

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

FAO No.1908 of 2013 (O&M)

Date of decision: 03.04.2019

Smt. Beena @ Veena @ Meena and others

... Appellants

Versus

Harish Kumar and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. BS Mamli, Advocate
for the appellants.

Mr. Krishan Singh, Advocate
for respondent No.1.

REKHA MITTAL, J. (Oral)

The claimants are in appeal seeking enhancement of compensation assessed by the Commissioner, Yamuna Nagar-I under the Employees Compensation Act, 1923 (in short 'the Act'), in regard to death of Mukesh Kumar during the course of employment on 21.08.2009.

Counsel for the claimants in order to assert for enhancement of compensation has made two fold submissions. It is argued that wage of the deceased has been assessed by treating him as unskilled labour but actually the deceased was a skilled person, therefore, wage is liable to be increased with consequential increase in amount of compensation. Another submission made by counsel is that the Commissioner has not decided the question of liability of the respondent to pay penalty for failure of the employer to pay compensation within a period of 30 days in view of the provisions of Section 4-A of the Act.

Counsel representing respondent No.1, on the contrary, would urge that there is no evidence on record that the deceased was a skilled

person.

The plea of claimants is that the deceased was working with Harish Kumar Contractor, engaged by Uttar Haryana Bijli Vitran Nigam (UHBVN) for erecting electric poles, installing transformers, releasing connections, removing defect in electricity lines etc. Counsel for the claimants has failed to point out any materials on record that the deceased was performing any technical job to facilitate erecting electricity poles, installing transformers, removing defect in the electricity lines etc. The mere fact that the contractor was engaged by UHBVN for performing the aforesaid work ipso facto is not sufficient to accept contention of the claimants that the deceased was a skilled person. In this view of the matter, I do not find an error in findings of the Commissioner assessing wage of the deceased by treating him as unskilled labour.

So far as non-imposing of penalty, the impugned order does not make reference, if the Commissioner had issued show cause notice calling upon the respondent therein as to why penalty be not imposed. In the given circumstances, question with regard to penalty is left to be decided by the Commissioner, if the claimants file an application before the said authority within two months. In case, the claimants file an application within the stipulated period, the same shall be decided by the Commissioner concerned after providing an opportunity of being heard to the persons effected, in accordance with law.

For the foregoing reasons, the appeal stands disposed of in the aforesaid terms.

03.04.2019

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:

Yes / No

Whether reportable:

Yes / No