

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

FAO No.2693 of 1999

Date of Decision: 10-05-2022.

Tara Devi (since deceased) through her LRs

.....Appellants.

Versus

Chajju Singh and another

.....Respondents.

CORAM: *HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA*

Present:- Mr. Parminder Singh, Advocate
for the appellants.

Mr. Kapil Aggarwal, Advocate
for the respondents.

MEENAKSHI I. MEHTA, J.

Feeling aggrieved by the order dated 05.08.1999 passed by the Commissioner under the Workmen's Compensation Act, 1923 for Yamuna Nagar (for short 'the Commissioner') whereby the claim application filed by appellant-applicant (for short 'the applicant') Tara Devi (since deceased and now represented through her LRs) against the respondents for seeking compensation on account of the death of her son named Suresh Pal, was dismissed, she preferred to file the present appeal.

As per the brief factual-matrix as set-forth by the applicant in her claim application, her above-named son, aged about 21 years, was employed by the respondents to work in their agricultural fields. He had completed one year of his employment with them on 01.06.1995 with the wages @ Rs.10,000/- Per Annum and his wages for the next year were

fixed @ Rs.11,000/- Per Annum. However, while manuring the fields of the respondents on 24.06.1995, he died due to the snake bite on his right toe.

In their written reply, the respondents contested the claim of the applicant by asserting that on completion of one year of his employment with them on 01.06.1995, the deceased had left the job and had started working with one Pal Singh w.e.f. 02.06.1995 and on the fateful day, he (deceased) had come to meet his brother named Kadam Pal who had been employed by them to work in their agricultural fields and was bitten by a snake and thus, his death did not occur during the course of his employment with them.

The applicant filed her replication controverting therein the assertions as put-forth by the respondents in their written reply and re-iterating the averments as advanced in her claim application. Then, the parties were put to the trial on the following issues:-

1. Is the claim application not maintainable as the accidental death of the deceased occurred when he was not in the employment of the respondent? OPR
2. Is the applicant entitled to claim compensation as per her claim application? If so relief? OPA

Both the parties led their evidence, oral as well as documentary, in support of their respective contentions and after appreciating and evaluating their evidence and hearing their counsel, the Commissioner decided issue No.1 against the applicant while holding that

the deceased was not in the employment of the respondents at the time of his death and he also observed that in view of the above-said findings on issue No.1, there was no requirement to decide issue No.2 and accordingly, he dismissed the claim application.

I have heard learned counsel for the LR's of the applicant as well as learned counsel for the respondents in the instant appeal and have also perused the record carefully.

Learned counsel for the LR's of the appellant-applicant has contended that the deceased had been working with the respondents and had completed one year of his employment as such on 01.06.1995 and his employment was extended for another year with the wages @ Rs.11,000/- Per Annum but the Commissioner did not appreciate and evaluate the evidence led by the applicant on the record, in the right perspective and erroneously held that at the time of his death, the deceased was not employed with the respondents and thus, wrongly dismissed the claim application and therefore, the impugned order is liable to be set-aside.

Per contra, learned counsel for the respondents has argued that on completion of one year of his employment on 01.06.1995, the deceased had left the job with the respondents and had started working with one Pal Singh and on the day of occurrence, he had come to the fields of the respondents to meet his above-named brother and thus, on that day, he was not an employee of the respondents and it being so, the impugned order is perfectly legal.

Concededly, the afore-named deceased died due to snake bite

in the fields belonging to the respondents. It also goes undisputed between the parties that he had completed one year of his employment with the respondents on 01.06.1995 with the annual wages @ Rs.10,000/-. The applicant has averred that even after the completion of the said one year, her deceased son had continued to work as an employee under the respondents with the annual wages @ Rs.11,000/- for the next year whereas the respondents have asserted that on completion of one year on 01.06.1995, the deceased had left his job with them and had started working with one Pal Singh. Thus, it is explicit that the entire controversy between the parties in this appeal revolves around the factum of the existence of the relationship of workman and employers between the deceased and the respondents on the day of occurrence, i.e 24.06.1995.

