In the High Court of Punjab and Haryana at Chandigarh

FAO- 711 of 2014 (O&M)
Date of Decision: 4.3.2020

M/s Pooja Courier

---Appellant

vs.

Commissioner Employees Compensation Act Sonepat and others

---Respondents

Coram: **Hon'ble Mrs. Justice Rekha Mittal**

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Present: Mr. Rakesh Sobti, Advocate
for the appellant

Mr. Ram Pal Verma, Advocate
for respondent No. 2

Mr. Madan Mohan, Advocate
for respondent No. 3

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Rekha Mittal, J.
CM No. 2243-CII of 2014

Prayer in this application filed under Order 41 Rule 27 read with Section 151 of the Code of Civil Procedure, 1908, is for placing on record Annexures A-1 to A-5.

Heard.

Allowed as prayed for. Annexures A-1 to A-5 are taken on record, subject to just exceptions.

Main case

Challenge in the present appeal has been directed against order dated 28.11.2013 passed by the Commissioner, Sonepat under the Employee's Compensation Act, 1923 (in short "the Act") whereby compensation has been assessed on account of death of Anup Singh in the course of employment while performing his duties on BSNL tower in village Rewara, Tehsil Gohana District Sonepat.

Ram Kuwar son of Sh. Muthra, father of deceased Anup Singh filed the application on the allegations that he (Anup Singh) was employed as helper at salary of Rs. 6000/- per month. He was 20 years and 10 months at the time of unfortunate occurrence. He joined service with the respondents on 10.7.2009. On 24.8.2011, he got electric current while working on BSNL tower in village Rewara and died at the spot.

Respondent No. 2 filed the written statement and denied relationship of employee and employer between the deceased and answering respondent. It is averred that Anup Singh was employed by M/s Pooja Courier being a contractor of the answering respondent. The claimant received compensation of Rs. 3,20,000/- from the contractor vide cheque dated 29.9.2011 and cash Rs. 30,000/- by way of compromise with the intervention of gram panchayat. The application is bad for non-joinder of necessary party.

Later, appellant was impleaded as a party and filed its written statement. It reiterated the allegations with regard to payment of Rs. 3,50,000/- in full and final settlement regarding death of Anup Singh with the allegations that the amount was paid on humanitarian grounds. The cause of death of Anup Singh is not within knowledge of the appellant and the same was caused due to fault of the deceased.

The Commissioner framed issues to the following effect:-

1. Whether there was existed relationship of master and servant between the respondent and the deceased or not?
2. Whether the applicant is entitled for the amount of compensation or not?
3. Relief

The Commissioner accepted plea of the respondent-claimant that there was relationship of employee and employer between the deceased and appellant. Compensation to the tune of Rs. 6,72,000/- was assessed payable with interest @ 12% per annum with effect from 6.12.2012 to the date of order i.e. 28.11.2013 calculated to the tune of Rs. 78,848/-. Liability to pay compensation and interest was fastened upon SDO, BSNL Gohana District Sonepat with a direction that respondent No. 2 therein shall be indemnified by respondent No. 3 (appellant herein). Failure to pay compensation within 30 days would entail simple interest @ 12% per annum on compensation amount from the date of order till realization.

Counsel for the appellant has assailed the award by raising few submissions. It is argued that there was no relationship of employer and employee between the appellant and Anup Singh, thus, liability to pay compensation has wrongly been fastened upon the appellant. It is further argued that respondent-claimant is guilty of concealing the material facts namely that Anup Singh was not married and he joined service with respondents on 10.7.2009. To substantiate his contention, it is argued that respondent-claimant in cross examination had admitted that Anup Singh was married with Priyanka two months before occurrence and Priyanka is the daughter of Om Parkash resident of village Reha. It is argued that as the appellant had entered into contract with BSNL, Gohana for the first time in the year 2010-11, it falsifies plea of the claimant that he (Anup Singh) joined service of respondent in July 2009.

