

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO No.2989 of 2020 (O&M)

Date of decision:14.01.2021

Bajaj Allianz General Insurance Company Ltd.

... Appellant

Versus

Suman Devi and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr. Punit Jain, Advocate,
for the appellant.

Mr. Rakesh Gupta, Advocate,
for respondents no.1 to 4.

(The proceedings are being conducted through video
conferencing, as per instructions.)

G.S. Sandhawalia, J. (Oral)

CM No.288-CII of 2021

The present application is filed for placing on record Annexure A-5, which is the application to deposit the amount of `12,22,320/- before the Commissioner, and also for placing on record Annexure A-6, which is the application for not disbursing the payment to the claimant(s) till final disposal of the appeal.

The application is allowed, subject to all just exceptions.

FAO No.2989-2020

This appeal is directed by the Insurance Company against the award of the Commissioner, Nuh (hereinafter referred to as the “Commissioner”) under the Employee's Compensation Act, 1923, whereby a sum of `8,16,640/- has been awarded along with interest @ 12% per

annum from the date of the incident to the claimants who are the widow, parents and child of the deceased Subhash Singh. The amount has been awarded on account of the fact that the deceased, who was a driver on Vehicle No.UP16-W-0077 of respondent no.5, had been killed by some unknown person by a gun-shot injury of a pistol while coming from Delhi to Mathura at about 10.00 pm on 24.07.2016. It was the case of the claimants that when the deceased reached near Akhbarpur Chowk in the area of Police Station Chhata, District Mathura while coming from Delhi to Mathura, the said incident had occurred. Resultantly, the Commissioner found that there was relationship of employer-employee between the deceased and respondent no.5 and he had died during the course of his employment, while placing reliance on the FIR Ex.A-1 and the paper cutting Ex.R-2. It was noticed by the Commissioner that the vehicle of respondent no.5 was insured with the appellant as per insurance policy Ex.A-4, which was valid from 15.02.2016 to 14.02.2017 and, thus, it covered the date of the incident, i.e. 24.07.2016. The driving license Ex.A-5 was relied upon to verify the age of the deceased to be 33 years at the time of incident and the wages of the deceased claimed to be `15,000/- per month was not accepted on account of lack of evidence. However, his wages were assessed @ `8,000/- per month. Resultantly, the amount of `8,06,640/- was awarded as compensation along with funeral expenses of `5,000/- and other expenses of `5,000/-. The show cause notice was also issued to respondent no.5, who had been proceeded against *ex-parte*, for not depositing the compensation within one month.

Counsel for the appellant has vehemently argued that the incident took place in District Mathura, Uttar Pradesh, therefore, the

Commissioner at Nuh would have no jurisdiction to award the compensation. The said argument is to be noticed and liable to be rejected at the very outset. The Act is a beneficial piece of legislation. Section 21 of the Employee's Compensation Act, 1923 (hereinafter referred to as the “Act”) provides the venue of proceeding and transfer. The relevant part of Section 21(1) of the Act is reproduced here-as-under for the ready reference:-

“21. Venue of proceedings and transfer – (1) Where any matter under this Act is to be done by or before a Commissioner, the same shall, subject to the provisions of the Act and to any rules made hereunder, be done by or before the Commissioner for the area in which --

- (a) the accident took place which resulted in the injury; or
- (b) the employee or in case of his death, the dependent claiming the compensation ordinarily resides; or
- (c) the employer has his registered office:

Provided that no matter shall be processed before or by a Commissioner, other than the Commissioner having jurisdiction over the area in which the accident took place, without his giving notice in the manner prescribed by the Central Government to the Commissioner having jurisdiction over the area and the State Government concerned:

xxx xxx xxx xxx”

Sub-clauses (b) & (c) of Section 21(1) of the Act further provides that the Commissioner shall have the jurisdiction for the area in which the employee or in case of his death, the dependent claiming the compensation ordinarily resides; or the employer has his registered office.

Therefore, it cannot be said that the Commissioner at Nuh had no jurisdiction as such, if the claimants-dependents are ordinarily residing in the area of Nuh. The only argument available with the appellant is that since the proviso to Section 21(1) of the Act provides that if the Commissioner, other than the Commissioner having jurisdiction over the area in which the accident took place, has to give a notice in the manner prescribed by the Central Government to the Commissioner having jurisdiction over the area and to the State Government concerned. It is pleaded that no notice was given by the Commissioner at Nuh to the Commissioner having jurisdiction over the area in which the accident took place. The said proviso is only procedural to ensure that the Commissioner of the concerned jurisdiction has also notice that the another Commissioner has taken cognizance of the issue and if the Commissioner at Nuh has not followed the aforesaid procedure, the claimants cannot be prejudiced for any such irregularity, which has taken place.

Another argument raised by the counsel for the appellant that the interest has wrongly been given by the Commissioner from the date of incident is without any basis. Section 4A of the Act provides that the compensation shall be paid when it falls due and for any default in the payment of compensation by the employer, it would be for the benefit of the claimant(s) in the shape of interest @ 12% per annum and the penalty, as provided under sub-clause 3(a) & 3(b) of Section 4A of the Act. Thus, the interest and penalty is provided in the said provision in case of default of payment of compensation, which was to be paid at the initial point of time within one month. The Commissioner has also given notice to the appellant as well as respondent no.5 for the purpose of penalty, therefore, the payment

of statutory interest @ 12% from the date of incident/accident cannot be held to be suffering from any irregularity or illegality.

The last argument raised by the learned counsel for the appellant is regarding the factum that the deceased had died by a gun shot injury which was in no way connected with his employment, is without any basis. Whatever be the motive, as such, by the person who had inflicted gun shot injury is of no consequence in the proceedings under the Act and the Insurance Company would have no defence behind the reason for killing Subhash, the driver, and whether it leads to a conviction is also not relevant as long the death is correlated with his employment.

Section 3(1) of the Act provides that if personal injury is caused to an employee by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter. This Court, in the case of **M/s. Oriental Insurance Co. Ltd. vs. Smt. Racha Devi and others**, 2005(2) Service Cases Today 475, dealt with the case having similar circumstances. The employee in that case was a Driver, who had been murdered on his way while going from Gurgaon to Patna alongwith the goods loaded in the truck driven by him. It is held that the word “accident” would mean the accident arising out of and in the course of his employment and the injury should be traceable, within reasonable limits, to a definite time, place and occasion or cause. Resultantly, the appeal filed by the Insurance Company in that case was dismissed by holding that the injuries received by the deceased were not designed by the deceased but by the attackers who caused the injuries.

Even otherwise, Section 30 of the Act provides that an appeal

shall only lie against the substantial question of law involved and the opinion of this Court is that no substantial question of law for consideration on merit is arising in this appeal.

Resultantly, this Court is of the opinion that there is no scope for interference in the award passed by the Commissioner, which is well justified and reasoned in view of the facts and circumstances discussed above.

Thus, the present appeal stands dismissed in limine.

Intimation of this fact be sent to the Commissioner at Nuh so that the amount of compensation can be released to the claimants.

January 14, 2021
vinod*

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No