

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

-.-

FAO 5846 of 2013 (O&M)
Date of decision: 25.02.2019

Nafe Singh and another

.....Appellants

versus

Safeways Cargo Pvt. Limited and another

.....Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present : Mr. J P Dhull, Advocate
for the appellants

Mr. Pradeep Kumar, Advocate
for the insurance company

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Rekha Mittal, J. (Oral)

The claimants are in appeal seeking enhancement of compensation over and above what has been allowed by the Commissioner under the Employee's Compensation Act, 1923, Kaithal (in short 'the Commissioner').

The Commissioner has awarded Rs.5,34,485.00 payable with interest from the date of order i.e. 26.07.2013 till deposit/realization.

The first submission made by counsel for the appellants is that calculation of compensation on the basis of wage at the rate of Rs.4,892.98 and factor of 218.47 is incorrect and needs to be modified. In addition, it is argued that interest at the rate of 12% per annum should be payable from the date of occurrence and not from the date of award. Another submission

made by counsel is that the Commissioner has not made an order for payment of penalty by the employer on account of its failure to pay the compensation within a period of 30 days from the date of occurrence.

Counsel representing the insurance company, on the contrary, would state that there is no mistake in calculation of compensation. It is further argued that penalty, if any, can be imposed only against the employer and not against the insurance company.

There is no arithmetical mistake in making calculations on the basis of wage of deceased and appropriate factor applied in the case. Accordingly, compensation assessed by the Commissioner is affirmed. However, interest at the rate of 12% per annum on awarded amount shall be payable from the date of accident till realization. In this context, reference can be made to Judgments of Hon'ble the Supreme Court ***Oriental Insurance Company Ltd. Vs. Siby George, 2012(4) RCR (Civil) 617*** and ***Saberabibi Yakubhai Shaikh and others Vs. National Insurance Company Ltd. and others, 2014(1) RCR (Civil) 731***.

So far as payment of penalty by the employer, perusal of the order impugned would reveal that the Commissioner has not adverted to the said issue after issuance of necessary show cause notice to the employer. In the given scenario, the appellants are at liberty to file an appropriate application before the Commissioner for deciding the question of penalty. In case, such an application is filed within two months, the same shall be decided by the Commissioner concerned after providing an opportunity of being heard to respondent No. 1.

In view of what has been discussed hereinbefore, the appeal is

partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

25.02.2019
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No