

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

FAO No. 4036 of 2013(O&M)
Date of decision: 29.4.2019

Kamla Devi

.....Appellant

VERSUS

Sombir Singh and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Kulvir Narwal, Advocate for the appellant.

Mr. Balkar Singh, Advocate for
Mr. Rajesh Dhankhar, Advocate for respondent No.1.

None for respondent No.2.

REKHA MITTAL, J. (Oral)**CM No.16248-CII of 2013**

Prayer in this application is for condoning delay of 20 days in
re-filing the appeal.

Heard.

In view of averments made in the application, the same is
allowed. Delay of 20 days in re-filing the appeal stands condoned.

Disposed of accordingly.

FAO No.4036 of 2013

Smt. Kamla Devi, mother of deceased Manjeet Singh is in
appeal seeking enhancement of compensation on account of death of
Manjeet Singh during the course of employment as a driver on truck
bearing No.HR-63-A-7055 on the intervening night of 15/16.07.2010 when
Manjeet Singh along with Parveen Kumar, cleaner, started his journey
from Gandhi Dham (Gujarat) to Nangloi and accident took place in the

wee hours of 16.07.2010 on the National Highway from Gandhi Dham to Radhanpur.

Counsel for the appellant has submitted that compensation has been allowed by assessing wage of the deceased at Rs.6000/- per month. It is argued that the claimants raised a plea that the deceased was working on a monthly salary of Rs.8000/- plus Rs.100/- as diet money for the days he had been working away from the station. It is further argued that Commissioner has not awarded benefit of diet money for those days even though respondent No.1 in his reply to the claim application has not denied the averments raised in the application and reiterated in testimony of Smt. Kamla Devi in the proceedings. Another submission made by counsel is that the Commissioner has not awarded penalty for failure of the employer to pay compensation within the stipulated period of 30 days from the date of occurrence.

Counsel representing respondent No.1 has supported assessment made by the Commissioner with the submission that there is no justification for allowing additional compensation with regard to diet money or penalty.

There is no representation on behalf of respondent No.2 earlier being represented by a counsel.

Perusal of the records would reveal that in the claim application, a specific plea was raised that the deceased was paid wage at the rate of Rs.8000/- per month and in addition he was paid Rs.100/- per day as diet money when he remained out of station. The plea of claimants with regard to payment of diet money was neither denied by way of reply filed by respondent No.1 nor challenged in her (Kamla's) cross examination conducted by representatives of both the sets of respondents.

However, there is no clear evidence available on record as to for how many days, the deceased had been staying away from the station. At the same time, it is undisputed position of the case that the deceased died on his way from Gandhi Dham (Gujarat) to Radhanpur. Taking into consideration that the deceased was a truck driver and he had been taking the truck outside State of Haryana, the appellant is allowed a sum of Rs.1000/- per month for diet money at the rate of Rs.100/- per day for a period of 10 days in a month. Accordingly, additional compensation is assessed to the tune of Rs.1,09,975/- (Rs.1000/- x 219.95 X 50%). The additional amount shall be payable with interest at the rate of 12% per annum in terms of the impugned order.

The plea of the appellant with regard to non-imposing of penalty, nothing has been mentioned in the impugned order if any show cause notice was issued to the employer calling upon him as to why penalty be not imposed for his failure to deposit compensation within the stipulated period. In the given circumstances, the appellant is left at liberty to file an appropriate application before the Commissioner concerned within a period of two months for deciding the issue of penalty in terms of Section 4-A (3) (a) of the Employees' Compensation Act, 1923. In case such an application is filed by the appellant within the stipulated period, the same shall be decided by the Commissioner concerned after providing an opportunity of being heard to respondent No.1, in accordance with law.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms.

APRIL 29, 2019

'D. Gulati'

Whether speaking/reasoned :

Whether reportable :

(REKHA MITTAL)

JUDGE

yes/no

yes/no