

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

**FAO-5032-2015
Reserved on : 26.07.2023
Date of Decision:-09.10.2023**

HDFC ERGO GENERAL INSURANCE COMPOANY LTD.

... Appellant

Versus

SUMITRA DEVI & ORS

... Respondents

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by :-

Mr. Sanjeev Goyal, Advocate for the appellant.

Mr. Vijay Lath, Advocate and
Mr. Naveen Sharma (Moudgil), Advocate
for respondents No.1 & 2.

KARAMJIT SINGH, J.

1. This appeal is filed by appellant Insurance Company against the order dated 16.12.2014 passed by the Commissioner under Employees Compensation Act, Patiala (in short the Commissioner).

2. The brief facts of the case of the Claimants-Respondent Nos.1 & 2 are that their son Monu Singh @ Baljinder Singh was aged about 20 years and he was working as a Helper/Cleaner on a truck-container No.HR-55M-7693 which was owned by respondent No.3-Gurdev Singh and was insured with appellant-Insurance Company. On 26.06.2013 Monu Singh went along with the said truck to Muradabad and after unloading the goods, he had gone to Gandhi Nagar along with the said truck as a Helper/Cleaner and the said truck met with an accident on 26.06.2013 and at that time the truck was driven by Sham Singh and due to the aforesaid accident Monu Singh sustained multiple injuries and was taken to hospital where he was

declared dead. FIR No.1-89/2013 dated 26.06.2013 was recorded in the concerned Police Station with regard to the aforesaid accident. That the deceased used to earn more than Rs.10,000/- per month as his monthly salary as a Cleaner on a truck was Rs.4,000/- and he also used to earn another Rs.6,000/- to Rs.7,000/- per month by doing work of loading-unloading of the goods from the said truck.

3. On notice respondent No.3-Gurdev Singh appeared in the Court of Commissioner and filed written statement wherein he admitted the relationship of employer and employee between him and the deceased and he also admitted that the deceased met with an accident during the course of employment and he also admitted the fact regarding ownership of the truck in question. However while praying for dismissal of the claim application, respondent No.3 pleaded that the monthly wages of Monu Singh were ₹3,000/-.

4. The claim application was also contested by appellant Insurance Company on the ground that the same is not maintainable. The relationship of employer and employee between Gurdev Singh and the deceased was also denied and it was further pleaded that the Court at Patiala is having no jurisdiction to entertain the compensation application. The other averments of the claim application were also denied.

5. On the pleadings of the parties, the following issues were framed by the Commissioner, for disposal of the claim application:-

1. Whether deceased Monu Singh @ Baljinder Singh met with an accident causing his death during and in course of his employment with the respondent ? OPA

2. Whether the claimant is entitled for compensation as claimed? if yes, with what details ? OPA

3. Relief, if any.

6. The counsel for the claimants examined claimant No.1 Sumitra Devi as PW-1 and she produced copy of FIR dated 26.06.2013 Ex. P-1 and its hindi transcription Ex. P-1/A, attested copy of Panchnama Ex. P-2, post mortem report of deceased Ex. P-3, Death certificate of deceased Ex. P-4, copy of Insurance Police Ex. P-5, copy of Registration Certificate of truck No.HR-55M-7693 (Annexure P-6) and copy of driving licence of Sham Singh Ex. P-7.

7. On the other hand, the respondents i.e. employer and Insurance Company failed to adduce any evidence in support of their defence and finally their evidence was closed by order, by the Commissioner.

8. After hearing counsel for the parties, the Commissioner decided issues No.1 & 2 in favour of the claimants-respondents No.1 & 2 and held that there was relationship of employer and employee between respondent No.3-Gurdev Singh and the deceased and that total salary of the deceased was ₹8,000/- per month and the age of the deceased was taken as 19 years on the basis of the post mortem report Ex. P-3. The total amount of compensation was calculated as per the schedule IV and multiplier of 225.22 was applied and accordingly the total compensation was assessed as ₹9,00,880/- ($₹8,000 \times 50\% \times 225.22$) by the Commissioner while passing the impugned award. The employer and the Insurance company were held jointly and severally liable to pay the said amount of compensation at rate of interest of 9% per annum from the date of accident till its realization and if

the awarded amount was not deposited within 30 days then the employer and Insurance Company were held liable to pay the interest on the awarded amount at the rate of 12% per annum till its realization.

