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(1992) 12 P&H CK 0068

In the Punjab And Haryana At Chandigarh

Case No : F.A.O. No. 1287 of 1991 and Cross Objection No.15-CII of 1992

Smt. Sheela Rani and Others — APPELLANT

Vs

Mehar Chand and Others — RESPONDENT

Date of Decision : 02-12-1992

Acts Referred:
Workmens Compensation Act, 1923 — Section 4A(3)

Citation : (1993) 2 ACC 108 : (1994) 2 LLJ 938 : (1993) 104 PLR 105

Hon'ble Judges : Amarjeet Chaudhary, J

Bench : Single Bench

Advocate : Ashit Malik, for the Appellant; S.S. Aulokh, for the Respondent

Final Decision : Allowed

Judgement

Amarjeet Chaudhary, J.—This order will dispose of FAO No. 1287 of 1991 filed by Smt. Sheela Rani and others and Cross Objection No. 15-CII of 1992 in the aforesaid first appeal filed by the New India Insurance Company Ltd.. Karnal as both have arisen out of the order passed by Commissioner under the Workmen''s Compensation Act, Panipat dated August 23, 1991.

2. The appellants hereinafter referred to as the claimants had filed an application under Workmen''s Compensation Act on March 3, 1988 against Shri Mehar Chand and New India Insurance Company Ltd. respondent Nos. 1 and 2, claiming compensation on account of the death of Sham Sunder who was employed as truck driver by Mehar Chand respondent No. 1. Sham Sunder died in truck accident on March 3, 1988. The plaintiffs had alleged that Sham Sunder had died in road accident during the course of duty. The deceased was drawing Rs. 1,500/- per month.

3. The authority under the Workmen''s Compensation Act, on the basis of the pleadings of the parties, had framed the following issues:

1. Whether the plaintiffs are entitled to claim amount? OPA

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2. Relief.

4. Mehar Chand respondent No. 1, the owner of the truck, had admitted that the deceased died in accident of truck belonging to him on March 3, 1981 and was drawing Rs. 1500/- as salary, However, Mehar Chand had produced Insurance Policy Exhibit R-1 to prove that the truck was insured with respondent No. 2, the New India Insurance Company. Shri Mehar Chand also produced Insurance Certificate Exhibit R-2 in his favour. The Commissioner under the Workmen''s Compensation Act returned a finding that since the truck was insured with respondent No. 2 it would the responsibility of respondent No. 2 to discharge liability because the deceased had died in truck accident which was duly insured.

5. The claimants had produced evidence that date of birth of deceased was January 8, 1963 to which there was no dispute. The Court for the purpose of compensation calculated the salary under Workmen''s Compensation Act u/s 4 which is limited to 1000/- and according to it the compensation was assessed at Rs. 83,968/- by applying a factor of 209.92. The Court accepted the claim of the claimants as under:

1. Compensation : 83,968.00 2. Interest 12% from December 16, 1987 to August 16, 1991. 3 years 8 months : 36,945.00 3. Expenses : 2,000.00 Total : 1,22,913.92

The Court passed an award in the sum of Rs. 1,22,913.92 in favour of the claimants and against respondent No. 2. It was directed that the decretal amount will be paid within 30 days, otherwise the amount of compensation will carry further interest of 12%. However, respondent No. 2 did not comply with the directions of the Court. Consequently, the plaintiffs have filed the present appeal.

6. In this appeal, a plea has been taken that the respondents have made themselves liable for penalty u/s 4A(3) of the Workmen''s Compensation Act to the extent of 50% of the award as the respondents failed to deposit the compensation. The other plea is that though there was no dispute regarding the date of birth, in spite of that the Commissioner under the Act had applied a factor of 209.92 inadvertently, whereas the deceased was 25 years and a multiplier of 216.91 should have been applied.

7. I have gone through the entire paper-book and am of the considered view that it was incumbent upon the respondents to have deposited the decretal amount as directed by the Authority under the Workmen''s Compensation Act. Though notice was issued to the respondents, but the direction was not complied with. In this view of the matter, respondents are liable to pay penalty to the appellants u/s 4A(3) of Act. Section 4A(3) of the Act reads as under:-

"4A(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 may direct that, in addition to the amount of the arrears, simple interest at the rate of six per cent per annum on the amount due together with, if in the opinion of the

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Commissioner there is no justification for the delay, a further sum not exceeding fifty per cent of such amount, shall be recovered from the employer by way of penalty."

In view of the above position, respondent No. 2, is liable to pay penalty to the extent of fifty per cent of the award.

8. The Authority under the Act had wrongly applied a factor of 209.92 taking the age of the deceased at the time of his death as 29 years. According to the authority itself, the date of birth of the deceased was January 8, 1963 and he died on December 16, 1987. Thus, I have reached the conclusion that the age of the deceased at the time of his death was 25 years and not 29 years. Since the deceased''s age was 25 years at the time of death, the authority under the Act should have applied a factor of 216.91 instead of 209.92. Calculating at this range, the amount of compensation comes to Rs. 86,700/- approximately. The appellants thus become entitled to the following compensation:-

Compensation : Rs. 86,700/- 12% interest : Rs. 36,945/- Expenses : Rs. 2,000/- Penalty : Rs. 43.350/- Total : Rs. 1,68,995/-

9. In view of the above discussion, the appeal is allowed and award of the Authority under the Workmen''s Compensation Act is accordingly modified to the extent indicated above with costs which are quantified at Rs. 500/-. The amount of compensation shall be released within two months from the receipt of a copy of this order.

10. Resultantly, Cross-objection filed by respondent No. 2 is dismissed being devoid of any merit.

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