

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

FAO No.2702 of 2018 (O&M)
Date of decision: August 16, 2018

The British India Corporation ... Appellant

Versus

Rajwinder Kaur & others ... Respondents

CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. Puneet Sharma, Advocate for the appellant.

Rajan Gupta, J.

Present appeal is directed against the judgment and decree dated 07.02.2018, passed by Civil Judge (Jr. Division), Gurdaspur, whereby suit filed by plaintiff/respondents No.1 to 3 has been decreed.

Brief factual matrix of the case are that the plaintiffs/respondents No.1 to 3 filed a suit for declaration and mandatory injunction that they are entitled to death benefits of late Mukhwant Singh alongwith interest and sought a direction to the defendants to pay the same to them. It was alleged that Mukhwant Singh, husband of plaintiff No.1 was employed as Caretaker in British India Corporation, New Mills, Branch Dhariwal since 13.03.1972. His ESI subscription used to be deducted @ Rs.150/- per month from his salary. On 18.4.2011, when he visited the site in local area of Dhariwal after getting requisite pass, he suffered the breathing problem. He was admitted in Mission Hospital, Dhariwal, where he died on the same day. The plaintiffs being his legal

heirs, were entitled to get all service benefits of the deceased. Initially, plaintiffs filed complaint before District Consumer Disputes Redressal Forum, Gurdaspur, which was allowed on 26.09.2013. However, vide order dated 12.05.2015, said order was set-aside by the State Commission on the ground that only Employee Insurance Court was competent to take cognizance in the matter. Plaintiffs, thus, filed instant suit. Defendants resisted the suit. They pleaded that as no accident report, as per provisions of the ESI Act, was submitted in the office of ESI Corporation, no claim was payable to the plaintiffs. Further deceased had died a natural death and not due to employment injury. After hearing both the parties and perusing oral as well as documentary evidence, the court below decreed the suit. It observed that deceased had died when he was on duty, therefore, his death was covered under "Employment Injury". It directed the defendants to pay compensation amount to the plaintiffs within two months from the date of receipt of copy of judgment, alongwith penal interest @ 18% per annum.

I find no infirmity with the findings arrived at by the court below. Learned counsel for the appellant has relied upon judgment reported as *Shakuntala Chandrakant Shreshti Vs. Prabhakar Maruti Garvali & Anr., 2007 AIR (SC) 248*. However, same is not applicable to the facts of the present case. Plaintiffs/respondents No.1 to 3 have been fighting for their right for last more than seven years. Only plea raised before this court is that judgments of two courts below are based on misappreciation of evidence as well as law. I find no substance in this plea. A perusal of concurrent findings of two courts below reveals that

same suffer from no infirmity. No other substantial question of law has been urged.

Dismissed.

CM-10020-CII & CM-10021-CII-2018:

Since the main appeal has been dismissed on merits, these applications do not survive and the same are also dismissed.

(RAJAN GUPTA)
JUDGE

August 16, 2018
'Rajpal'

Whether speaking / reasoned	Yes / No
Whether Reportable:	Yes / No