IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.3222 of 2016 (O&M)
Date of decision: 28.02.2020

Prem ... Appellant

Versus

Smt. Veena and ors. ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. SS Sahu, Advocate for the appellant.

Mr. SK Verma, Advocate for respondents No.1 and 2.

Mr. Radhey Shyam Sharma, Advocate for respondent No.5.

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REKHA MITTAL, J. (Oral)

Challenge in the present appeal has been directed against order dated 14.03.2016 passed by the Commissioner under the Employees Compensation Act, 1923 (in short 'the Act') whereby compensation has been assessed on account of death of Bittoo, in the course of employment as driver of truck bearing No.HR-45/4615 owned by appellant Prem.

The Commissioner awarded compensation to the tune of Rs.12,81,420/- with interest @ 6% per annum from the date of accident i.e. 22.03.2014 amounting to Rs.76,855/- with a direction to the appellant to deposit Rs.13,58,275/- within a period of 30 days failing which the appellant shall be liable to pay interest @ 9% per annum from the date of award till realisation.

Counsel for the appellant has assailed the impugned order primarily by making two submissions. It is argued that as the deceased was a casual employee, therefore, he does not fall within the definition of workman under Section 2 of the Act and as such, the respondents are not entitle to claim compensation by resorting to the provisions of the Act. In support of his contention, he has relied upon judgment of this Court **Ganesh Foundry Works Vs Bhagwanti and ors., 1985(1) LLN 387.**

Another submission made by counsel is that as per testimony of Smt. Veena, widow of the deceased, her husband Bittoo was employed as a driver on the aforesaid vehicle on the date of occurrence. There is no cogent evidence adduced by the claimants to prove that deceased was getting wage of Rs.12,000/- per month. In addition, it is argued that in the application, wage of the deceased is stated to be Rs.10,000/- per month but witnesses of the claimants stated it to be Rs.12,000/- per month. It is argued with vehemence that the Tribunal has not assigned any reason for assessing wage at Rs.12,000/- per month, thus, the same needs modification.

Counsel representing the claimants, on the contrary, has supported the impugned order with the submission that appellant lodged DDR marked as Ex.PW2/A wherein it has been categorically stated that Bittoo was employed as driver on the aforesaid vehicle, 10 days prior to the occurrence i.e. 22.03.2014. It is argued that since the deceased died few days after engaged as driver on the aforesaid vehicle, claimants cannot be expected to produce documentary evidence with regard to wage of the deceased. It has further been argued that if the employer has not given any appointment letter or has not maintained any record with regard to employing Bittoo, the applicants cannot be condemned for the same. It is further argued that rate of interest allowed by the Commissioner needs enhancement.

Indisputably, the appellant lodged DDR Ex.PW2/A on the day of occurrence itself. It has been specifically recorded therein that deceased was employed as driver of aforesaid vehicle 10 days before the unfortunate occurrence. As the deceased was working with the appellant as a full time driver, contention raised by the appellant that either the deceased was a casual employee or he does not fall within the purview of workmen defined in Section 2 of the Act is patently misconceived and ordered to be rejected. The judgment relied upon by counsel for the appellant was rendered, in view of peculiar facts and circumstances of the given case wherein Kulbhushan Kumar was a regular employee of Sukhjit Starch and Chemicals Ltd., Phagwara at salary of Rs.173/- per month but he was doing work with Ganesh Foundry Works in spare time. On the fateful day i.e. 19.02.1977, he was called to remove some electrical defect in their factory for which Rs.25/- were settled. At that time, the deceased sustained injury that proved fatal. In those circumstances, contention of the appellant therein was accepted that deceased could not be held to be a workmen within the meaning of definition contained in Section 2(1)(n) of the Act as his employment was of a casual nature.

This brings the Court to compensation assessed by the Tribunal. Counsel for the claimants has not disputed that in the application for compensation, salary of the deceased is stated to be Rs.10,000/- per month. During the course of evidence, it was stated to be Rs.12,000/- per month. There is no documentary evidence on record with regard to salary fixed between the deceased and his employer though, of course there cannot be documentary evidence with regard to payment of salary as deceased died within few days of his employment as driver.

Counsel for the claimants, in response to a query, would fairly inform that at the relevant time i.e. March, 2014, the maximum wage at which compensation could be allowed by the Commissioner was Rs.8000/- per month. Counsel for the respondents has failed to cite any precedent that Commissioner is competent to allow wage at a rate more than fixed by the Government by way of notification. Taking into consideration the nature of job coupled with the minimum wage of a skilled worker available at the time and the limit in respect of wage that could be granted by the Commissioner, in my considered opinion, wage of the deceased is assessed at Rs.8000/- per month. By applying the criteria adopted by the Tribunal, compensation is calculated at Rs.8,54,280/- (8000 x 213.57 x 50%). The respondents/claimants shall be entitle to interest @ 12% per annum statutorily provided w.e.f 19.04.2014 till realisation of compensation irrespective of whether the amount assessed is deposited within 30 days or otherwise.

In view of what has been discussed hereinbefore, the appeal stands disposed of in the aforesaid terms.

28.02.2020 **(REKHA MITTAL)**
ashok **JUDGE**

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