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

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FAO No.281 of 1995 (O&M)
Date of Decision : 28.02.2018

United India Insurance Company

...... Appellant

Versus

Smt. Daljit Kaur and ors.

...... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

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Present : Mr. Vinod Chaudhary, Advocate
for the appellant.

Mr. Vikrant Attri, Advocate for
Mr. C.S.Pasricha, Advocate
for respondent No.5.

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AJAY TEWARI, J. (Oral)

This appeal has been filed against the award dated 22.11.1994 passed under Workmen's Compensation Act, Mohali vide which the appellant was directed to deposit a sum of Rs.84,716/- by way of compensation with @ 6% interest per annum.

The brief facts of the case are that the deceased-Avtar Singh was employed with respondent No.5-M/s Syal & Associates and was working as a Tractor Driver. On 02.11.1993 deceased-Avtar Singh died on the spot. The deceased was allegedly of 28 years of age and his monthly wages were Rs.1,250/- per month.

The claim having been allowed the appellant-Insurance company is before me. The argument of the learned counsel for the appellant-Insurance company is that in the policy in question there was a specific clause as per which the appellant-Insurance company was not liable to pay any interest or penalty on any delayed payment but the Commissioner has foisted the liability of interest on the appellant-Insurance company. As per him the judgment of the Supreme Court passed in ***Oriental Insurance Company Ltd. Vs. Siby George (2012) 12 SCC 540*** would not be applicable because in that case there was no specific clause excluding the liability of the Insurance company as in the present case.

Learned counsel for respondent No.5 has argued that in the present case he would not be called upon to answer this issue because the appellant-Insurance company first appeared before the Commissioner but then chose to go ex-parte without filing any reply or bringing to the knowledge of the Commissioner any such clause which it is now trying to rely upon and consequently, now the appellant-Insurance company can not be heard to raise this argument.

I am in agreement with the counsel for respondent No.5. Had the appellant-Insurance company submitted to the jurisdiction of the Commissioner and urged the particular clause as per which it was claiming immunity from payment of interest and penalty it would have been a different thing but in the present case the representative of the Insurance company chose not to appear after putting first appearance and consequently, even no reply was filed by the appellant-Insurance company. Once the appellant-Insurance company had not brought any specific clause to the notice of the Commissioner no fault can be found with the action of the Commissioner since in the absence of this clause there is nothing to distinguish the present case from that of ***Oriental Insurance Company Ltd. 's case (supra)***

Appeal stands dismissed.

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

(AJAY TEWARI)
JUDGE

28.02.2018
Pooja sharma-I

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