

In the High Court of Punjab and Haryana at Chandigarh

**FAO-1225 of 2013(O&M)
Date of Decision: 30.10.2018**

New India Assurance Company Limited

---Appellant

versus

Jagir Kaur and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Ashwani Talwar, Advocate
for the appellant**

**Mr.Pardeep Rajput Advocate,
for respondents No. 1 and 2**

None for respondent No. 3

Rekha Mittal, J.

Challenge in the present appeal has been directed against order dated 26.12.2012 passed by the Commissioner under the Workmen's Compensation Act, Amritsar (hereinafter to be referred to as “authority”) whereby compensation to the tune of Rs. 9,00,800/- plus Rs. 5000 towards funeral expenses has been assessed on account of accidental death of Jagjit Singh in an occurrence that took place on 3.11.2010.

Counsel for the appellant would inform that the appeal has been preferred only to assail quantum of compensation assessed by the authority. It is argued that income of the deceased has been assessed at Rs. 8000/- per month but in the application filed by the respondents-claimants, they raised a clear and categoric plea that deceased was working with Dhian Singh

respondent No. 1 therein and drawing salary of Rs. 5000/- per month. It is argued that plea raised by Dhian Singh in reply that deceased was getting salary of Rs. 8000/- per month does not find corroboration from any evidence as neither Dhian Singh appeared in the witness box nor the respondents-claimants produced any documentary evidence with regard to salary of the deceased more than Rs. 5000/- per month, pleaded in the claim application. It is further argued that even the minimum wage of a cleaner on a truck was not more than Rs. 5000/- per month at the relevant time.

Counsel representing the claimants has supported findings with regard to income of the deceased at Rs. 8000/- per month based upon statement of Dhian Singh respondent No. 1 therein as well as notification issued by the Central government, referred to under issue No. 3

I have heard counsel for the parties and perused the paper book particularly the order impugned.

Indisputably, the claimants-respondents have raised averment that the deceased was working as cleaner on truck No. PB 06 Temp. T.R. 1248 now registration No. PB.12.M. 9637 at salary of Rs. 5000/- per month for the past six months before the occurrence. Dhian Singh has raised a plea that the deceased was getting salary of Rs. 8000/- per month. He did not appear in the witness box to say something about salary of the deceased with an opportunity to the insurance company to cross examine him. Counsel for the respondents has failed to point out if the claimants ever tried to amend their plea qua salary of the deceased. As the claimants have taken a categorical stand with regard to salary of the deceased to be Rs. 5000/- and minimum wage at the relevant time in view of the notification issued by the State of Punjab is less than Rs. 5000/- per month, I find merit

in contention of the insurance company that income of the deceased is liable to be assessed at Rs. 5000/- as against Rs. 8000/- assessed by the authority. Accordingly, compensation assessed by the authority is modified to the effect that claimants shall be entitle to Rs.5,63,050/-[225.22 x 2500] plus Rs. 5000/- for funeral expenses.

No other point has been raised.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

30.10.2018

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No