the interest on the amount @ 12% per annum from the date of accident. The said amount be paid within a period of two months from the date of this order.

The appeal of the company is accordingly dismissed and the cross-objection is accordingly allowed.

(G.S. SANDHAWALIA)
JUDGE

March 23, 2017
Dinesh Bansal

Whether speaking/reasoned **Yes / No**

Whether Reportable **Yes / No**