

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

FAO No. 6730 of 2018(O&M)

Date of decision: 21.11.2018

IFFCO TOKIO General Insurance Company Ltd.Appellant

VERSUS

Daya and othersRespondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Vishal Aggarwal and Mr. Rajan Bhargava, Advocates
for the appellant.

REKHA MITTAL, J. (Oral)

CM No.23515 and 23517-CII of 2018

Prayer in these applications is for condoning delay of 22 days
in re-filing and 31 days in filing the appeal.

Heard.

In view of averments made in the applications supported by
affidavits, the applications are allowed. Delay of 22 days in re-filing and 31
days in filing the appeal stands condoned.

Disposed of accordingly.

FAO No.6730 of 2018

The present appeal directs challenge against order dated
28.09.2016 passed by the Commissioner under Employees Compensation
Act, 1923 (in short 'the Act') whereby compensation has been assessed on
account of death of Ashok Kumar in the course of employment while
working as cleaner/conductor on vehicle No.HR-45A-3501, owned by
Shamsher Singh – respondent No.4.

Counsel for the appellant would inform that the entire amount

of compensation assessed by the Commissioner already stands deposited by way of initial deposit made before filing of the appeal and deficiency made up, in compliance of order dated 29.10.2018 passed by this Court.

Counsel for the appellant has challenged the impugned order primarily on two counts. The first submission made by counsel is that no evidence has been adduced by the claimants to prove relationship of employee and employer between the deceased and Shamsheer Singh – respondent No.4. Another submission made by counsel is that the Commissioner has allowed interest at the rate of 12% per annum and the same is on higher side and needs reduction. He has prayed, that in terms of application CM No.23516-CII of 2018 an amount of Rs.25,000/- deposited by the appellant may be refunded as there is no provision in the Act requiring deposit of Rs.25,000/- in addition to compensation assessed by the Commissioner.

The contention of insurance company to challenge the relationship of employee and employer between the deceased and Shamsheer Singh is patently misconceived and liable to be rejected. Counsel for the insurance company would fairly concede that in the reply filed by respondent No.1 before the Authority concerned, he has admitted relationship of employee and employer. He has failed to point out any materials on record that the said plea raised by Shamsheer Singh is the result of collusion between claimants and Shamsheer Singh. In this view of the matter, contention raised in this regard is untenable and rejected.

The Commissioner has awarded interest at the rate of 12% per annum which is statutorily permissible under the Act. Perusal of the impugned order would reveal that the Commissioner has awarded interest

@ 12% per annum from 1.10.2016 (30 days after the date of accident)
which is calculated at Rs. 1,45,297/-.

Counsel for the appellant, on making calculation, would inform that this interest is upto the date of making of award i.e. 24.5.2018. Total compensation assessed by the Commissioner to the tune of Rs. 8,91,977/- includes interest of Rs. 1,45,297/-. In the concluding para No. 21 of the order, it has been held that the insurance company is directed to pay Rs. 8,91,977/- to the applicants by way of deposit within 30 days from the date of this order failing which respondent No. 2 shall be liable to pay further interest @ 12% per annum till the date of actual payment. The claimants shall be entitle to future interest on the principal sum of Rs. 7,36,680/- from the date of award till actual realization irrespective of whether the deposit is made within 30 days or otherwise. At the same time, it is clarified that future interest shall be payable on the amount of Rs. 7,36,680/- and not on a sum of Rs. 8,91,977/- which also includes interest amount of Rs. 1,45,297/-.

For the foregoing reasons, the appeal stands disposed of in the aforesaid terms. The amount of Rs. 25,000/- deposited by the appellant is ordered to be refunded. Any observations made hereinbefore, shall not cause prejudice to the claimants in case they file an appeal for enhancement. The claimants shall also be at liberty to file an appropriate application before this Court if they have any grievance to express with regard to modification of the order impugned, in the aforesaid terms.

NOVEMBER 21, 2018
'D. Gulati/paramjit

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned : yes

Whether reportable : yes/no