

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

**FAO No.6733 of 2015 (O&M)
Decided on : 07.03.2017**

Jatinder Kumar

... Appellant

Versus

Mewa Devi and others

... Respondents

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

Present : Mr. Nitin Kant Setia, Advocate
for the appellant.

Mr. Manoj Kumar Pundir, Advocate
for respondents No.1 and 2.

Mr. Raj Kumar Bashamboo, Advocate
for respondent No.3.

G.S. Sandhawalia, J. (Oral)

The employer has filed the present appeal under Section 30 of the Employee's Compensation Act, 1923 (for short 'the Act) against the order dated 16.07.2015 passed by the Commissioner, Yamunanagar under the Act.

Vide the said order, a sum of ₹4,57,054/- was held payable to respondents No.1 and 2, on account of the death of Bhupinder Singh @ Mithu, who was a cleaner on a vehicle owned by the appellant. The death was occurred during the intervening night of 17/18.06.2010, when the vehicle went off the road and struck against the tree. Both the occupants were injured and eventually Bhupinder Singh, who was the son of the claimants-respondents No.1 and 2 expired. Resultantly, the claim was filed, after serving notice.

The appellant had denied the employment. However, keeping in view the deposition of Mewa Devi, AW-1 and AW-2 Rajinder Kumar, who was an independent witness of the accident and had removed the driver of the vehicle and the deceased and in view of the testimony of the driver Baldev Singh also who appeared as AW-4, it was held that the deceased had died during the course arising out of his employment.

Resultantly, the amount was assessed, keeping in view the fact the age was mentioned as 25 years and minimum wages was ₹4213.23/- per month. However, the interest element was fixed upon the employer, in view of the judgment passed in **FAO No.320 of 2009 'Bouti Devi and another Vs. Yamuna Packages and others'**.

The Apex Court in **'Ved Parkash Garg Vs. Premi Devi & others' (1997) 8 SCC 1** has held that the interest element is to be paid by the Insurance Company. Thereafter, in **'New India Assurance Co. Ltd. vs. Harshadbhai Amrutbhai Modhiya', 2006 (5) SCC 192**, it has been held that in case there is a clause of contracting out, the company can deny its liability to pay the interest.

A perusal of the judgment passed in **Bouti Devi and another (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.

The said case was decided alongwith **FAO No. 2084 of 2008, 'ICICI Lombard General Insurance Company Ltd. vs. Smt. Sanjida and another'**.

Resultantly, the liability of interest which has been shifted upon the employer is not justified. Accordingly, the substantial question of law which has been framed by the appellant is decided in its favour that the interest is to be paid by the Insurance Company.

Accordingly, the Insurance Company will reimburse the interest element to the employer, who has already paid the same to the claimants.

With the abvoesaid observations, the present appeal stands allowed.

MARCH 07, 2017
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No