

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Date of decision : 13.11.2018

FAO 7128 of 2011 (O&M)

Oriental Insurance Co Limited *Appellant*

versus

Sunita Sharma and others *Respondents*

FAO 7129 of 2011 (O&M)

Oriental Insurance Co Limited *Appellant*

versus

Ashok Kumar and others *Respondents*

FAO 1400 of 2012 (O&M)

Ashok Kumar and others *Appellants*

versus

Prem Pushpa and another *Respondents*

FAO 1401 of 2012 (O&M)

Sunita Sharma and another *Appellants*

versus

Prem Pushpa and another *Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present : Mr. Neeraj Khanna, Advocate
for the insurance Company

Mr. G L Bajaj, Advocate
for the claimants (FAO 1400 and 1401 of 2012)

Mr. Deepak Gupta, Advocate
for respondent Prem Pushpa

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Rekha Mittal, J. (Oral)

This order will dispose of aforesaid appeals as the same
pertain to occurrence dated 26.01.2009 and involve identical questions of

law and facts for adjudication.

FAO Nos. 7128 and 7129 of 2011 have been preferred by the Oriental Insurance Company Limited (in short, 'the insurance company') whereas FAO Nos. 1400 and 1401 of 2012 have been filed by the claimants in regard to death of Varun Sharma and Sukhwinder Pal Kumar alias Sukhwinder Singh for enhancement of compensation.

FAO Nos. 7128 and 7129 of 2011

The sole submission made by counsel for the insurance company is that as per the facts elicited in cross examination of Lovely, a witness examined by the claimants to prove the alleged occurrence, Varun Sharma, driver of truck trolly bearing registration No. RJ 31G-5425, owned by Om Parkash Sharma (since deceased) and insured with the insurance company had given lift to two persons, who caused murder of Varun Sharma and Sukhwinder Singh, therefore, findings of the Commissioner under the Workmen's Compensation Act (in short, the Commissioner) that Varun Sharma and Sukhwinder Singh sustained injuries in the course of employment cannot be allowed to sustain and the claimants are not entitled to get compensation.

Counsel representing the claimants in both the cases, on the contrary, has supported the impugned order particularly findings of the Commissioner on issue No. 1 (*Whether the deceased met with an accident in the course and out of the employment with respondent No. 1? OPA*).

I have heard counsel for the parties, perused the paper book and records.

Section 3 of the Employees Compensation Act, 1923 (in short, 'the Act') provides for employer's liability for compensation.

A relevant extract therefrom reads as follows:-

3. *Employer's liability for compensation* - (1) *If personal injury is caused to a employee by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter:*

Provided that the employer shall not be so liable:-

(a) in respect of any injury which does not result in the total or partial disablement of the employee for a period exceeding three days;

(b) in respect of any injury, not resulting in death or permanent total disablement caused by an accident which is directly attributed to

(i) the employee having been at the time thereof under the influence of drink or drugs, or

(ii) the wilful disobedience of the employee to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of employees, or

(iii) the wilful removal or disregard by the employee of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of employees,

(c) Omitted by Act 5 of 1929

Perusal of the aforesaid extract makes it evident that under clause (b) of proviso appended to sub section 1 of Section 3 of the Act, the employer shall not be liable to pay in respect of any injury which is directly attributed to the employee on account of his having been under the

influence of drink or drugs or wilful disobedience of employee to an order expressly given or to a rule expressly framed for the purpose of securing safety of workmen or wilful removal or disregard by the employee in any safety guard or other device which he knew to have been provided for the purpose of securing safety of employee but even these exceptions are not available in favour of employers in case the injury results in death.

This apart, counsel for the company has failed to point out any material on record that Varun Sharma, driver of the truck in question gave lift to two persons in wilful disobedience of an order expressly given or a rule expressly framed for the purpose of securing safety of employee. That being so, neither the employer,, can escape his liability to pay compensation in the given scenario nor the insurance company can be heard to say that it is not liable to pay compensation by way of indemnification of the employer, in terms of policy issued by the company. In this view of the matter, contention raised by the insurance company to escape its liability to pay compensation is not meritorious and accordingly rejected.

No other point has been raised.

For the foregoing reasons, the appeals fail and are accordingly dismissed leaving the parties to bear their own costs.

FAO No. 1400 of 2012

Counsel for the appellants/claimants would pray for enhancement of compensation on the ground that the Commissioner has assessed income of the deceased at Rs.3,700.00 per month as against their plea that the deceased was drawing Rs.4,000.00 per month and also getting

Rs.150.00 per day as travelling allowance whenever he went out of State. It is further argued that even the minimum wage at the relevant time was more than the income assessed by the Commissioner.

Counsel representing the respondents have supported findings of the Commissioner with regard to assessment of compensation including income of deceased. It is argued that the claimants have failed to adduce sufficient much less cogent evidence to prove income of the deceased at Rs.4,000.00 and entitlement of Rs.150.00 per day as travelling allowance. It is further argued that the question of payment of travelling allowance does not arise in the circumstances that the deceased was to travel in Truck in question when he had gone out of State.

Shri Om Parkash Sharma, employer of the deceased had since passed away and his widow Smt. Prem Pushpa was impleaded as respondent No. 1. She has denied averments of claim application with regard to income of the deceased. Claimants have failed to produce independent much less documentary evidence to establish their plea with regard to emoluments drawn by the deceased and getting Rs.150/- per day travelling allowance whenever the deceased had gone out of State. However, it remains a fact that the deceased was working as a cleaner on the Truck. Taking into consideration the minimum wages available at the relevant time, there is no scope for enhancement of income of the deceased and compensation assessed by the Commissioner.

For the foregoing reasons, the appeal stands dismissed.

FAO 1401 of 2012

The Commissioner has assessed compensation by taking into

consideration monthly income of the deceased at Rs.4,375.00. In view of findings recorded in FAO No. 1400 of 2012, plea of the claimants with regard to income of deceased at Rs.6,000.00 per month plus Rs.200.00 per day as travelling allowance neither finds corroboration from the stand taken by Smt. Prem Pushpa widow of Shri Om Parkash Sharma nor from independent much less documentary evidence. The deceased was travelling in the Truck trolly used for the purpose of transportation of materials even outside the State of Punjab. The occurrence in question took place in the State of Maharashtra when scrap was carried therein. Keeping in view of the minimum wage available at the relevant time, there is no scope for enhancement of compensation over and above what has been allowed by the Commissioner.

For the foregoing reasons, the appeal stands dismissed.

(Rekha Mittal)
Judge

13.11.2018
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