
(2013) 11 P&H CK 0027

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No. 1648 of 2000

Panpori

APPELLANT

Vs

Ashok Kumar

RESPONDENT

Date of Decision : 28-11-2013

Acts Referred:

Citation : (2014) 140 FLR 382 : (2014) 2 PLR 528

Hon'ble Judges : Rakesh Garg, J

Bench : Single Bench

Final Decision : Partly Allowed

Judgement

Rakesh Kumar Garg, J.—This is the claimants appeal challenging the order dated 21.09.1999 of the competent authority under the Workmen's Compensation Act, 1923. The appellants filed a claim application before the competent authority seeking compensation on account of death of deceased-workman Jasmer Singh, who alleged to have died in a road accident on 21.08.1996 during the course of his employment with respondent No. 1 being driver of Matadoor No. HR-45-0253.

2. Upon notice, respondent No. 1 did not appear and proceeded against ex-parte. However, respondent No. 2 filed the written statement, wherein, relationship of employer and employee between the deceased-workman and respondent No. 1 was denied, further, stating that he did not die during the course of his employment. It was further stated that the deceased was not having a valid driving licence at the time of alleged accident.

3. On the basis of evidence on record, the competent authority found that there existed a relationship of employer and employee between deceased-workman and respondent No. 1, as respondent No. 2 has not led any evidence to support its contention in this regard. The competent authority determined compensation payable to the appellants at Rs. 1,51,933/- by taking the wages of the deceased-workman at Rs. 1543 and thereafter, applying relevant factor of 197.06 treating his age at 35 years as indicated in the post-mortem report; The competent

authority further awarded interest @ 12% per annum from the date of filing of the claim application till the date of the award.

4. Challenging the aforesaid order, learned counsel for the appellants has vehemently argued that the compensation has been assessed at a lower rate as the age of the deceased-workman was 30 years at the time of accident, his date of birth being 11.02.1966. The amount of monthly wages of the deceased at Rs. 1543/- has also been disputed as according to the appellants the deceased was earning Rs. 3000/- per month at the time of his death. It is further the case of the appellants that they are also entitled to penalty as envisaged u/s 4-A(3) of the Act.

5. On the basis of the aforesaid arguments, learned counsel for the appellants has vehemently argued that the following substantial questions of law arises in this appeal:-

(i) whether the competent authority has erred in law while determining the compensation, ignoring the correct age and income of the deceased workman.

(ii) whether the appellants are entitled to interest w.e.f. the date it fell due i.e. 30 days from the date of accident instead of date of filing of the claim application.

(iii) whether penalty is payable to the appellants in terms of Section 4-A(3)(b) of the Act.

6. On the other hand, counsel for the respondent-insurance company has submitted that the income of the deceased-workman has been taken at Rs. 1543/- per month correctly and the same is based upon the wages being paid to the workmen by the government under the Minimum Wages Act and there is no documentary proof to prove the fact that the deceased-workman was earning a sum of Rs. 3000/- per month. Counsel for respondent No. 2 has further submitted that the age of the deceased-workman at 35 was taken correctly because there was no other evidence on record as indicated in the post-mortem report. It has further been brought to the notice of this Court that penalty, if any, is payable by the employer and not by the insurance company. Moreover, such a question was not raised before the competent authority.

7. However, counsel representing insurance company could not dispute that in view of the judgment of Hon'ble the Supreme Court in *The Oriental Insurance Company Ltd. Vs. Siby George and Others*, interest u/s 4-A(3)(a) of the Act is payable from the date it fell due i.e. 30 days from the date of accident.

8. I have heard learned counsel for the parties and perused the impugned order.

9. Counsel for the appellants could not dispute the fact that there is no documentary evidence to prove the income of the deceased at Rs. 3000/-. Not only this, even the employer has not contested the claim application, who could have thrown some light on the aforesaid fact of income of the deceased-workman. In view of the aforesaid facts, no fault can be found with the findings

of the competent authority, who has been determined the compensation by taking the wages of at Rs. 1543/- per month calculated on the basis of the minimum wages paid to such workers. Similarly, no fault can be found with the findings of the competent authority whereby factor of 197.06 has been applied for taking the age of deceased at 35 years. It has been argued before this court that the age of the deceased was 30 years at the time of accident, which is corroborated from the school leaving certificate issued by the school authorities. However, it could not be disputed that the said certificate has not been proved on record in accordance with law. Therefore, the same has been rightly ignored.

10. In view thereof, question No. 1 of substantial question of law as raised is decided against the appellants, holding that the compensation has been rightly determined whereas question No. 2 is held against the insurance company and in favour of the appellants holding that the appellants are entitled to interest from the date it fell due i.e. 30 days from the date of accident and not from the date of filing of the claim application as awarded by the competent authority. The impugned order is modified to that extent.

11. Since, there is no discussion with regard to the penalty as payable under, Section 4-A(3)(B) of the Act in the impugned order; and that the said penalty is payable by the employer and not by the insurance company; and the fact that such employer was proceeded against ex-parte; and even before this Court the said employer has not appeared and moreover, under the procedure a notice has to be given to the employer before determining such a penalty, liberty is granted to the appellants to move an application, before the competent authority within 15 days from the date of receipt of a certified copy of this order for grant of penalty to them in accordance with law. If any, such application is filed as stated above, the same shall be decided by the competent authority in accordance with law. In view thereof the 3rd question of Law as raised is left unanswered. Thus, the impugned order is modified to the aforesaid extent and appeal is partly allowed.