



215 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-6576-2016
Date of decision : 29.11.2024

SEEMA AND ANR
Versus
....Appellants

KAVITA KAMBOJ AND ORS
....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. R.K. Agnihotri, Advocate
for the appellants.

None for respondent No.1.

Mr. D.R. Bansal, Advocate with
Dr. Anjali Bansal, Advocate for respondent No.2.

PANKAJ JAIN, J. (ORAL)

Claimants are in appeal against the order passed by
Commissioner under the Employee's Compensation Act, 1923 (hereinafter
referred to as the 'Act of 1923')

2. Claim petition was filed seeking compensation on account of
death of Harpal Singh husband of appellant No.1, father of appellant No.2
and son of appellant No.3 who was employed as driver with the vehicle
owned by respondent No.1 and insured by respondent No.2. It was claimed
by the claimants that the deceased was employed on a monthly wages of
Rs.10,000/- along with daily expenses @ Rs.300/- .

3. Commissioner framed the following issues :



- “1. Whether Sh. Harpal Singh since deceased was the employee of the respondents at the time of the accident, as alleged ? OPA.
2. Whether applicant are entitled to the amount claimed, if so with what details ? OPA.
3. Whether the claim petition is not maintainable under the provision of employees compensation Act as alleged in the preliminary objection ? OPR.
4. Relief ?”

4. Commissioner awarded compensation of Rs.5,25,875/- to the claimants taking wages of the deceased @ Rs.5991.51/- along with interest @ 12% to be calculated for a period commencing after a one month from the date of accident till realization.

5. Claimants in the present appeal seek modification of the order seeking enhancement on two grounds. Counsel for the appellants submits that the claim of the claimants/appellants was that the deceased was earning monthly wages of Rs.10,000/- per month along with daily expenses of Rs.300/-. Yet the Commissioner has calculated compensation by deeming his income @ Rs.5991.51/- per month. He does not dispute that no proof of income of the deceased could be produced by the claimants.

6. Mr. Bansal appearing for the insurer points out that the employer in his testimony rather claimed that the deceased was employed for monthly wages of Rs.5,000/- per month.

7. In the considered opinion of this Court, once the Commissioner opted to go by the minimum wages fixed by the Government of Haryana, he



ought to have taken into consideration the minimum wages fixed of a skilled worker and not of unskilled keeping in view the fact that vocation of the deceased i.e. being employed as a driver, was not in dispute.

8. In view of above, deemed income of the deceased is taken to be Rs.230X30=Rs.69,00/- per month. Since the deceased was aged 43 years, the factor as per schedule to be multiplied is 175.54. Thus, the total compensation come out to be Rs.69,00/- X 175.54 = Rs.12,11,226/-. Interest has been rightly awarded. The proportionate disbursal shall be abide by the order passed by the Commissioner.

9. Apart from the aforesaid compensation, appellants are also held entitled for penalty as contemplated under Section 4(a) of Act of 1923 which is 50% of the awarded compensation. In terms of dictum of law laid down by Apex Court in the case of **Ved Parkash Garg vs. Premi Devi (1997) 8 SCC 1**, the penalty will be paid by the employer and not the insurer.

10. Impugned award is modified accordingly.

11. Resultantly, the instant appeal is disposed off.

November 29, 2024

Dpr

(Pankaj Jain)

Judge

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No