

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**FAO No.4022 of 2014 (O&M)
Decided on : 25.04.2017**

Ranjit Kaur and others

...Appellants

Versus

Vimal Kishore and another

... Respondents

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

Present : Mr. Rajbir Singh, Advocate for the appellants.

Respondent No.1 ex parte.

Mr. Aman Dhir, Advocate for respondent No.2.

G.S. Sandhawalia, J.

The present appeal under Section 30 of the Employee's Compensation Act, 1923 (for short 'the Act) has been filed by the claimants who are the legal representatives of the deceased employee, namely, Balwinder Singh.

Enhancement of compensation has been sought of the order passed by the Commissioner, Panchkula dated 27.11.2013, whereby a sum of ₹5,68,680/- was granted alongwith interest @ 9% per annum from the date of the accident. Condition was put that in case the amount is not paid within 30 days, the Insurance Company would be liable to ordered alongwith 12% per annum interest. The order of penalty if any was liable to be subject to the reply of the show cause notice under Section 4A of the Act. The liability of payment was fixed upon the Insurance Company, in view of the fact that there was a policy Ex.RW1, which was insuring the vehicle fully and, therefore, the Insurance Company was made liable to pay the amount.

The substantial question of law which arises is that whether the appellants were entitled for 12% interest in view of Section 4A (3) of the Act, instead of 9% per annum which has been granted and the benefit of the statutory rate has only been given, if the payment was not made within the prescribed period.

A perusal of the record would go on to show that the claim was made on the basis of the relationship of the employer and employee with the respondent No.1, who has chosen not to put in appearance. The deceased fell down from the driver window, on account of the impact of an accident and had come under the vehicle on 24.09.2011. Salary was stated to be ₹6,000/- per month and the owner had admitted the factum of the accident and the relationship. Resultantly, it was held that he had died during the course of his employment and the salary was taken as ₹6,000/- per month in view of the admission. Resultantly, keeping in view the age was just 38 years as per the date of birth given on the driving license Ex.C-3, the relevant factor of 189.56 was applied and the compensation of ₹5,68,680/- was assessed. However, interest as noticed was only given @ 9% per annum, whereas under the statute it has been provided @ 12% per annum from the date it became due.

In ***Ved Prakash Vs. Premi Devi (1997) 8 SCC 1***, the liability of interest element, apart from the compensation, was also held to be that of the Insurance Company in cases of insurance contracts being in force. The said view was followed by the Apex Court in ***Oriental Insurance Company Ltd. Vs. Siby George (2012) 12 SCC 540*** and in ***Saberbibi***

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

In ***Jaya Biswal Vs. Branch Manager, IFFCO Tokio General Insurance Company Ltd. & another 2016 (11) SCC 201***, the said view has further been reiterated, that the interest @ 12% is liable to be paid from the date of the accident. Relevant portion reads as under:

“26. 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 ₹25,000/-.”

Similarly, the funeral expenses, which was payable under Section 4 (4) of the Act was also not assessed and, which is to be payable by the Insurance Company.

Resultantly, keeping in view the above, the appeal is partly allowed. The Insurance Company will pay the balance amount of the interest of 3% and the sum of ₹5,000/- as funeral expenses under Section 4 (4) of the Act within a period of one month from the receipt of the certified copy of this order.

Since, penalty proceedings have already been initiated, therefore, the Commissioner shall proceed ahead with the said proceedings and conclude the same expeditiously, in case already not done so.

APRIL 25, 2017

Naveen

Whether speaking/reasoned:

Whether Reportable:

**(G.S. SANDHAWALIA)
JUDGE**

Yes/No

Yes/No