2024:PHHC:043343

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

(1) **FAO No.580 of 1991 & XOBJC No.1-CII of 1992**
Date of Decision: 01.04.2024

New India Assurance Company Limited

…..Appellant.

Versus

Himat Singh & another

…..Respondents.

(2) **FAO No.680 of 1991 & XOBJC No.2-CII of 1992**

New India Insurance Company Limited

…..Appellant.

Versus

Parras Ram & others

…..Respondents.

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

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Present:- Mr. Brij Bhushan Sharma, Advocate appearing for
Mr. Deepak Suri, Advocate,
for the appellant-Insurance Company.

Mr. Inderjeet Sharma, Advocate and
Mr. P.C. Goyal, Advocate,
for the respondents.

MEENAKSHI I. MEHTA, J.

The above-captioned appeals and the cross-objections, as filed therein, are being taken up together for discussion and adjudication as these have arisen out of the same accident and the common questions of law and facts are involved therein.

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2. The appellant-Insurance Company (for short 'the appellant') has preferred **FAO No.580** and **FAO No.680 of 1991** to lay challenge to the orders handed down by the Commissioner (for short 'the Competent Authority') under the Workmen's Compensation Act, 1923, (for short 'the Act'), at Panipat on 10.09.1990 in Claim Application No.20 of 1990 filed by respondent-claimant Himat Singh and Claim Application No.03 of 1990 as jointly moved by respondents-claimants Parras Ram and Shanti Devi, respectively. It is also pertinent to mention here that claimant-Himat Singh filed **Cross-Objections No.1-CII of 1992** in **FAO No.580 of 1991** and claimants Parras Ram and Shanti Devi moved **Cross-Objections No.2-CII of 1992** in **FAO No.680 of 1991** for seeking modification in the impugned orders, by way of enhancement in the respective amounts of compensation, as granted to them.

3. Bereft of the unnecessary details, the facts, as emerging from the perusal of the files and culminating in the filing of both the afore-referred appeals, are that the above-named claimants filed their respective Claim Applications, while averring that injured-Himat Singh and deceased-Chhotu Ram had been working as 'Drivers' with the respondent-employer on his Truck bearing Registration No.HIU-930. On 29.09.1989, they were going in the afore-said Truck and when they reached near Baroli, it (Truck) collided with another Truck having Registration No.DEG-2856 and they suffered injuries in this accident and Chhotu Ram succumbed to his injuries at the spot. The employer and the appellant filed their separate written-

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statements in the above-said Claim Applications, contesting the claim of the claimants therein, on various grounds. Then, the parties had been put to the trial by framing the issues and after appreciating and evaluating the evidence as adduced by them on the record and hearing their counsel, the Competent Authority passed the impugned orders, granting compensation to the tune of Rs.1,35,773.30Ps. to claimant-Himat and of Rs.1,23,620.34Ps. to claimants Parras Ram and Shanti Devi, along-with the interest on these amounts @12% per annum and also imposed the penalty, amounting to Rs.5,000/-, in each Claim Application.

4. I have heard learned counsel appearing for the appellant-Insurance Company as well as learned counsel for the respondents in both the present appeals and also the Cross-Objections and have gone through the files carefully.

5. Learned counsel appearing for the appellant contends that vide the impugned orders, the Competent Authority has erroneously saddled the appellant with the liability to pay the interest and penalty as well, besides the respective amounts of compensation awarded to the respondents-claimants whereas the appellant was liable to indemnify the employer for the amounts of compensation only and the liability to pay the interest and penalty should have, rather, been fastened upon the employer.

6. However, it is worth-while to mention here that the Apex Court has categorically observed in ***M/s L.R. Ferro Alloys Ltd. versus Mahavir Mahto & Anr, Law Finder Doc Id # 186848*** that *"the compensation with*

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interest is payable by the insurance company but so far as the penalty imposed upon the insured-employer is on account of his personal fault, the insurance company cannot be made liable to reimburse the penalty". The appellant has not been able to show that there was any specific term or condition in the relevant insurance policy regarding the exclusion of its liability to pay the amount of interest and thus, in the light of the afore-quoted observations, it becomes quite explicit that though the appellant is not liable to pay the penalty but it has rightly been burdened to pay the interest, as awarded on the amounts of compensation.

7. Learned counsel for the respondents-claimants-cross objectors contend that the amounts of daily allowance and bonus, as were being paid by the employer to the deceased and injured along-with their wages, were required to be taken into consideration for the calculation of the amounts of compensation and the Competent Authority had also erred in allowing the interest @ 12% per annum only as the same was to be granted @ 18% per annum and to add to it, a meagre sum of Rs.5,000/- has been imposed as the penalty whereas it should have been imposed @ 50% of the amount of compensation awarded to the claimants and hence, they are entitled to the enhancement in the amounts of compensation, as already granted to them vide the impugned orders, on the above-mentioned counts.

8. Per-contra, learned counsel appearing for the appellant argues that the claimants have been awarded adequate amounts as compensation, along-with interest at the statutory rate thereon and therefore, they do not

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have any occasion to ask for any further enhancement in these amounts, as prayed for by them in their respective Cross-Objections.

9. As regards the contention qua the inclusion/addition of the amounts of daily allowance and bonus in the monthly wages of the afore-named injured and deceased for working out the amounts of compensation, it is, again, necessary to point it out here that there is nothing on the file to establish that besides the monthly wages, they were also being paid any such bonus or daily allowance.

10. So far as the contention regarding the rate of interest on the amounts of compensation is concerned, it is relevant to mention here that Section 4-A(3)(a) of the Act provides for the grant of simple interest @ 12% per annum or at such higher rate not exceeding the maximum of the lending rate of any Scheduled Bank as notified by the Central Government but again, the claimants have not been able to refer to any such notification to show that on the date of the above-mentioned accident, the prevalent rate of interest, as notified in respect of any such Bank, was 18% per annum.

11. Further, the contention about the imposition of penalty @ 50% also does not cut any ice with this Court as it is entirely for the Competent Authority to impose the penalty upon the employer by taking the peculiar facts and circumstances of each case into consideration and the claimants have not been able to show as to how the Competent Authority went wrong in not imposing the penalty upon the employer at the maximum rate, i.e @ 50% of the amounts of compensation.

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12. As a sequel to the fore-going discussion, **FAO No.580 of 1991** and **FAO No.680 of 1991** are, hereby, partly allowed only to the extent that the appellant-Insurance Company is not liable to pay the amount of penalty and these are partly dismissed so far as these pertain to the liability of the appellant to pay the interest as granted on the amounts of compensation and **Cross-Objections No.1-CII** and also **Cross-Objections No.2-CII of 1992**, being *sans* any merit, stand dismissed.

(MEENAKSHI I. MEHTA)
JUDGE

April 01, 2024
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Whether speaking/reasoned: *Yes*
Whether Reportable: *Yes*

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