

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

Date of decision: 10.12.2018

FAO No.5731 of 2013 (O&M)

Geeta Soap Factory

... Appellant

Versus

Sita Devi and another

... Respondents

FAO No.8082 of 2014 (O&M)

Sita Devi and another

... Appellants

Versus

Geeta Soap Factory and another

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. B.S. Mittal, Advocate
for Geeta Soap Factory.

Mr. Arpandeeep Narula, Advocate
for the claimants.

REKHA MITTAL, J. (Oral)

This order will dispose of FAO No.5731 of 2013 and 8082 of 2014 as these have emerged out of the same order passed by the Commissioner under the Employees Compensation Act, 1923 whereby compensation has been assessed on account of death of Dharam Pal on account of receipt of injuries during the course of employment with Geeta Soap Factory, Sirsa.

FAO No.5731 of 2013 has been field by Geeta Soap Factory

(hereinafter to be referred as 'the appellant') whereas the other appeal has been preferred by the claimants seeking enhancement of compensation.

Counsel for the appellant would argue that as per case set up by the claimants, deceased sustained acid injuries while he was working in the night shift on the fateful day of 20.01.2010 though he succumbed to the injuries on 17.02.2010. It is argued that claimants failed to adduce clear, tangible and convincing evidence to establish their plea in this regard. The appellant had raised a categorical plea that the deceased left the premises after duty hours in the evening and if he has suffered any injury after duty hours, the appellant is not liable for the same. It was also averred that no acid is used by the appellant for manufacturing soap nor there was any night shift as working hours of factory were from 9.00 am to 5.00 pm. It is further argued that testimony of the appellant, proprietor of Geeta Soap Factory is duly corroborated by Sarvan Kumar RW2, an employee of the appellant. It is vehemently argued that since Dharam Pal did not sustain injuries in the course of employment, one of the essential ingredients for claim under the Employees Compensation Act, 1923 becomes missing, therefore, the application for compensation is liable to be dismissed on this score alone.

Counsel for the appellant would further argue that an application for additional evidence has been filed to place on record certificate (Annexure A1) issued by Sigma Laboratories, Ludhiana wherein it has been certified that in manufacturing of soap, none of the materials is

strong acid that can harm living being/human being. Fatty acids are weak acids which are not harmful for fatal accident to human being. It is argued that as per the postmortem report, the victim had sustained severe burns because of acid and the certificate (Annexure A1) is sufficient to falsify and belie case of the claimants that injured sustained injuries in the course of employment.

Counsel representing the claimants, on the contrary, would argue that contentions raised by counsel for the appellant do not pertain to a question of law that is amenable to be raised in an appeal against order passed by the Commissioner under the Employees Compensation Act, 1923. It is further argued that plea of the claimants that deceased sustained injuries while working in the night shift at the factory of the appellant gets established from the statement of Veerpal wife of Balbeer as Veerpal and Balbeer had been working in Geeta Soap Factory at the relevant time. It is further argued that the appellant has admitted that deceased was working in soap factory at salary of Rs.3600/- per month though he has denied his having sustained injuries in the course of employment. There is no evidence led by the appellant that the deceased sustained burn injuries at a place other than the premises of the appellant.

To substantiate plea of the claimants for enhancement of compensation, the sole submission made by counsel for the claimants is that the Commissioner has awarded interest from the date of filing of petition in place of 30 days after the occurrence that happened in January,

2010. In addition, it is argued that future interest is payable from the date of order and not in case of appellant failed to deposit the same within 30 days from the date of order.

Counsel representing the appellant, in reply, has supported the quantum of compensation assessed by the Commissioner in case challenge to the impugned order is not accepted.

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

Before advertng to the submissions made by counsel for the parties, it is appropriate to mention that an appeal against order passed by the Commissioner under the Employees Compensation Act, 1923 can be maintained only on a question of law.

There is a serious dispute between the parties if Dharam Pal son of the claimants sustained injuries in the course of employment or otherwise. There is no denial that Dharam Pal was working in Geeta Soap Factory near Auto Market, Sirsa at a salary of Rs.3600/- per month in view of the plea raised by the appellant though the claimants have alleged his salary at Rs.5000/- per month. It is averred by the claimants that on 20.01.2010 when Dharam Pal was working in the factory in night shift and was engaged in preparing soap, acid fell on his back and front portion due to which he sustained serious burn injuries. The plea of claimants has been supported by Veerpal wife of Balbeer. Counsel for the appellant has failed to point out any tangible material elicited in cross examination of Veerpal

to establish that her testimony is not worthy of credence and reliance. Veerpal has categorically stated that at the relevant time, she was working in Geeta Soap Factory.

The proprietor of Geeta Soap Factory appeared in the witness box to counter case of the claimants and to substantiate his plea that either the factory does not work in night shift or Dharam Pal did not sustain injuries in the course of employment and no strong acid is used in the factory for manufacturing soap.

Lakhpal Bansal proprietor of the appellant has admitted that records are being maintained in the factory with regard to attendance of the employees. He intentionally withheld records from the Court, therefore, an adverse inference is liable to be drawn against him. There is nothing on record suggestive of the fact that Veerpal or her husband Balbeer had any animosity against the proprietor of Geeta Soap Factory to depose against him. Similarly, no such fact has been elicited in cross examination of Veerpal that she had any personal interest in success of case of the claimants much less being a beneficiary in case plea of the claimants is accepted. In the given circumstances, it can safely be held that Veerpal is an independent witness examined by the claimants to establish their plea that the injured sustained injuries in the course of employment. On the contrary, the appellant has examined Sarvan Kumar RW2 who had stated himself to be employee of Geeta Soap Factory, therefore, had every reason to support cause of his employer/owner of the factory. In this view of the matter, I do

not find an error much less illegality in findings of the Commissioner that Dharam Pal sustained burn injuries while working in Geeta Soap Factory on 20.01.2010.

The appellant has filed an application for additional evidence to place on record certificate (Annexure A1). Firstly, the certificate (Annexure A1) is not per se admissible in evidence, therefore, the same would not advance cause of the appellant even if the same is allowed to be placed on record. This apart, even if no strong acid is used for manufacturing soap, availability of acid in the factory for some other purpose can not be ruled out. Since Dharam Pal sustained burn injuries while working in the factory of the appellant during the course of his employment, the appellant cannot escape its liability to pay compensation by relying upon the certificate (Annexure A1). In this view of the matter, contentions raised by the appellant are not meritorious and accordingly rejected.

This brings the Court to plea for enhancement of compensation. Interest @ 12% per annum on expiry of 30 days from the accident is statutorily provided. As such, claimants shall be entitle to interest @ 12% per annum from 30 days after the accident till actual realization. The findings recorded by the Commissioner with regard to payment of interest stand modified in the aforesaid terms.

No other point has been raised.

In view of what has been discussed hereinabove, the appeal

preferred by appellant is dismissed whereas the appeal preferred by the claimants is partly allowed in the terms indicated hereinbefore. In the peculiar facts and circumstances, parties are left to bear their own costs.

10.12.2018

ashok

(REKHA MITTAL)
JUDGE

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