

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CR No.2628 of 2020

Decided on : 05.01.2021

The New India Assurance Co. Ltd.

... Petitioner

Versus

Smt. Rekha Kumari and others

... Respondents

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

Present: Mr. Vinod Gupta, Advocate
for the petitioner-Insurance company.

Mr. Rakesh Sobti, Advocate
for respondent Nos.1 to 5.

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

G.S. Sandhawalia, J. (Oral)

The present revision petition has been filed under Article 227 of the Constitution of India by the petitioner company challenging the order 18.11.2020 (Annexure P-4) passed by the MACT, Palwal whereby its application to lead rebuttal evidence against the evidence with regard to the employment and income of deceased allegedly led by the claimants in compliance of the earlier order dated 03.02.2020 (Annexure P-1) passed by this Court in FAO No.886 of 2016, has been dismissed.

Counsel for the insurance company vehemently argued that the order is not justified and the chance of rebuttal evidence has wrongly been denied.

The said submission is opposed by the counsel for the claimants on the ground that rebuttal evidence could have only been

permitted if the claimants have produced any evidence after the matter had been remanded. There is no dispute on the issue that claimants have not led any evidence in rebuttal. Also on 11.12.2020 a chance was given by this Court to the counsel for the petitioner company to show the material that the claimants had adduced the evidence. Today he has also conceded that there is no such evidence which was led by the claimants after remand. It is settled principle that rebuttal as such would only be allowed if claimants had led evidence after the remand.

A perusal of the paper-book would go on to show that on an earlier occasion two appeals had been filed, one by the insurance company and one by the claimants since both were not satisfied with the assessment of the monthly income of the deceased at Rs.19,800/- against the Award dated 03.09.2015. Resultantly, findings on issue No.2 were set aside and the matter was remitted to the Tribunal for assessment of compensation afresh on the basis of materials already on record. The evidence of the authorized representative and of the deceased employee along with relevant record was to be taken into consideration along with income of the deceased. Evidence in rebuttal, if any, was to be produced by the insurance company. The relevant portion of the order whereby the said condition has been imposed reads as under:-

“With regard to quantum of compensation, counsel for the parties are ad idem that findings of the Tribunal on issue No.2 may be set aside and the matter be remitted to the Tribunal for assessment of compensation afresh on the basis of materials already on record and evidence of an authorised representative of M/s YRD Industries, Faridabad

along with all relevant records proving employment and income of the deceased and evidence in rebuttal, if any, to be adduced by the insurance company.”

An application thereafter came to be filed by the insurance company before the Tribunal, wherein it was prayed to call and examine earlier recorded witnesses i.e. PW5 Ajay Kushwah, Accountant, PW2 Smt. Rekha (one of the claimants), plus investigator of the insurance company to rebut the evidence earlier led by the petitioners qua the employment of the deceased. The said application was accordingly opposed on the ground that there was no such opportunity granted by this Court. The MACT, Palwal noticed that neither the claimants have been allowed to produce the additional evidence by this Court on earlier occasion and the assessment was only to be done on the basis of material already placed on record. It was also noticed that PW5 the Accountant had already been cross-examined and the same runs into six pages. The said cross-examination had been deferred on the request of the counsel for the insurance company and record had been called for. On the production of the record he was also cross-examined extensively. Thereafter, the counsel for the petitioner-Company had closed the evidence after tendering into evidence copy of insurance vide statement dated 16.07.2015.

Resultantly, the award had been passed on 03.09.2015 which was also subject matter of the challenge before this Court whereby the appeals had been dismissed and other findings have been affirmed and only on the quantum of compensation, the matter has been remanded.

In such circumstances, it is thus apparent that the application filed by the insurance company is without any basis whereby rebuttal is sought and which has rightly not been permitted in the absence of the evidence having been led by the claimants in pursuance of the remand order. Accordingly, there is no irregularity and illegality in the order which would warrant interference under the supervisory jurisdiction of this Court.

Resultantly, the revision petition is dismissed.

05.01.2021
Parveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No