Another submission made by counsel is that on the basis of compromise, Rs. 3,20,000/- was paid by way of cheque and Rs. 30,000/- in cash but the Commissioner has not adjusted that amount while awarding Rs. 6,72,000/-. In addition, it is argued that the Commissioner has assessed wage of the deceased at Rs. 6,000/- per month but as the appellant was entitle to Rs. 4950/- for supplying one person to BSNL, there was no question of payment of wage of Rs. 6,000/- per month to the deceased. It is argued that as per the ration card, the deceased was 20 years old in the year 2006, therefore, he was 25 years old at the time of occurrence, as such, factor adopted for computing compensation needs modification, if the respondent-claimant is held entitle to compensation. The last submission made by counsel is that under the Hindu Succession Act, the widow is class-I heir whereas father is class-II heir of a male Hindu, therefore, the respondent-claimant is not entitle to compensation during lifetime of widow of the deceased who has neither filed an application for compensation nor impleaded as a party in the claim application.

Counsel representing respondent No. 2 has supported the impugned order with regard to the deceased being an employee and claimant being father of the deceased entitle to compensation assessed by the Commissioner.

I have heard counsel for the parties, perused the paper book and copies of documents supplied during the course of hearing.

Indisputably, the claimant is father of deceased Anup Singh. Under Section 2 of the Act, 'dependent' has been defined. A parent who is wholly or partly dependent upon the deceased is covered within the ambit of 'dependent'.

Ram Kuwar claimant appeared in the witness box and stated on oath that he had no source of income and was wholly dependent upon income of the deceased. Counsel for the appellant has failed to point out any facts elicited in cross examination of Ram Kuwar to challenge his testimony to the aforesaid effect or any evidence led in rebuttal to prove that Ram Kuwar was not dependent upon the deceased. Counsel for the appellant without examining provisions of the Act with regard to definition of 'dependent' raised contention by referring to provisions of the Hindu Succession Act that has nothing to do to decide the question as to who can be said to be dependent upon the deceased for maintaining claim under the Act. In this view of the matter, contention of the appellant that respondent could not maintain an application for grant of compensation is patently misconceived and rejected.

Counsel for the appellant has also made submissions to challenge findings of the Commissioner on the issue of relationship of employer and employee but without noticing contents of the written statement filed by M/s Pooja Courier. In para 2 of reply on merits, it is admitted that deceased was employee of the answering respondent. As such, contention raised by the appellant either to find fault in the allegations with regard to deceased being employee or relationship of employer and employee lose significance much less to interfere in the award.

The respondent-claimant raised a specific plea that deceased was working on wage of Rs. 6000/- per month. In reply, neither there is any specific denial with regard to salary @ Rs. 6000/- per month nor a plea was raised with regard to salary at which the deceased was employed. In the given scenario, there is no merit in contention of the appellant that Commissioner has wrongly assessed income of the deceased at Rs. 6000/- per month.

Ram Kuwar, in cross examination, had admitted that he received Rs. 3,20,000/- by way of cheque from BSNL by way of compensation as per panchayati compromise. However, he has denied that he also received Rs. 30,000/- in cash in addition to Rs. 3,20,000/-. The amount of Rs. 3,20,000/- received by the claimant is liable to be adjusted out of compensation assessed by the Commissioner. With regard to payment of Rs. 30,000/- in cash, it does not appeal to reason that if the appellant would pay Rs. 3,20,000/- by way of cheque, remaining amount of Rs. 30,000/- would have been paid in cash. Accordingly, plea of the appellant for adjustment of Rs. 30,000/- in addition to Rs. 3,20,000/- is not tenable. After adjusting Rs. 3,20,000/-, compensation payable is Rs. 3,52,000/- (6,72,000-3,20,000).

Claimant produced certificate Ex. A4 wherein date of birth of deceased has been mentioned as 1.10.1990. The certificate Ex. A4 is to be given primacy viz-a-viz age of deceased mentioned in the ration card. That being so, the Commissioner has rightly held that age of deceased comes to 20 completed years on the last birth day falling immediately to date of death, on the basis whereof appropriate factor has been applied for computing compensation.

In view of what has been discussed hereinabove, the appeal is partly allowed. The respondent-claimant shall be entitle to compensation to the tune of Rs. 3,52,000/- with interest @ 12% per annum with effect from 24.9.2011 till realization irrespective of whether the amount assessed by the Commissioner is deposited within a period of 30 days or otherwise. The excess amount deposited by BSNL or the appellant, as the case may be, would be refunded to the concerned party.

(Rekha Mittal)
Judge

4.3.2020
paramjit

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