IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

FAO No.160 of 2015(O&M)

Date of Decision:-18.09.2017

Smt. Sunita Devi & Ors.

......Appellants**.**

Versus

Arvind & Ors.

......Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. Harish Nain, Advocate for the Appellants (Claimants).

None for respondent no.1-Employer.

Ms. Monica Jangra, Advocate for
Ms. Vandana Malhotra, Advocate for
respondent no.2-Insurance Company.

None for the respondent nos.3 & 4-Proforma respondents
(Co-claimants)

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JASWANT SINGH, J.(ORAL)

Widow and two minor daughters of the deceased employee-Naresh Kumar are in first appeal assailing the order dated 2.5.2014 passed by the Commissioner, Employees Compensation Act, Circle, Jind whereby the statutory interest at the rate of 12% and penalty has not been awarded in terms of Section 4-A(1) & (3) Clause (a) & (b) of The Employees Compensation Act, 1923 (for short, 1923 Act) .

In short, facts are that deceased Naresh Kumar husband of Claimant no.1 was working as driver on truck No.HR-46-5321 (insured by ICICI Lombard General Insurance Company-respondent no.2) which met with an accident with Tata Canter bearing registration No.HR-45A-1131 on 24.11.2008 resulting into the death of aforesaid Naresh Kumar on account of injuries suffered in the accident regarding which FIR was registered with P.S. Kalayat District Kaithal. Appellants (claimants) filed their claim under Employees Compensation Act, Circle Jind.

Upon notice, inspite of due service, none has put in appearance on behalf of the employer-registered owner of the insured truck.

Counsel for the appellant submits that the Authority below has fell in error in restricting the statutory interest at the rate of 12% per annum for a fixed period of 3 years preceding the date of passing of the order instead of the date on which the compensation "fell due". Further submits that upon the accident leading to the death of the employee Naresh Kumar on 24.11.2008, Employer Arvind Singh was duly informed vide notice dated 6.12.2008 Ex.A-3, therefore, apart from the interest even the penalty is liable to be imposed on the employer in view of the statutory provisions of the Act, as authoritatively interpreted in a catena of judgments by the Hon'ble Supreme Court. Further prayer is for grant of funeral expenses of Rs.5,000/- as per provisions of Sub Section 4 of Section 4 of the 1923 Act.

Counsel for the Insurance Company-respondent no.2 has made a halfhearted attempt to contest the claim of grant of interest to be calculated on expiry of 30 days from the date of accident in terms of the statutory provisions.

After hearing counsel for the parties, this Court finds that there is merit in the contentions raised on behalf of the appellants. Before proceeding further it is necessary to reproduce the relevant statutory provisions of 1923 Act:-

“ Sections 4-A (1) and (3) reads as under:-

4-A Compensation to be paid, “when due” and penalty for default.

(1) Compensation under Section 4 shall be paid as soon as it falls due.

(2) xxx xxx xxx

(3) Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner shall

(a) direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve per cent per annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government, by notification in the official Gazette on the amount due; and

(b) if, in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears and interest thereon, pay a further sum not exceeding fifty per cent of such amount by way of penalty:

Provided that an order for the payment of penalty shall not be passed under Clause (b) without giving a reasonable opportunity to the employer to show cause why it should not be passed.

Explanation.- xxx xxx xxx

(3A) xxx xxx xxx. ”

It is a conceded position that the aforesaid provisions have been interpreted by the Hon'ble Supreme Court in a catena of judgments, whereby it has been held that the compensation to be determined as per the criteria approved under Section 4 of the Act falls due on the date of accident/date of death. The employer is required to pay the amount of compensation based on the fixed criteria under Section 4 as he is aware of the wages and the factor to be invoked as per the Schedule in view of the known age of the employee. Sub Section 3 of Section 4-A mandates that in case the employer does not pay the amount of compensation within one month from the day it "fell due", simple interest at the rate of 12% per annum is liable to be paid by the employer and in case the employer is insured then the vicarious liability is of the insurance company. The insurance company can possibly take up the defence qua the employer only with regard to the date of notice of the accident by the employer to the insurance company so as to make the employer liable initially and subsequently the insurance company from notice. The penalty is required to be paid by the employer not exceeding the rate of 50% of the determined compensation. This determination of penalty is subject to the prior condition of grant of opportunity to the employer to contest the same. This view is fortified by recent judgment of Hon'ble Supreme Court in **Oriental Insurance Company Ltd. Vs. Sib George <u>2012(4) R.C.R. (Civil) 617</u>**.

In the present case, concededly the employer/respondent no.1 was provided full opportunity by the learned Commissioner to contest the case. No explanation was tendered by the employer for not paying the due compensation to the claimants of the deceased employee within time. Even the insurance company has not taken up the defence of lack of proper notice by the employer of the insurance company.

Faced with this factual situation, in view of the aforesaid settled position of law, it is held that the claimants are entitled to the award of statutory interest at the rate of 12% on the awarded compensation w.e.f. the expiry of 30 days of the date of accident. Further, in the fact of no explanation tendered by the employer Arvind Singh for non deposit of the due compensation within time, it is held that the claimants are also entitled to the award of penalty at the rate of 50% of the awarded compensation to be paid solely by the employer Arvind Singh. The claimant is also held to be entitled to the award of Funeral Expenses of Rs.5,000/- to be paid by the employer and thus the vicarious liability of the insurance company. The increased amount of interest component shall be paid by the insurance company within two months from the date of receipt of certified copy of this Court.

Accordingly appeal is allowed in terms of the aforesaid directions. It is further directed that in case the insurance company fails to pay the enhanced compensation within three months from the receipt of the copy of the order, the interest at the rate of 9% on the enhanced compensation shall be liable to be paid to the claimants and the same can be recovered from the official concerned of the insurance company. In case the penalty amount is not paid by the employer within the same time, then the claimants would be free to seek recovery as arrears of land revenue.

(JASWANT SINGH)
JUDGE

September 18, 2017
Vinay

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