

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

109

FAO No.3649 of 2017 (O&M)

Date of decision: 25.05.2017

National Insurance Company Ltd.

....Appellant

Versus

Kuldeep Kaur & another

...Respondents

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

Present: Mr.D.P.Gupta, Advocate, for the appellant.

G.S. SANDHAWALIA, J. (Oral)

CM-11883-CII-2017

Application for condonation of delay of 64 days in filing the appeal is allowed, in view of the averments made in the application, duly supported by an affidavit. The delay of 64 days in filing the appeal is hereby condoned.

CM stands disposed of.

FAO-3649-2017(O&M)

Challenge in the present appeal is to the order dated 10.01.2017, passed by the Commissioner, Hoshiarpur under the Employees Compensation Act, 1923 (for short, the 'Act'), whereby a sum of Rs.8,85,480/- has been assessed as compensation on account of the death of Kanwaljit Singh, who was a Driver, working under the employment of respondent No.2. It is the case of the claimants that he died on 05.11.2011 in the course of his employment, while fixing an iron rod and was crushed between the 2 trucks.

The employer never appeared to contest the proceedings despite service and keeping in view the documents on record, in the form of the post-mortem report, the death certificate and the driving licence along with the statement of AW2-Sukhwinder Singh, who was present at the spot, a finding was recorded that he died during the course of his employment. Keeping in view the fact that the vehicle was insured with the appellant-company, the

FAO-3649-2017 (O&M)

liability has been fixed upon the appellant by taking the age as 22 years on the basis of his birth certificate (Ex.A5). In the absence of any rebuttal regarding the income which was claimed at Rs.10,000/-, the income has been taken at the maximum permissible level of Rs.8000/- and by giving a 50% cut, the relevant factor of 221.37 was applied at Rs.4000/- as per the formula prescribed under the Act. However, interest was only granted @ 9% per annum from 06.12.2011, i.e., one month after the accident.

Counsel for the appellant has vehemently argued that an application for production of documents regarding the route permit and fitness certificates etc. had been filed, seeking directions that the respondent-owner should produce the above-said documents and an adverse inference should have been drawn against the owner.

The onus whether the vehicle was driven with a valid registered route permit and registration certificate and the fitness certificate, was upon the appellant-company, as they had set up the said plea. Therefore, due to the non-appearance of the owner, it was for them to get the record summoned from the necessary offices, to show that their stand was justified. Not having done so, the Commissioner has rightly decided issue No.3 against the Company. In such circumstances, no substantial question of law arises which would warrant consideration in the well reasoned order passed by the Commissioner and the present appeal is accordingly, dismissed in limine.

25.05.2017
Sailesh

(G.S. SANDHAWALIA)
JUDGE

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