IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Reserved on 13th of September, 2024
Pronounced on 13th December, 2024

CM-7099-CII-2017 in/and
FAO-2114-2017 (O&M)

Chattar Singh @ Chatru ....Applicant/appellant
Versus

Kuldeep Hooda and another ....Respondents

CM-8892-CII-2017 in/and
FAO-2424-2016 (O&M)

The New India Assurance Company Limited ....Applicant/appellant
Versus

Chattar Singh @ Chatru and another ....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Kartar Singh Malik-I, Advocate
for the appellant in FAO-2114-2024.

Mr. Rajneesh Malhotra, Advocate
for the appellant in FAO-2424-2016.

PANKAJ JAIN, J. (ORAL)

CM-7099-CII-2017 in FAO-2114-2017
CM-8892-CII-2017 in FAO-2424-2016

These are the applications filed under Section 5 of Limitation Act seeking condonation of delay of 401 days (in FAO No.2114 of 2017) and 87 days (in FAO No.2424 of 2016) in filing the instant appeals.

For the reasons recorded in the applications, this Court is satisfied that the applicants/appellants have made out a sufficient cause for condonation of delay.

Consequently, the present applications are allowed. The delay of 401 days in filing FAO No.2114 of 2017 and 87 days in filing FAO No.2424 of 2016 is hereby condoned.

FAO-2114-2017 (O&M)
FAO-2424-2016 (O&M)

Both, the claimant as well as respondent/Insurance Company, are in appeals aggrieved of order dated 23rd of October, 2015 passed by Commissioner exercising powers under the Employee's Compensation Act, 1923.

2. In FAO No.2114 of 2017 the claimant seeks enhancement of compensation.

3. In FAO No.2424 of 2016, Insurance Company seeks setting aside of the order passed by the Commissioner claiming that no notice under Section 10 was served. Thus, there being a statutory violation, Commissioner erred in allowing the claim petition. It has been further claimed that there is a serious dispute w.r.t. the employer-employee relationship.

4. Claimant filed claim petition under the Employee's Compensation Act, 1923 (hereinafter referred to as 'the Act of 1923') claiming that his son Ashok Kumar was working as driver on Vehicle bearing No.HR-46-B-8049 owned by respondent No.1. He was employed on monthly wages of Rs.66,00/- + Rs.5,00/- for outstation visits. The vehicle was being plied on contract with Blue Bird Company for carrying

goods. On 16th of June, 2009, deceased Ashok Kumar along with cleaner Rajender in course of his duty went from Chiliana to Ambala. At around 1.00 A.M. in the intervening night of 16/17.06.2009, the deceased stopped the vehicle. While he was crossing the road, he was hit by an unknown vehicle and suffered injuries. Later on, he succumbed to his injuries. FIR was lodged.

5. Employer filed written statement admitting that the vehicle was being plied on contract with Blue Bird Company to carry goods. However, he denied that the deceased was employed on the vehicle as a driver.

6. On the basis of the pleadings of the parties, following issues were framed :

1. Whether there was relationship of employee employer between deceased Ashok Kumar and respondent No.1?
2. Whether he died out of and during the course of employment with respondent No.1?
3. Whether the deceased was not holding a valid and effective driving licence at the time of his death?
4. Whether there is no other dependent of deceased alive/present?
5. Whether petitioner is entitled for any compensation? If so, to what extent?
6. Whether respondent does not attract penal provisions under Section 4A of the Act?
7. Relief.

7. Ld. Commissioner while relying upon documents Exhibit P-1 to Exhibit P-3 and the contents of the FIR which was produced on record as Mark B came to the conclusion that the deceased died in a road side accident

and was mentioned as co-employee by author of the FIR namely Rajender. Commissioner further pointed out that though respondent No.1 admitted that the vehicle was on contract with Blue Bird Company but failed to disclose as to who was the person driving the vehicle and thus held that the deceased was employed on the vehicle owned by respondent No.1.

8. Counsel for the appellant has not been able to point out any serious infirmity in the aforesaid pure findings of fact recorded by the Commissioner. He does not dispute that the FIR was registered, wherein the deceased was referred to as the co-employee.

9. So far as the issuance of statutory notice and claim under Section 10 is concerned, the date of accident in the present case is 16th of June, 2009 and the application was filed in the year 2010. Thus, the objection taken by the Insurance Company w.r.t. non-compliance of Section 10, is not applicable and the same deserves rejection. Thus, there is no cogent reason to interfere in the findings recorded by the Commissioner in the appeal preferred by the Insurance Company, as there is no question of law much less substantial question of law involved which is requirement of Section 30 of the Act of 1923.

10. Resultantly, the appeal preferred by the Insurance Company (FAO No.2424 of 2016) is ordered to be dismissed.

11. Coming on to the appeal preferred by the claimant, Ld. Counsel for the claimant emphatically argues that even though the salary of the deceased was proved to be Rs.66,00/- apart from outstation charges, the

Commissioner erred in taking the wages as Rs.4,000/-. In order to hammer-forth his contention, he relies upon ratio of law laid down by Supreme Court in the case of '**Jaya Biswal and others vs. Branch Manager, IFFCO Tokio General Insurance Company Limited and another', (2016) 11 SCC 201.**

12. I have carefully perused the judgment in ***Jaya Biswal's*** case (supra). Amount of compensation payable to the injured/dependents of the deceased under the Employee's Compensation Act, 1923 is governed by provisions contained under Section 4 of the Act, which reads as under:

