

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

211

FAO-5245-2013 (O&M)

Date of decision: 15.01.2019

RUBAIDA KHATOON @ JUBAIDA KHATOON & ORS ... Appellants

Versus

RAJIV GUPTA & ANR

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Sagar Aggarwal, Advocate for
Mr. Ashit Malik, Advocate for the appellants.
Mr. R.K. Bashamboo, Advocate for the insurance company.

REKHA MITTAL, J. (Oral)

The claimants are in appeal seeking enhancement of compensation assessed by the Commissioner under the Employees Compensation Act, 1923, vide order dated 13.12.2012.

The Commissioner has awarded compensation of Rs.4,44,780/- by considering wage @ Rs.5250/- per month and appropriate factor at the age of 45 years and 50% of admissible wage.

Counsel for the appellants has staked his claim for enhancement of compensation primarily on two grounds. It is argued that Rajiv Gupta employer of Jamil Akhtar (since deceased) filed reply and stated that the deceased was drawing salary of Rs.7000/- per month and accordingly wage of the deceased may be assessed @ Rs.7000/- per month for computing compensation. It is further argued that if the employer has not maintained any records with regard to payment of wage to the deceased, claimants cannot be condemned for the same nor an adverse view can be taken for their failure to prove wage of the deceased on the basis of documentary evidence. In support of his contention, he has relied upon the judgment of Hon'ble the Supreme Court **Jaya Biswal and others Vs. Branch Manager, IFFCO Tokio General Insurance Company Ltd. and another, 2016(1) RCR (Civil) 1003.**

Another submission made by counsel for the claimants is that the Commissioner has allowed interest @ 12% per annum w.e.f. 13.12.2012 instead of from the date of accident i.e. 08.09.2012.

Counsel representing the insurance company has supported assessment of compensation by the Commissioner. However, he is not in a position to counter arguments of the claimants with regard to their entitlement to interest @ 12% per annum from the date of accident.

Be that as it may, it is undisputed position of the case that the deceased was working as driver on truck bearing No.HR-55Q-5718 being an employee of respondent Rajiv Gupta. Rajiv Gupta filed reply and stated that the deceased was paid Rs.7000/- per month as salary. There is no evidence led by the insurance company that plea taken by Rajiv Gupta with regard to salary of the deceased is the result of collusion between the claimants and respondent No.1 before the Tribunal. As has rightly been argued by counsel for the claimants, if the employer has not maintained any records with regard to payment of salary to the deceased, the same cannot enure to benefit of the employer or the insurance company nor can cause prejudice to right of the claimants for grant of adequate compensation particularly that Employees Compensation Act, 1923 is a social welfare legislation meant to benefit the workers and their dependents in case of death of workman in an accident caused during course of employment. In this view of the matter, compensation is liable to be assessed by considering wage of the deceased @ Rs.7000/- per month. Accordingly, the claimants shall be entitle to compensation of Rs.5,93,040/- (7000 x 169.44 x 50%).

The claimants shall be entitle to interest @ 12% per annum on the amount of compensation from the date of accident, in the light of judgments of Hon'ble the Supreme Court **Oriental Insurance Company Ltd. Vs. Siby George, 2012(4) RCR (Civil) 617** and **Jaya Biswal and others's case (supra)**.

In view of what has been discussed hereinabove, the appeal is partly allowed in the aforesaid terms.

15.01.2019

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No