IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO-5505-2024 (O&M)
Date of decision : 24.07.2025

The New India Assurance Company ...... Appellant

versus

Bhajan Kaur and others ...... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Imran Ahmad Ali, Advocate for the appellant.

Mr. I.S. Kooner, Advocate for LRs of respondent No.1.

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<u>PANKAJ JAIN, J. (Oral)</u>

<u>CM-13690-CII-2025</u>

This is an application for preponing the date of hearing in the main case from 15.01.2026 to an early date.

For the reasons mentioned in the application, the same is allowed. Main case is taken on board today itself.

<u>Main case</u>

1. The insurance company is in appeal.

2. Primary grievance relates to the salary of the deceased. Counsel for the insurance company submits that once it was held by the Commissioner that no cogent evidence has been led to prove salary of Rs.9,000/- being earned by the deceased and rather the employer having admitted the salary to be Rs.8,000/- per month, the Commissioner ought to have considered notification dated 31.05.2010 issued by Central Government exercising power under Section (1B) of Section 4 of 1923

Act. Counsel for the respondent-claimants is not in a position to dispute the aforesaid fact.

3. Having heard counsel for the parties and after carefully perusing the records, this Court finds that the Commissioner while returning finding on issue No.5 observed as under:-

> "The onus to prove this issue was upon the applicants. The applicants have alleged the salary of the deceased Sh. Kulwinder Singh as Rs. 9,000/- per month, but the employer respondent no. 1 has admitted the salary to be Rs. 8,000/- per month and Rs. 2,000/- per month in lump sum towards meal expenses. So, the salary of the deceased is to be taken as Rs. 10,000/- per month and 50 percent of which is comes to Rs. 5000/-. Now coming to the age of the deceased, a perusal of Aadhaar Card No. 936936951920 of the deceased reveals the date of birth as 23.07.1971 and as the present accident took place on 25.10.2017. Hence the deceased was aged 46 years as on the date of accident. Even the post mortem report Ex. C-3 reflect the age of the deceased as 45 years. The relevant factor for the age of 46 years, as per the Act, is 166.29. In this manner, the total amount of compensation payable to the applicants comes to Rs. 5,000/- X 166.29 = Rs. 8,31,450/-. Since respondent no.1 is being the owner of truck no. PB-07-AF-2797 and employer deceased cleaner Kulwinder Singh and respondent no.2 being the insurance company of the vehicle are jointly and severally liable to pay this amount of Rs. 8,31,450/- to the applicants. In the present case both the respondents had knowledge of the accident as well as death of Kulwinder Singh deceased, but they did not pay any compensation to the applicants. Hence both the respondents jointly and severally held liable to pay simple interest @12% per annum on compensation amount as provided under section 4-A (3) (a) of the Employees Compensation Act from the date of death till its actual realization. Further apart from this amount respondents are directed to pay an additional amount of Rs. 10,000/- towards funeral expenses, as provided under section 4 (4) of the Act. The whole amount of compensation along with up to date interest be paid to the applicants within one month from the date of receipt of copy of judgment."

4. The aforesaid observation cannot be sustained in the light of provisions as contained under Section 4 of the 1923 Act which read 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 from the injury	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; or an amount of one lakh and forty 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.

(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 an 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 14[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."

5. Exercising power under Section (1B) of Section 4, notification was issued by Central Government on 31.05.2010 which reads as under:-

"In exercise of the powers conferred by sub-section (1B) of Section 4 of the Employee's Compensation Act, 1923 (8 of 1923), the Central Government hereby specifies, for the purposes of sub-section (1) of the said section, the following amount as monthly wages, with effect from the date of publication of this notification in the Official Gazettee, namely:-

"Eight thousand rupees"

6. In view of above, the compensation awarded is modified to the extent that the salary of the deceased is deemed to be Rs.8,000/- as per notification and the calculation shall be as under:-

8000 - 1/2 x 166.29 = 6,65,160/-

7. The claimant shall also be entitled interest @ 12% per annum on the awarded compensation payable for the period commencing from 30 days after the date of accident and upto the date of actual realization. Funeral expenses of Rs.5,000/- shall also be paid to the claimants.

8. Disposed off, accordingly.

(PANKAJ JAIN)
JUDGE

24.07.2025
Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No