

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

RSA-3732-2015 (O&M)

Date of Decision: 21.02.2018

Union of India and others

... Appellants

Vs.

Sudesh Kumari and others

... Respondents

CORAM : HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present : Mr. Vivek Singla, Advocate
for the appellants.

Mr. Rohit Seth, Advocate
for the respondents.

P.B. BAJANTHRI J. (Oral)

C.M. No.9147-C of 2015

Delay of 8 days in filing the present appeal stands condoned in view of the averments made in the application as well as affidavit.

Application stands allowed accordingly.

C.M. No.9148-C of 2015

Delay of 113 days in re-filing the appeal stands condoned in view of the averments made in the application as well as affidavit.

Main case

In the present appeal, appellants have questioned the validity of appellate court's order by which appellate court has reversed the decree passed by the trial court.

2. Grievance of the respondents who are legal heirs of the deceased employee late Sh. Sansar Chand is that they are entitled to ex-gratia grant/compensation of Rs.5,00,000/-. Suit was dismissed. Consequently, respondents preferred an appeal. Appeal was allowed. Hence, the present appeal.

3. Learned counsel for the appellants submitted that rightly trial court appreciated the fact that deceased employee was not on duty on 29.11.2003 with reference to the attendance register so also contradictory evidence of one co-employee namely Sh. Santok Raj. The appellate court has erred in holding that deceased employee was on duty since last pay drawn was upto 29.11.2003 i.e. inclusive of 29.11.2003 and it is evident that deceased employee was on duty. It was also taken note of the attendance register where against deceased employee name neither it was marked present nor absent or on leave on 29.11.2003. Therefore, appellant court has held that he was on duty. The appellate court has presumed the things that he was on duty in the absence of record. Consequently appellate court erred in reversing the decision of the trial court.

4. Per contra, learned counsel for the respondent while resisting the appellant's claim submitted that attendance register is being maintained by an officer of the commanding office. Presence of employee is marked by concerned officer and not by the employee. In not marking either present or absence or on leave by the concerned person on 29.11.2003 against the deceased employees' name has been taken note of by the appellate court. That apart last pay drawn has been taken into consideration upto the date of 29.11.2003 which was inclusive as 29.11.2003. Therefore, there is no infirmity in the order of the appellate court.

5. Heard learned counsel for the parties.

6. Crux of the matter in the present case is whether deceased employee was on duty on 29.11.2003 or not? There were two documents to determine whether deceased employee was on duty or not? One is relating to attendance register and other one is last pay drawn upto 29.11.2003.

Insofar as attendance register is concerned, it is evident from the attendance register that it is being maintained by an officer of the commanding office and not each of the employee mark present, leave or absent. In other words, employees were not marking attendance either present, absent or leave. Therefore, it is beyond the control of the deceased employee where to mark presence. In other words, there is lapse on the part of the officer who was maintaining the attendance register. Therefore, one has to draw inference that deceased employee was on duty. Perusal of the attendance register, it is evident that one person who was maintaining the attendance register having regard to the entries made against each of the employee name handwriting is common. That apart when the appellants had paid the salary for the deceased employee upto 29.11.2003 that shows that salary is being paid inclusive of the day i.e. 29.11.2003. Therefore, there is no infirmity in the order passed by the appellate court. Hence, no interference is called for.

Accordingly, appeal stands dismissed.

21.02.2018
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**