

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

201

FAO No.923 of 1990 (O&M)
Date of Decision : 07.03.2018

Babu Ram and others

..... Appellants

Versus

Kasturi Lal Ramdev and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. S.S. Swaich, Advocate
for the appellants.

Mr. Tarun Singla, Advocate
for Mr. Ashok Aggarwal, Sr. Advocate
for the respondent No.2.

AJAY TEWARI, J. (Oral)

This appeal has been filed against the order dated 4.8.1990 of the Commissioner under the Workmen's Compensation Act for the enhancement of compensation on account of death of Manohar Lal.

On 11.09.2017 the following order was passed:-

“Deceased Manohar Lal, 20 years of age, died in a Motor Vehicular Accident occurred on 08.05.1995 while employed as a cleaner on an Oil Tanker insured by the insurance company. It has been proved on record that the salary of the deceased was Rs.400/- per month, however, the claimed daily allowance at the rate of Rs.10/- while being on duty has been ignored in the absence of any evidence showing actual days of work undertaken. It is urged that there is some guess work required to be relied upon in determining the number of days of actual working so as to avail the benefit of

daily allowance being a part of the salary. The other aspect is that w.e.f. 15.09.1995 an amendment to Section 4 of the Workmen Compensation Act 1923 was made whereby the criteria for determination of compensation was changed by providing that “50% of wages” instead of existing “40% of wages”. Therefore, the benefit of subsequent enhanced criteria to be applied to the case of the appellant is urged.

None has put in appearance on behalf of the New India Insurance Company has appeared to contest the claim of the appellants.

At this stage counsel for the appellant prays for two weeks time to cite case law on both the aspects.

List on 10.10.2017.”

Counsel for the appellants has argued that the fact that the appellants were not able to show the exact days in every month in which the deceased was entitled to daily allowance can not result in a situation where it can be held that the deceased was not entitled to any daily allowance at all.

Counsel for the respondent No.2-insurance company is not in a position to deny this argument.

In the circumstances, as noticed in the order dated 11.09.2017 certain amount of guess work would have to be put in in view of the fact that the deceased was working as Cleaner on a commercial vehicle (Truck). Consequently, I deem it appropriate to fix the daily allowance of the deceased @ Rs.10/- per day for 20 days which comes to Rs.200/- in a month. Ordered accordingly. The total income would thus come to Rs.600/- per month and the criteria for determination of compensation would be 50% of the wages. The enhanced amount shall be paid alongwith

payment.

Appeal is allowed in the above terms.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

March 07, 2018
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(AJAY TEWARI)
JUDGE

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No