IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: February 19, 2020

1. FAO-268-2016

Gajraj

...Appellant

Versus

Chander Parkash Bhatia and others

...Respondents

2. FAO-1352-2016 (O&M)

National Insurance Company Limited

...Appellant

Versus

Gajraj and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL.

Present: Mr. R.K. Agnihotri, Advocate,
for the appellant in FAO-268-2016

Mr. D.P. Gupta, Advocate,
for the appellant in FAO-1352-2016

Mr. Ankit Aggarwal, Advocate,
for respondent No. 1 in FAO-268-2016 &
for respondent No. 2 in FAO-1352-2016.

Mr. Vinod Kumar Kaushal, Advocate,
for respondent No. 3 in FAO-268-2016.

REKHA MITTAL, J. (ORAL)

This order will dispose of FAO Nos. 268 and 1352 of 2016, as these have emerged out of the same order dated 29.07.2015, passed by the Commissioner under the Employee's Compensation Act, 1923, whereby compensation has been assessed on account of death of Davinder @ Pappi, engaged for fixing electric poles and lines etc. by the SDO, UHBVN Ltd., Newal, District Karnal.

FAO No. 268 of 2016 has been filed by the claimant whereas the other appeal has been filed by the National Insurance Company Ltd. (hereinafter referred to as the 'Insurance Company').

FAO-268-2016:

The Tribunal has awarded Rs.4,80,851/- with interest for a fixed period of 3 ½ year out of span of 4 years, amounting to Rs.2,01,957/-. The Insurance Company was directed to deposit Rs. 6,82,808/- within 30 days, failing which it shall be liable to pay simple interest @ 12% per annum on the amount of compensation only from the date of order till actual realisation.

Counsel for the appellant-claimant would argue that deceased was working on monthly wage of Rs.10,000/-, but his wage has been assessed at Rs.4502.98. Another submission made by counsel is that interest ought to have been awarded after expiry of 30 days from the date of occurrence, i.e. 25.05.2011. It has further been urged that the claimant is entitle for penalty to be paid by the employer, rejected by the Commissioner without assigning any reason in this regard.

Counsel representing the Insurance Company, on the contrary, would argue that determination of income of the deceased is a matter of factual dispute and cannot be raised in appeal. Another submission made by counsel is that Insurance Company is not liable to pay interest, in view of terms and conditions of the insurance policy.

The Commissioner has not discarded plea of the claimant that deceased was engaged in fixing electric poles and electric lines etc. The appellant failed to adduce sufficient much less cogent evidence to establish that the deceased was working at wage of Rs.10,000/- per month. If the Commissioner has assessed wage without appreciating materials on record in right perspective, it is difficult to accept that the same is not amenable to correction in appeal, as has been sought to argue by counsel for the Insurance Company. Taking a clue from notification issued by the State of Haryana fixing minimum wage at the relevant time, coupled with the nature of job performed by the deceased, he cannot be treated as an unskilled labour. The deceased was a matriculate, doing the aforesaid job, entitle to be treated as a highly skilled person. Accordingly, wage of the deceased is assessed at Rs.5,000/- per month. By following the criterion adopted by the Commissioner, compensation is calculated at Rs. 5,33,925/- (213.57 X Rs.5000 X 50%), payable with interest @ 12% per annum w.e.f. 25.06.2011 till actual realisation, irrespective of whether the compensation is deposited within 30 days from the date of order impugned or otherwise.

With regard to payment of penalty by the employer, the Commissioner has not assigned any reason for rejecting plea of the claimant in this regard. In the concluding line of the penultimate para of the impugned order, it has been recorded "there is no order for any penalty". As such, the order passed by the Commissioner rejecting plea of the appellant-claimant for payment of penalty cannot be allowed to sustain and accordingly set aside. The matter is remitted to the Commissioner for deciding the question of penalty after issuance of show cause notice to the employer. The matter would be decided within a period of three months from the date of receipt of certified copy of the order.

So far as plea of the Insurance Company with regard to its being not liable to pay interest, the same would be considered while disposing of FAO No. 1352 of 2016.

Accordingly, the appeal filed by the appellant-claimant is partly allowed in the above terms.

FAO-1352-2016:

The appeal has been directed against the order dated 29.07.2015, passed by the Commissioner under the Employee's Compensation Act, to the limited extent that the Insurance Company cannot be fastened with liability to pay interest.

Alongwith the appeal, an application, i.e. CM-4615-CII-2016, has been filed for condonation of delay of 149 days in filing the appeal. A relevant extract from para Nos. 2 to 5 of the application reads as follows:

> *"2. That the order of the case was announced by the Ld. Commissioner on 29.07.2015. The certified copy of the order was applied on 06.08.2015. Certified copy was received on 07.08.2015.*
>
> *3. That the said certified copy was sent by the Counsel of the applicant before the Ld. Commissioner to the applicant's office at Karnal. The office at Karnal processed the case and recommended that appeal be*

filed against the order of the Ld. Commissioner through its note dated 17.09.2015. The Divisional Office sent the said file to the Regional Office at Chandigarh which is the competent authority to take a decision with regard to filing of the appeal.

4. *That the file was received in the Regional Office at Chandigarh. Regional Office was found that the case is fit where the appeal should be filed. Accordingly necessary instructions were sent to the Divisional Office at Karnal to send the necessary certificate of deposit of amount from the Ld. Commissioner so that the appeal is filed. The amount was deposited on 15.10.2015. On receipt of said receipt it was noticed that the Divisional Office at Karnal had deposited only the amount of compensation and had not deposited the interest as ordered by the Commissioner. Immediately the said office was advised to deposit the component of interest as ordered by the Ld. Commissioner. The said office after deducting the TDS deposited the interest on 29.01.2016.*

5. *That the delay in filing of appeal is unintentional. The delay has occurred due to handling of the file in different offices of the applicant situated at different places and late depositing of interest due to wrong*

impression by the office at Karnal that only compensation amount was required to be deposited."

When the case is examined in the light of judgment of this Court in FAO No. 4740 of 2016, decided on 17.10.2016, titled "Bharti Axa General Insurance Company Ltd. v. Ram Parshad and others", it can safely be concluded that there is no sufficient ground to condone delay of 149 days in filing the appeal. As a consequence, the application for condonation of delay is dismissed. As a natural corollary, appeal filed by the Insurance Company is dismissed being barred by limitation.

Miscellaneous applications, if any, pending in the appeal shall be deemed to be disposed of.

(REKHA MITTAL)
JUDGE

February 19, 2020
Pkapoor Whether Speaking/Reasoned: YES / NO
Whether Reportable: YES / NO