

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 1828 of 2014 (O & M)
Date of decision: 16.02.2017

Ashok Kumar Dhingra ....Appellant(s)

Versus

Manju and others ...Respondent(s)

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

Present: Mr. HPS Ishar, Advocate,
for the appellant.

Mr. Gaurav Rana, Advocate,
for Mr. Ashwani Talwar, Advocate,
for respondent no. 3.

G.S.SANDHAWALIA, J. (Oral)

The present appeal has been filed by the employer who is aggrieved against the order of the Commissioner dated 14.01.2014 under the Employee's Compensation Act, 1923 wherein, the interest liability was fixed upon him in view of the judgment passed by this Court in ***FAO No. 320 of 2009, Bouti Devi and another vs. M/s. Yamuna Packages and others*** which was decided in bunch of cases, the lead case of which was ***FAO No. 2084 of 2008, ICICI Lombard General Insurance Company Ltd. vs. Smt. Sanjida and another.***

Thus, the sole substantial question of law which arises for consideration is whether the Commissioner was justified in holding that the owner of the vehicle, the employer, is liable to pay the interest element.

Respondents no. 1 and 2 were the claimants being the parents of the deceased Jitender Jaiswal, who was engaged as a cleaner on the truck had sought the claim on account of the death which took place on 02.04.2011 in the State of Jharkhand. An FIR No. 24 of 2011 had also been lodged under Sections 279, 304-A and 427 IPC and a post mortem had also been conducted on the basis of which, a legal notice had also been served. Keeping in view the documents placed on record, it was held that the death of the deceased stood proved that it had happened on account of an accident arising out of and in course of the employment with the present appellant. Resultantly, the minimum rate of wages was taken as ₹4502-98/- and keeping the relevant factor 228.54, compensation to the tune of ₹5,14,444/- was assessed alongwith interest on the entire compensation amount @ 12% after one month from the date of accident.

A perusal of the order would go on to show that nothing could be brought on record by the insurance company that there was any such exclusion clause in the policy as such which would make it not liable to pay the interest element. In ***Ajay vs. Balwan Singh and another, 2010 (2) PLR 168,*** while keeping in mind the judgment of the Apex Court in ***New India Assurance Co. Ltd. vs. Harshadbhai Amrutbhai Modhiya, 2006 (5) SCC 192,*** it was held that once the liability of the insurance company to pay interest has not been excluded in the insurance policy, then the company is liable to pay interest to the claimants. Reliance was also placed upon the judgment of the Apex Court in ***Ved Parkash Garg Vs. Premi Devi & others (1997) 8 SCC 1***. The said judgments apply to the present issue in controversy and clearly covers the matter.

A perusal of the judgment in FAO No.320 of 2009, *Bouti Devi-supra,* would go on to show that question in that particular appeal was as to whether the interest is payable from the date of order/award or from expiry of one month from the date of accident.

Keeping in view the above, the present appeal is allowed. The substantial question of law is, thus, answered in favour of the appellant and the impugned order of the Commissioner dated 14.01.2014 is accordingly modified and it is held that the insurance company will be liable to pay the element of interest also.

16.02.2017 (G.S. SANDHAWALIA)
shivani/sailesh JUDGE

Whether reasoned/speaking Yes/No

Whether reportable Yes/No