> "**4. Amount of compensation.**- (1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely:--
> (a) where death results an from the injury : an amount equal to fifty per cent. of the monthly wages of the deceased *[employee] multiplied by the relevant factor; or an amount of *[one lakh and twenty thousand rupees], whichever is more;
> (b) where permanent total disablement results from the injury : an amount equal to sixty per cent. of the monthly wages of the injured *[employee] multiplied by the relevant factor; *[one lakh and twenty thousand rupees], whichever is more;
>
> *[Provided that the Central Government may, by notification in the Official Gazette, from time to time, enhance the amount of compensation mentioned in clauses (a) and (b).]
>
> Explanation I.--For the purposes of clause (a) and clause (b), "relevant factor", in relation to a *[employee] means the factor specified in the second column of Schedule IV against the entry in the first column of that Schedule specifying the number of years which are the same as the completed years of the age of the *[employee] on his last birthday immediately preceding the date on which the compensation fell due. Explanation II .- Omitted by Act 45 of 2009.
>
> (c) where permanent partial disablement result from the injury:

(i) in the case of an injury specified in Part II of Schedule I, such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury; and

(ii) in the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury;

Explanation I.--Where more injuries than one are caused by the same accident, the amount of compensation payable under this head shall be aggregated but not so in any case as to exceed the amount which would have been payable if permanent total disablement had resulted from the injuries.

Explanation II.--In assessing the loss of earning capacity for the purpose of sub-clause (ii), the qualified medical practitioner shall have due regard to the percentages of loss of earning capacity in relation to different injuries specified in Schedule I;

(d) where temporary disablement, whether total or partial, results from the injury : a half monthly payment of the sum equivalent to twenty-five per cent. of monthly wages of the *[employee], to be paid in accordance with the provisions of sub-section (2).

(1A) Notwithstanding anything contained in sub-section (1), while fixing the amount of compensation payable to a *[employee] is respect of an accident occurred outside India, the Commissioner shall take into account the amount of compensation, if any, awarded to such *[employee] in accordance with the law of the country in which the accident occurred and shall reduce the amount fixed by him by the amount of compensation awarded to the *[employee] in accordance with the law of that country.]

*[(1B) The Central Government may, by notification in the Official Gazette, specify, for the purposes of sub-section (I), such monthly wages in relation to an employee as it may consider necessary.]

(2) The half-monthly payment referred to in clause (d) of sub-section (1) shall be payable on the sixteenth day --

(i) from the date of disablement where such disablement lasts for a period of twenty-eight days or more, or

(ii) after the expiry of a waiting period of three days from the date of disablement where such disablement lasts for a period of less than twenty-eight days; and thereafter half-monthly during the disablement or during a period of five years, whichever period is shorter:

Provided that--

(a) there shall be deducted from any lump sum or half-monthly payments to which the *[employee] is entitled the amount of any payment or allowance which the *[employee] has received from the employer by way of compensation during the period of disablement prior to the receipt of such lump sum or of the first half-monthly payment, as the case may be; and

(b) no half-monthly payment shall in any case exceed the amount, if any, by which half the amount of the monthly wages of the *[employee] before the accident exceeds half the amount of such wages which he is earning after the accident.

Explanation.--Any payment or allowance which the *[employee] has received from the employer towards his medical treatment shall not be deemed to be a payment or allowance received by him by way of compensation within the meaning of clause (a) of the proviso.

*[(2A) The employee shall be reimbursed the actual medical expenditure incurred by him for treatment of injuries caused during course of employment.]

(3) On the ceasing of the disablement before the date on which any half-monthly payment falls due there shall be payable in respect of that half-month a sum proportionate to the duration of the disablement in that half-month.

(4) If the injury of the *[employee] results in his death, the employer shall, in addition to the compensation under sub-section (1), deposit with the Commissioner a sum of *[not less than five thousand rupees] for payment of the same to the eldest surviving

> dependant of the *[employee] towards the expenditure of the funeral of such *[employee] or where the *[employee] did not have a dependant or was not living with his dependant at the time of his death to the person who actually incurred such expenditure.]
>
> *[Provided that the Central Government may, by notification in the Official Gazette, from time to time, enhance the amount specified in this sub-section.]"

13. As per Section 4(1), the compensation has to be calculated by taking into consideration monthly wages of the deceased employee and the same has to be multiplied by the relevant factor as provided in the Schedule 4 appended to the Act. Monthly wages are the wages which may be notified by Central Government in the Official Gazette for the purpose of Section 4(1). Thus, it is not the monthly wages which the deceased-employee is being paid by the employer, but are the monthly wages as notified by Central Government by notification in the Official Gazette for the purpose of Section 4(1) of the Employee's Compensation Act, 1923. On the relevant date i.e. on the date of accident and on the date of passing of Award, the wages notified by Central Government were Rs.4,000/-.

14. In view of above, this Court finds that the mandate of the statute is to calculate compensation considering the minimum wages notified under Section 4(1B) of the 1923 Act. Hence, the Commissioner rightly calculated the compensation by taking into consideration the maximum wages as prescribed under the Act i.e. Rs.4,000/-.

15. In view of above, finding no merit, the appeal filed by the claimant is also ordered to be dismissed.

16. Pending application(s), if any, shall also stand disposed off.

17. A copy of this order be kept on the file of other connected case.

December 13, 2024 **(Pankaj Jain)**
Dpr **Judge**

Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes