# IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

**FAO No.1554 of 1998 (O&M)**
**Date of Decision: 24.05.2024**

Krishna Devi

…Appellant

Versus

Kamlesh and others

…Respondents

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

Argued by:- Mr. Anas Ahmed, Advocate appearing for
Mr. R.N. Lohan, Advocate
for the appellant.

*Respondents No.1, 4 & 5 proceeded against ex-parte vide the order dated 16.09.1998 and respondents No.2 and 3 proceeded against ex-parte vide the order dated 25.11.1998.*

Mr. R.K. Bashamboo, Advocate
for respondent No.6-Insurance Company.

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***MEENAKSHI I. MEHTA, J.***

Feeling aggrieved and dis-satisfied with the order as handed down by the Commissioner (for short 'the Competent Authority') under the Workmen's Compensation Act, 1923 (for short 'the Act'), at Bhiwani on 18.05.1998, whereby the Claim Application moved by respondents No.1 to 5-claimants (here-in-after to be referred as 'the claimants') against the appellant-employer (arrayed as respondent No.1 in the Claim Application and here-in-after to be referred as 'the employer') and respondent No.6-

Insurance Company (sued as respondent No.2 in the Claim Application and here-in-after to be referred as 'the insurer'), for seeking compensation on account of the death of Kishan, has been allowed and they (claimants) have been awarded compensation to the tune of Rs.2,16,910/- and the insurer has been directed to deposit the afore-said amount and the employer has been fastened with the liability to deposit/pay the interest on the above-referred amount @ 12% per annum along-with the penalty @ 50% of the afore-mentioned amount of compensation, she (employer) has chosen to prefer the instant appeal to lay challenge to the same.

2. Shorn and short of unnecessary details, the facts, as emanating from the perusal of the record and culminating in the filing of the present appeal, are that the claimants, being the wife, two minor daughters and the parents of above-said Kishan (since deceased) respectively, had moved the afore-referred Claim Application, while averring that the above-named deceased had been working with the employer as the 'Driver' on her Maruti Van bearing registration No.HNH-6665 and on the ill-fated day, i.e 12.07.1995, he, as per the instructions of the employer, had gone in the afore-said Van but he did not return home. Later-on, his dead-body was recovered from a Canal in Village Kapro and it transpired that he had been murdered by some miscreants. The employer and the insurer filed their separate written-statements, contesting the claim of the claimants therein on various grounds. Then, the parties were put to the trial by framing the issues and after appreciating and evaluating the evidence as led by them on the record and hearing their respective counsel, the Competent Authority

had allowed the Claim Application vide the impugned order, as already indicated in the opening para of this judgment.

3. I have heard learned counsel appearing for the appellant-employer as well as learned counsel for respondent No.6-insurer in the instant appeal and have also perused the record carefully.

4. Learned counsel appearing for the employer has contended that the deceased had never been employed by the employer as the Driver and rather, one Satish Kumar son of Bal Kishan had been working with her (employer) as the Driver and moreover, the deceased had, allegedly, been murdered by some unknown assailants and thus, he had not died in any incident arisen out of and during the course of his employment and to add to it, the interest, as awarded to the claimants, is to be paid by the insurer and even otherwise, the same was to be granted @ 6% per annum and the Competent Authority also erred in imposing the penalty upon the employer and that too, at the maximum rate, i.e 50% of the amount of compensation, without even affording her (employer) the opportunity of being heard and in these circumstances, it becomes explicit that the impugned order is not legally sustainable and hence, it deserves to be set-aside.

5. Per-contra, learned counsel for the insurer has argued that the Competent Authority has rightly held the employer to be liable to pay the amounts of interest and penalty and the insurer could not be burdened with the liability to pay the same.