9. Being aggrieved appellant-Insurance Company has filed the present appeal.

10. I have heard the counsel for the parties.

11. The counsel for appellant-Insurance Company while assailing the impugned order has *inter alia* contended that the award passed by the Commissioner worth Rs.9,00,880/- is on higher side. That the monthly wages of the deceased were Rs.4,000/- as has been pleaded by the parents in their claim application and thus, there was no occasion or reason for the Commissioner to reach conclusion that the monthly wages of the deceased were Rs.8,000/-. It has been further contended that as per Section 5 of the Employees Compensation Act expression 'monthly wages' means the amount of wages deemed to be payable for month's service and do not include labour charges and thus, in the instant case the monthly wages of the deceased were Rs.4,000/- only but were wrongly assessed as Rs.8,000/- by the Commissioner and thus, the impugned order of the Commissioner requires to be modified. In support of his contentions, the counsel for the appellant has placed reliance on the decision of Andhra Pradesh High Court in The New India Assurance Company Limited, represented by its Branch Manager Vs. Smt. Mandava Krishna Kumari and Others 2013 ACJ 376.

12. On the other hand, the counsel for claimants-respondent Nos.1 & 2 while supporting the impugned order has *inter alia* submitted that the deceased was working as Cleaner on a truck owned by Gurdev Singh and his

monthly wages were ₹4,000/- and he also used to load/unload the goods in/from the said truck for which he was paid labour wages of ₹6,000/- to Rs.7,000/- per month and as such the Commissioner rightly assessed the monthly wages of the deceased as Rs.8,000/- in the light of the provisions of the Employees Compensation Act as well as the notification dated 31.05.2010. The Counsel for respondent Nos.1 & 2 has further argued that the case law referred by the counsel for the appellant-Insurance Company is not applicable to the present case as in the instant case the monthly wages of the deceased were more than ₹10,000/- per month as pleaded in the compensation application and thus, were rightly assessed as ₹8,000/- per month in the light of the maximum limit provided in the Employees Compensation Act. The counsel for the respondents No.1 & 2 has further contended that the appeal filed by the Insurance Company deserves to be dismissed.

13. I have considered the submissions made by counsel for the parties.

14. The only issue involved in the present appeal filed by the appellant-Insurance Company is as to whether the Award passed by the Commissioner date 16.12.2014 is just and reasonable or should be reduced.

15 In the present case claim application was filed by parents of deceased Monu Singh @ Baljinder Singh aged about 20 years, who was working as a helper/cleaner on a truck-container No.HR-55-M-7693 owned by respondent No.3-Gurdev Singh and insured with appellant-Insurance Company. In the claim application, it was specifically pleaded that the deceased was earning more than ₹10,000/- per month, as salary of deceased

being cleaner was ₹4,000/- per month and he used to earn wages worth ₹6,000/- to ₹7,000/- per month by doing labour work of loading-unloading the goods from the aforesaid truck-container. So it was never the case of the parents of the deceased that the monthly wages of the deceased were ₹4,000/- only. From the averments made in the claim application, it is evident that the deceased would often be required to undertake long journeys outside the State during the course of his employment as a cleaner with truck-container No.HR-55-M-7693. It is not disputed that the wage ceiling limit under Employees Compensation Act was ₹8,000/- at the time of accident which took place on 26.6.2013. The Hon'ble Supreme Court in **Jaya Biswal and Ors. vs. Branch Manager, IFFCO Tokio General Insurance Co. Ltd. and Another, 2016(11) SCC 201**, held that the Employees Compensation Act is a welfare legislation meant to benefit the workers and their dependents in case of death of workman due to accident caused during and in the course of employment and should be construed as such and assessed the monthly wages of workman as ₹10,000/- per month and accordingly awarded compensation of ₹10,92,850/- to the claimants therein.

16. In the light of the above discussion, the monthly wages of deceased Monu Singh being assessed as ₹8,000/- by the Commissioner do not suffer from any grave infirmity or perversity. Further the facts and circumstances of the case law cited by the appellant-insurance company are entirely different from that of the present case.

17. Furthermore as per 1st proviso to Section 30 of Employees Compensation Act, no appeal is maintainable against any order passed by

the Commissioner unless a substantial question of law is involved. In **Golla Rajamma and Another vs. Divisional Manager and Another (2017)1 SCC 45**, the Hon’ble Apex Court observed that under the scheme of the Workmen’s Compensation Act, the Commissioner is the last authority on facts and Parliament has thought it fit to restrict the scope of the appeal only to substantial questions of law, it being a welfare legislation. This exposition of law has been reiterated by the Hon’ble Supreme Court in **Civil Appeal No.4713-2023 Fulmati Dharmdev Yadav and Another vs. New India Assurance Company Ltd. and Another** decided on **4.9.2023**.

18. For the forgoing reasons, no ground for interference is made out in the present case, as no substantial question of law has been raised by the appellant-Insurance Company which requires adjudication.

19. Consequently the appeal filed by the appellant-Insurance Company is hereby dismissed.

09.10.2023
Gaurav Sorot

(KARAMJIT SINGH)
JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No