

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

FAO-4723-2014 (O&M)

Date of decision: 07.01.2019

JASWINDER KAUR AND ORS

... Appellants

Versus

HARI KRISHAN AND ORS

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Ashwani Arora, Advocate
for the appellants.

Mr. Nikhil Chopra, Advocate
for the insurance company.

REKHA MITTAL, J. (Oral)

Jaswinder Kaur and others are in appeal seeking compensation more than what has been allowed by the Commissioner under the Employees Compensation Act, 1923.

The Commissioner has awarded compensation of Rs.4,07,700/-, detailed hereunder:-

1. Monthly wage of the deceased Rs.4000/-
2. Factor applied at the age of 32 years 203.85

Counsel for the appellants has staked claim for enhancement of compensation primarily on two counts. It is argued that as per plea of the claimants, deceased was working as a cleaner on truck bearing No.HR-56-5761 owned by Hari Krishan respondent No.1 at monthly salary of

Rs.5000/- besides trip allowance and daily needs expenses including diet money. Respondent No.1 filed reply and admitted that the deceased was paid salary of Rs.5000/- per month. It is argued that in view of admission of claim of the appellants by respondent No.1, there was no reason for the Commissioner to deny them benefit of salary @ Rs.5000/- per month and accordingly the compensation may be enhanced.

Another submission made by counsel is that interest @ 12% per annum has been ordered to be paid only if the amount of compensation is not paid within 60 days from receipt of copy of the order but the Commissioner has not assigned any reason to deny interest from the date of accident till realization. It is argued that the claimants are entitled to interest @ 12% per annum from the date of accident. In support of his contention, he has relied upon judgments of Hon'ble the Supreme Court **Oriental Insurance Company Ltd. Vs. Siby George, 2012(4) RCR (Civil) 617, Jaya Biswal and others Vs. Branch Manager, IFFCO Tokio General Insurance Company Ltd. and another, 2016(1) RCR (Civil) 1003 and Saberabibi Yakubbbhai Shaikh and others Vs. National Insurance Company Ltd. and others, 2014 STPL(Web) 1 SC.**

Counsel representing the insurance company has supported findings of the Commissioner in respect of wage @ Rs.4000/- per month. For this purpose, reference has been made to Section 4 of the Workmen's Compensation Act, 1923 (in short 'the Act') particularly explanation II appended to Clause b of Section 4. It is further argued that interest would

be payable from the date of adjudication by the Commissioner. In support of his contention, he has relied upon judgment of Hon'ble the Supreme Court **UPSRTC Now Uttarakhand Transp. Corpn. Vs. Satnam Singh, 2012(4) RCR (Civil) 232.**

I have heard counsel for the parties, perused the paper book particularly the order impugned and judgments cited at bar.

There is no dispute that the claimants raised a plea that the deceased was working as a cleaner at monthly salary of Rs.5000/- plus trip allowance etc. They have not quantify the trip allowance and daily needs allowance. Respondent No.1 admitted that the deceased was paid salary @ Rs.5000/- per month.

The question for consideration is whether the Commissioner was competent to assess compensation on wage exceeding Rs.4000/- per month in view of the provisions of Section 4 of the Act. A relevant extract therefrom, germane to the present controversy, reads as follows:-

4. Amount of compensation. –
- (1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely: -

(a) Where death results from the injury	an amount equal to fifty percent of the monthly wages of the deceased workman multiplied by the relevant factor; or an amount of eighty thousand rupees, which ever is more;
(b) Where permanent total the disablement results from the injury	an amount equal to sixty per cent of monthly wages of the injured workman multiplied by the relevant factor; or an amount of ninety thousand rupees, whichever is more;

Explanation II says that where the monthly wages of a

workman exceed four thousand rupees, his monthly wages for the purposes of clauses (a), (b) shall be deemed to be four thousand rupees only.

The language used in Section 4 is quite clear and does not admit of any interpretation by the Court. Taking into consideration the aforesaid provision, it is difficult to accept contention of the appellants that the Commissioner has committed an error much less illegality by assessing wage at Rs.4000/- per month. In **Jaya Biswal and others's case (supra)**, Hon'ble the Supreme Court has affirmed findings of the Commissioner assessing wage of the deceased at Rs.4000/- per month but allowed daily bhata @ Rs.200/- per day i.e. Rs.6000/- per month. As in the case at hand, claimants have failed to adduce any evidence with regard to entitlement of the deceased to trip allowance/daily allowance etc., there was no option with the Commissioner except to assess wage of the deceased in the light of relevant provisions of the Act. Accordingly, findings of the Commissioner assessing compensation to the tune of Rs.4,07,700/- are liable to be affirmed and ordered accordingly.

This brings the Court to the issue, when does the payment of compensation under the Employees Compensation Act, 1923 became due and consequently what is the point in time from which interest would be payable on the amount of compensation as provided under Section 4-A(3) of the Act. The Employees Compensation Act is, indisputably, a welfare legislation enacted with an avowed object to secure compensation to the poor who suffer injuries at their place of work. The Commissioner has

allowed interest @ 12% per annum only in case the respondents commit default in payment of interest within 60 days from receipt of copy of order. However, in view of enunciation laid down in **Siby George's case (supra)** wherein reliance has been placed upon decision by a four Judge Bench in **Pratap Narain Singh Deo Vs. Shrinivas Sabata and another, AIR 1976 SC 222**, interest would be payable from the date of accident.

In view of what has been discussed hereinbefore, the appeal is partly allowed. Appellants No.1 to 3 shall be entitle to interest @ 12% per annum on compensation of Rs.4,07,700/- w.e.f. 28.06.2009 till actual realization. No order as to costs.

07.01.2019
ashok

(**REKHA MITTAL**)
JUDGE

Whether speaking/reasoned:	Yes / No
Whether reportable:	Yes / No