

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

FAO-4687-2013 (O&M)
Date of decision: 17.10.2018

KAMLA DEVI AND ORS

... Appellants

Versus

DASHMESH TOUR AND TRAVELS AND ANR

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Ms. Amandeep Kaur, Advocate
for the appellants.

Mr. R.C. Gupta, Advocate
for respondent No.2.

REKHA MITTAL, J. (Oral)

CM No.19805-CII of 2013

Heard.

Allowed as prayed for. Delay of 112 days in filing the appeal
stands condoned.

Main Case

Claimants are in appeal seeking enhancement of compensation
assessed by the Commissioner under the Employees Compensation Act,
1923 with regard to death of Sanjeev Kumar in an accident on 09.01.2010.

As the appeal has been filed by the claimants and insurance
company has been fastened with liability to pay compensation and interest,
in view of consensus recorded by counsel for the parties, service of

respondent No.1 is dispensed with.

The Commissioner has awarded compensation of Rs.4,90,553/-, detailed hereunder:-

- | | |
|---|---------------------------------|
| 1. Monthly salary of the deceased | Rs.4477/- |
| 2. Compensation under Section 4 of the Act (Employees Compensation Act, 1923) | 4,85,553/-
(4477x216x50/100) |
| 3. Funeral expenses | Rs.5000/- |

The interest has been allowed @ 12% per annum on the due amount till realization in case the amount is not paid within 60 days from the date of order i.e. 28.02.2013.

Counsel for the appellants has pressed for enhancement primarily on two counts. It is argued that employer of the deceased appeared in the witness box and stated that deceased was getting salary @ Rs.7000/- per month but the Commissioner has assessed his income at Rs.4477/- per month. It is further argued that as the deceased was a driver on a taxi registered and insured as such, claimants are entitle to benefit of additional trip allowance. In support of her contention, she has referred to judgment of Hon'ble the Supreme Court **Jaga Biswal and ors. Vs. Branch Manager, IFFCO Tokio General Insurance Co. Ltd. and anr, 2016(1) RCR (Civil) 1003.**

Counsel representing the insurance company has supported assessment of income of the deceased by relying upon notification issued by the State of Punjab fixing minimum wage for a driver. Further submitted

that no such fact has been elicited in cross examination of Hardit Singh RW1 that Sanjeev Kumar was paid salary @ Rs.7000/- per month.

So far as plea of the claimants with regard to entitlement of interest @ 12% per annum w.e.f. 30 days after the accident, is concerned, the same is meritorious and liable to be accepted. In this context, reference can be made to judgment of Hon'ble the Supreme Court **Oriental Insurance Company Ltd. Vs. Siby George and others, 2012(4) RCR (Civil) 617**. Accordingly, claimants shall be entitle to interest @ 12% per annum on the amount payable w.e.f. 09.02.2010 till realization.

This brings the Court to quantum of compensation particularly income of the deceased. The deceased was admittedly a driver on taxi operated by Dashmesh Tour and Travels with its proprietor Hardit Singh RW1. Hardit Singh has not stated anything with regard to salary of the deceased but in his cross examination, he has deposed that in addition to salary, the driver is paid Rs.150/- per night and Rs.40/- per hour. Taking into consideration minimum wage available at the relevant time coupled with facts elicited in cross examination of Hardit Singh, in my considered opinion, income of the deceased is liable to be assessed at Rs.5000/- per month and accordingly compensation is calculated at Rs.5,40,000/- ($5000 \times 216 \times 50 / 100$). A sum of Rs.5000/- allowed for funeral expenses is correct and affirmed.

Total compensation is Rs.5,45,000/- and the additional amount is Rs.54,447/- ($5,45,000 - 4,90,553$). The entire compensation shall be

payable with interest @ 12% per annum w.e.f. 09.02.2010 till realization.

The appeal is partly allowed in the aforesaid terms.

17.10.2018
ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:	Yes / No
Whether reportable:	Yes / No