

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

FAO No.2692 of 2012(O&M)

Date of Decision:-08.08.2017

Lakhan Singh & Ors.

.....Appellants.

Versus

Shri B.S. Kapil & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. Rajesh Kumar, Advocate for
Mr. Atul Yadav, Advocate for the Appellants.

Mr. Vikram Bali, Advocate for respondent nos.1 & 2.

JASWANT SINGH, J. (ORAL)

Appellant no.1-Lakhan Singh is the widower and appellant nos.2 to 4 i.e. Kapil, Neha and Laxmi are the minor children of since deceased Smt. Ram Kanti who died by a fall on 18.08.2010 from the third floor while working as a labourer at a site being developed by M/s AGL Company-respondent no.3 through Sub Contractors i.e. Sh. B.S. Kapil and Lalit Parsad-respondent nos.1 & 2.

The appellants filed an application under Section 30 of The Employees Compensation Act, 1923 (for short "The Act") for grant of compensation, which has been dismissed vide impugned order dated 16.01.2012 passed by the Commissioner, Gurgaon. Hence the present appeal.

The claim petition has been dismissed on the ground that the minor children being a part of Hindu united family were dependent on the father i.e. applicant-Lakhan Singh, who concededly was employed at the same site as a *Mason* and earning a higher wage, therefore, it was held that all the applicants were not dependent upon the deceased Ram Kanti.

Learned Counsel for the appellants states that the appellants no.2 to 4 i.e. three minor children in the light of the definition of dependent as provided in Section 2(d)(i) of the Act would be entitled to maintain the claim petition being dependents and thus entitled to compensation. It is further argued that in the light of the amended definition of the employer provided in Section 2(e) read with Section 12 of the Act, the liability of the principal employer i.e. M/s AGL Company-respondent no.3 would also arise.

Learned Counsel for the respondent nos.1 & 2 does not dispute the aforesaid legal and factual contention raised on behalf of the appellants-claimants.

Although there is no report regarding service of the respondent no.3-M/s AGL Company, however, in the light of the proposed order which this Court is inclined to pass the presence of respondent no.3 would not be required at this stage.

Keeping in view the conceded facts of this case and the legal definition of dependents in Section 2(d)(i) of the Act, it is evident that the claim petitions on behalf of all the three minor children i.e. appellant nos.2 to 4 could not be dismissed as not being dependents on the deceased mother, therefore, the present appeal qua appellant no.1-Lakhan Singh is dismissed, whereas appeal of appellants no.2 to 4 is allowed and the

impugned order dated 16.01.2012 is set aside qua them only and the matter is remanded back to the Commissioner concerned for a decision afresh on all points raised in the claim petition on behalf of either of the parties.

Parties are directed to present themselves before the Commissioner concerned on 05.09.2017.

(JASWANT SINGH)
JUDGE

August 08, 2017
Vinay

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No