While appearing as RW-1, said Pal Singh has deposed that the deceased started working with him in the first week of June, 1995 but he had left the job just after one and a half days and he (RW-1) was away to Punjab at the time of his death. However, his above-said depositions do not inspire any confidence because in the normal course of events, it seems highly improbable that the deceased, who was eking out a living for himself and his dependant family members by working on a meagre income/wages @ Rs.10,000/- Per Annum, would have left the job after working with his employer for full one year and would have started working with a new employer and would have left the job with him also after one and a half days and that too, without any cogent reason because neither said RW-1 has made any depositions in this regard nor the

respondents, throughout in their written reply, have come forward with any fair, candid and plausible version qua the cause for the deceased having left the job with them.

Then, Exhibit AW3/4 is the copy of the letter dated 05.10.1995 sent by the Superintendent of Police to the Deputy Commissioner, Yamuna Nagar in respect of the inquiry conducted on the application moved by the applicant against the respondents and in para No.2 therein, it has categorically been mentioned that during the inquiry, it was found out that on 24.06.1995, Suresh Pal, i.e the deceased, had gone to work in the fields of the respondents and he, along-with Kadam Pal and Surinder Singh, was manuring the fields and was bitten by a snake there. There are no valid reasons to disbelieve or doubt the correctness of the afore-narrated contents of the said letter especially in the circumstances when it has also been specifically mentioned therein that no cognizable offence was found to have been committed, which certainly goes in favour of the respondents. In these circumstances, it is quite explicit that at the time of his death, the deceased was working in the fields of the respondents as their employee and therefore, the above-discussed findings, as returned by the Commissioner on issue No.1 to the contrary, are erroneous and are not legally sustainable and hence, the same are set-aside and it is, further, held that the applicant (through her LRs) would be entitled to the compensation on account of the death of her above-named son.

Further, it is worth-while to mention here that though the Commissioner has not returned any findings on issue No.2 but keeping in

view the fact that the occurrence in question took place in the year 1995 and the instant appeal pertains to the year 1999, this Court is of the considered opinion that it would be the travesty of justice to remand the matter to the Commissioner for recording the findings on the said issue qua the quantification of the amount of compensation as would be payable to the applicant and therefore, the same is being calculated while deciding this appeal.

The applicant herself appeared in the witness-box as AW-5 and categorically deposed that she was dependent upon her deceased son for her livelihood as her husband was tuberculosis patient and was aged about 60 years and used to stay at home. Exhibit A5/10 is the School Leaving Certificate of the deceased wherein his date of birth has been recorded as 07.08.1997 meaning thereby that at the time of his death, he was about 18 years old. Though the applicant has averred that the annual wages of her deceased son for the previous one year of his employment with the respondents were Rs.10,000/- and for the next year, the same were agreed to be Rs.11,000/- but except her oral version, she has not led any other cogent evidence to prove the said enhanced rate of his wages. During his cross-examination, RW-3 Kuldeep Singh, i.e. respondent No.2, also made depositions regarding the rate of the annual wages of the deceased being Rs.10,000/- for the said previous year and as such, the annual wages of the deceased are being considered as Rs.10,000/-. It being so, the amount of compensation, as payable to the applicant, would be as under: -

Monthly wages of the deceased=Rs.10000/12=Rs.833.33/-

Amount of compensation =Rs.416.66X227.49= Rs.94,786/-

As a sequel to the fore-going discussion, the appeal in hand is allowed and the impugned order passed by the Commissioner is set-aside and the claim application, as preferred by the applicant-appellant, is hereby allowed to the effect that she (through her LRs) is entitled to receive the compensation to the tune of Rs.94,786/- from the respondents on account of the death of her above-named son along-with interest @ 7% Per Annum from the date of filing of the claim application till its deposit with the competent Authority.

10th May, 2022.
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(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned: *Yes*

Whether Reportable: *Yes*