

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

FAO No. 950 of 2006(O&M)

Date of decision: 31.10.2018

Rajinder Kaur and othersAppellants

VERSUS

Achhar Singh and anotherRespondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Ashwani Arora, Advocate for the appellants.

Mr. V.K. Garg, Advocate for respondent No.2.

REKHA MITTAL, J. (Oral)

The appellants-claimants are in appeal seeking enhancement of compensation as assessed by the Commissioner, Union Territory, Chandigarh under Workmen's Compensation Act (hereinafter to be referred as 'the Authority') whereby compensation to the tune of Rs.2,12,452/- payable with interest at the rate of 12% per annum from the date of accident by the respondents and penalty of Rs.20000/- payable only by the employer/respondent No.1, has been allowed.

Respondent No.1 has been served but remains unrepresented.

Counsel for the appellants would urge that the deceased was a driver with respondent No.1 on monthly salary of Rs.3,000/-. He met with unfortunate accident on 06.07.1997 while driving Maruti Van No.CH-01-K-0842 from Jagadhari to Chandigarh. It is further argued that respondent No.1 filed reply and admitted that the deceased was working as driver on

monthly salary of Rs.3000/-. It is further argued that if respondent No.1 had not maintained any record with regard to salary paid to the deceased, neither the claimants can be condemned for the same nor they can be called upon to produce documentary evidence to substantiate their plea with regard to salary of the deceased. For this purpose, reference has been made to judgment of Hon'ble the Supreme Court **Jaya Biswal and others Vs. Branch Manager, IFFCO Tokio General Insurance Co. Ltd. and another, 2016(1) RCR (Civil) 1003.**

Counsel for respondent No.2 has supported assessment by the Authority on the premise that income has rightly been assessed on the basis of minimum wage of a driver, available at the relevant time.

I have heard counsel for the parties and perused the paper-book particularly order dated 20.07.2005 passed by the Authority.

Indisputably, Varinder Singh was working as Driver of Maruti Van No.CH-01-K-0842 with Achhar Singh – respondent No.1 therein and died in an accident while driving the aforesaid vehicle. Achhar Singh admitted that the deceased was paid salary at the rate of Rs.3000/- per month. The insurance company has failed to adduce any evidence that plea raised by respondent no.1 is the result of collusion between claimants and respondent no.1. In the given scenario, there is no reason to deny compensation on the basis of salary at the rate of Rs.3000/- per month in preference to minimum wage at the relevant time. Accordingly, compensation is calculated at Rs. 3,11,970/- (Rs.3000/- x 50% x 207.98) and additional amount of Rs.99,518/- (Rs.3,11,970/- - Rs.2,12,452/-) shall be payable with interest at the rate of 12% per annum 30 days from the

date of accident till realization. The amount of penalty awarded by the authority is affirmed.

The appeal is partly allowed in the aforesaid terms.

OCTOBER 31, 2018

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no