6. So far as the contention regarding the denial of the factum of the deceased having been working with the employer as the Driver on the

above-mentioned Van, is concerned, the same is devoid of merit because the deceased is stated to have gone in the said Van and to have been killed by some unknown assailants/miscreants on the way and the afore-referred Van had, undisputedly, been insured in the name of the employer. Further, though the employer has asserted that above-said Satish Kumar had been working with her as the Driver for the afore-mentioned Van but however, she even herself did not step into the witness-box to make the depositions in support of her above-discussed assertion and she also failed to examine him (Satish) as her witness, for the reasons best known to her, despite the fact that his testimony would have clinched the entire controversy regarding the existence of the relationship of employer and employee between her and the deceased. Therefore, an adverse inference has to be drawn against the employer to the effect that if examined, said Satish Kumar would not have supported her above-narrated version.

7. As regards the contention qua the deceased having not died during the course of his employment with the employer, the same does not hold any water because as discussed earlier, the deceased had gone in the afore-said Van, as insured in the name of the employer, at the time when the incident, which resulted into his death, had taken place.

8. So far as the issue regarding liability to pay the interest and penalty, is concerned, it is again pertinent to point it out here that the Apex Court has categorically observed in ***M/s L.R. Ferro Alloys Ltd vs. Mahavir Mahto & Anr, Law Finder Doc Id # 186848*** that *"the compensation with 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".* In the light of these observations, it becomes crystal clear that the amount of interest, as awarded by the Competent Authority, would be payable by the insurer whereas the penalty, imposed upon the employer, has to be paid by the employer alone.

9. As regards the contention qua the grant of interest @ 12% per annum, it will not be out of place to mention here that vide the amendment in Section 4A(3) of the Act with effect from 15.09.1995, the rate of interest had been enhanced from 6% to 12% per annum whereas the incident in question had, admittedly, taken place on 12.07.1995, i.e prior to the above-referred amendment. The three Judges' Bench of Hon'ble Supreme Court has specifically observed in ***Kerala State Electricity Board and another vs. Valsala K. and another etc, 1999 AIR (Supreme Court) 3502*** that *"the relevant date for determining the amount of compensation and the interest is the date of accident and where the accident had taken place prior to the amendment made in 1995, the claimants were not entitled to the enhanced amount of compensation and the higher rate of interest on account of the said amendment*". In view of these observations, it is held that the interest on the amount of compensation, would be payable by the insurer @ 6% per annum instead of 12% per annum.

10. Then, so far as the contention regarding the employer having not been afforded the opportunity of being heard before the imposition of the penalty upon her, is concerned, it is again necessary to clarify here that

prior to its amendment with effect from 15.09.1995, Section 4-A(3) of the Act read as under: -

> *"(3) Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner may direct that, in addition to the amount of the arrears, simple interest at the rate of six per cent per annum on the amount due together with, if in the opinion of the Commissioner there is no justification for the delay, a further sum not exceeding fifty per cent of such amount, shall be recovered from the employer by way of penalty."*

However, by virtue of the amendment in the afore-mentioned provisions in the year 1995, the following proviso was appended to Section 4A(3)(b) of the Act:-

> *"Provided that an order for the payment of penalty shall not be passed under clause (b) without giving a reasonable opportunity to the employer to show cause why it should not be passed."*

Thus, it becomes quite explicit that prior to the amendment in the Act w.e.f 15.09.1995, the mandate to afford a reasonable opportunity to the employer to show cause as to why the penalty should not be imposed upon him/her, did not exist in the Statute book and since, as discussed earlier, the incident in question had taken place prior to the above-referred amendment, therefore, the afore-said contention pales into insignificance.

11. As regards the imposition and the amount of penalty, it is relevant to mention here that it is entirely for the Competent Authority to impose the penalty by taking the peculiar facts and circumstances of each case, into consideration and the employer has not been able to put-forth any

reason/ground to show as to how the Competent Authority has exercised its discretion in an illegal, arbitrary or unreasonable manner.

12. As a sequel to the fore-going discussion, the appeal in hand stands partly dismissed so far as it pertains to the direction to the employer to deposit the penalty @ 50% of the amount of compensation and the same is, hereby, partly allowed to the effect that the impugned order is modified to the extent that the interest on the amount of compensation, shall be payable by the insurer but @ 6% per annum instead of 12% per annum.

**24.05.2024** **(MEENAKSHI I. MEHTA)**
neetu **JUDGE**

*Whether speaking/reasoned: Yes*
*Whether Reportable: Yes*