

2024:PHHC:015671

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(1)

FAO No.519 of 2001
Date of Decision: 05.02.2024

Anil Kumar

.....Appellant.

Versus

Gurmeet Kaur and others

.....Respondents.

(2)

FAO No.928 of 2001

Gurmeet Kaur and others

.....Appellants.

Versus

Anil Kumar and another

.....Respondents.

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

Present:-

Mr. Ashwani Bakshi, Advocate
for the appellant (employer) in FAO No.519 of 2001 and
for respondent No.1 in FAO No.928 of 2001.

Mr. Bhavdeep Singh Mamli, Advocate
for respondents No.1 to 5 (claimants) in FAO No.519 of 2001
and for the appellants in FAO No.928 of 2001.

None for respondent No.6 (Insurance Company) in
FAO No.519 of 2001 and respondent No.2 in
FAO No.928 of 2001.

Mr. Apoorv Garg, Senior DAG, Haryana
for respondent No.7 in FAO No.519 of 2001.

MEENAKSHI I. MEHTA, J.

Both the above-captioned appeals are being taken up together
for discussion and adjudication as these have arisen out of the same order

as passed by the Commissioner (for short ‘the Competent Authority’) under the Workmen’s Compensation Act, 1923 (for short, ‘the Act of 1923’) for Yamuna Nagar on 22.09.2000, whereby the claimants have been awarded compensation to the tune of Rs.2,15,280/- on account of the death of one Jagmal son of Dhani Ram and the Insurance Company has been fastened with liability to pay the same to them and the employer has been imposed the penalty of Rs.21,528/-, along-with interest @ 12% per annum.

2. Bereft of the unnecessary details, the facts, as emerging from the perusal of the record and resulting in the filing of the present appeal, are that the claimants, being the wife, minor son, parents and another minor son of the afore-named deceased respectively, filed the Claim Application for seeking compensation from the employer and the Insurance Company, while averring that the deceased had been working with the employer as the ‘Driver’ on his Maruti Van bearing registration No.MBO-337, with the monthly wages @ Rs.2,000/- and daily allowance @ Rs.50/-. On the fateful day, i.e 19.03.1998, on the instructions of his employer, the deceased had taken his (employer’s) relative in the above-referred vehicle, to drop him (relative) at Shakumbhari Devi and when he was returning to Yamuna Nagar from there, some miscreants killed him on the way and threw his dead-body in the bushes on the road-side and also took away the afore-said vehicle. The employer and the Insurance Company filed separate Replies, contesting the claim of the claimants therein, on various grounds. Then, the issues were framed. After appreciating and evaluating the evidence led by the parties on the record and hearing their learned counsel, the Competent

Authority allowed the above-said Claim Application, vide the impugned order, as already discussed in the opening para of this judgment.

3. The employer has moved **FAO No.519 of 2001** to impugn the afore-mentioned order to the extent of imposition of the penalty upon him whereas **FAO No.928 of 2001** has been filed by the claimants for seeking the enhancement of the amount of compensation.

4. I have heard learned counsel for the claimants and also for the employer in these appeals as well as learned State counsel for respondent No.7 in **FAO No.519 of 2001** and have perused the record carefully.

5. In **FAO No.519 of 2001**, learned counsel for the appellant-employer contends that the Competent Authority had imposed the penalty upon the employer without having recourse to the procedure, as prescribed in the proviso appended to Section 4-A(3)(b) of the Act of 1923 and hence, the impugned order is not legally sustainable and deserves to be set-aside, so far as it pertains to the imposition of penalty upon the employer.

6. Per contra, learned State counsel for respondent No.7 argues that the Competent Authority has rightly saddled the employer with the liability to pay the penalty, on account of default on his part in the payment of compensation to the claimants.

7. Section 4-A(3)(b) of the Act of 1923 provides as under:

“4-A(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 shall –

(a) X X X X X

(b) if, in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears and interest thereon, pay a further sum not exceeding fifty per cent of such amount by way of penalty:

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.”

8. A bare reading of the above-quoted provisions makes it crystal clear that before passing the order for imposing penalty upon the employer, the Competent Authority is required to afford a reasonable opportunity to him to show cause as to why it (order) should not be passed. However, throughout in the impugned order, it has nowhere been mentioned that the Competent Authority had granted such opportunity to the employer before burdening him with the liability to pay the penalty. In these circumstances, this Court is of the considered opinion that the present matter requires to be remanded to the Competent Authority with the direction to pass fresh order qua the imposition of penalty, by following the due procedure, as provided under the afore-mentioned provisions.

9. So far as **FAO No.928 of 2001** is concerned, learned counsel for the claimants contends that the deceased was, in fact, getting the wages @ Rs.3,500/- per month, including the daily allowance but the Competent Authority has fallen in error in assessing his monthly wages as Rs.2,000/-

for computing the amount of compensation and has also wrongly awarded the interest @ 12% per annum whereas the same should have been awarded @ 18% per annum and moreover, the claimants are entitled to the penalty @ 50% of the amount of compensation as awarded to them, instead of 10% thereof, as ordered by the Competent Authority.

10. As regards the contention qua the assessment of the monthly wages of the deceased, a perusal of the impugned order reveals that while returning the findings on issue No.2 therein, the Competent Authority has assessed his (deceased's) monthly wages in view of the maximum statutory limit thereof, as prevalent at the relevant time and undisputedly, the same stood capped at Rs.2,000/- only at that time and it being so, it is held that the same has correctly been taken into consideration for the purpose of calculating the amount of compensation, payable to the claimants.

11. So far as the contention regarding the rate of interest on the amount of compensation is concerned, Section 4-A(3)(a) of the Act of 1923 provides for grant of simple interest @ 12% per annum or at the maximum lending rate of any Scheduled Bank as notified by the Central Government but the claimants did not adduce any evidence on the record to show that on the date of the above-mentioned incident, the prevalent notified rate of interest of any such bank was 18% per annum.

12. As regards the last contention qua the imposition of penalty @ 50% of the amount of compensation, it is again worth-while to point it out here that as already discussed in the preceding paragraphs, the Competent Authority had not followed the due procedure, even at the time of imposing

the penalty @ 10% of the afore-said amount, upon the employer vide the impugned order and this aspect requires its fresh adjudication by the said Authority, in accordance with the prescribed procedure.

13. As a sequel to the fore-going discussion, **FAO No.519 of 2001** moved by the employer, is hereby disposed of, by way of setting aside the impugned order only to the extent of the imposition of penalty upon him (employer) and remanding this matter to the Competent Authority for the limited purpose of adjudication of the above-mentioned point afresh, as per the procedure laid down in the proviso appended to Section 4-A(3)(b) of the Act of 1923 and **FAO No.928 of 2001**, filed by the claimants, stands dismissed, without any prejudice to their (claimants') right to pursue their claim for the penalty during the proceedings, as would be conducted by the said Authority for deciding this point afresh, in compliance of the afore-referred directions, as given by this Court.

14. Accordingly, the parties in **FAO No.519 of 2001** are directed, through their respective counsel, to appear before the concerned Competent Authority on 11.03.2024 for the purpose of fresh adjudication of the matter, pertaining to the imposition of penalty, in the terms as discussed above.

February 05, 2024
Yag Dutt

(MEENAKSHI I. MEHTA)
JUDGE

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