(2011) 11 P&H CK 0275

In the Punjab And Haryana At Chandigarh

Case No : F.A.O. No. 3007 of 2010

United India Insurance Co. Ltd. APPELLANT

Vs

Krishana and Others RESPONDENT

Date of Decision : 09-11-2011

Acts Referred:

Citation : (2012) ACJ 2599

Hon'ble Judges : Mohinder Pal, J

Bench : Single Bench

Advocate : Rajesh K. Sharma, for the Appellant; L.S. Sandhu and Mr. Dheeraj Narula, for the Respondent

Judgement

Mohinder Pal, J.—United India Insurance Co. Ltd. (hereinafter referred to as ''the insurance company'') has preferred this appeal against the order/award dated 15.2.2010 passed by the Commissioner, Workmen''s Compensation, Sirsa Circle, whereby Krishana, Vikram, Jaibir and Pushpa (claimants-respondent Nos. 1 to 4 herein), dependants of deceased workman Subhash, have been held entitled to receive compensation to the tune of Rs. 1,40,386 from Banwari Lal, respondent No. 4 (respondent No. 6 herein and owner of Canter No. HR 22-4359). It was further ordered to pay interest on the above compensation amount at the rate of 6 per cent per annum (Rs. 1,19,257) from 6.12.1995, i.e., one month after the accident and penalty to the extent of 20 per cent (Rs. 31,197). However, since the vehicle of respondent No. 6 had been insured with the insurance company, appellant, the Commissioner held that insurance company was liable to pay the said amount. The insurance company was directed to deposit the amount of compensation within 30 days from the date of communication of the copy of the award/order failing which it (insurance company) was held liable to pay interest at the rate of 6 per cent after one month from the date of the order, i.e., 15.2.2010 up to the date of actual payment. The workman Subhash was working as a driver on Canter bearing registration No. HR 22-4359 owned by Banwari Lal, respondent No. 6, and Pala Ram, respondent No. 5, who was working as caretaker, and was earning Rs. 1,500 per month. Canter driven by Subhash met with an accident on 7.11.1995. Subhash received grievous injuries in this accident and on the same night at about 10 or 11 p.m. he succumbed to his injuries. Wife of Subhash along with their minor children had filed the claim application before the Commissioner. Respondent No. 6, owner of Canter, denied the accident and employment of Subhash. He submitted that Subhash did not die while driving the said Canter. Under the circumstances, the Commissioner awarded the compensation as noticed above.

2. I have heard learned counsel for the parties and have perused the record.

3. Learned counsel for the appellant has submitted that there was no relationship as master and servant between the respondent No. 6 and the deceased. It is further submitted that no accident has ever taken place with Canter in question as there was no P.M.R. and F.I.R. to prove the factum of the death of the deceased Subhash in the accident during the course of employment.

4. In order to prove the fact regarding the accident, the evidence of Dr. M.K. Soni, who is an Orthopaedic Surgeon, PW 2, is relevant, who has stated that Subhash, son of Gopal, resident of village Sahuwala, was brought in his clinic for primary aid but due to the grievous hurt, he expired at about 10.40 p.m. Doctor issued certificate, Exh. P1, by which he handed over the dead body to the family members of the deceased. Ram Kishan, son of Chet Ram, employee of Public Health Department, PW 3, has deposed that he knew Pala Ram, respondent No. 5 (caretaker of Canter), personally and deceased Subhash was engaged as the driver on Canter of Banwari Lal, owner. Wife of the deceased workman deposed that they did not lodge the F.I.R. as when she and other family members of the deceased were preparing to go to lodge the F.I.R. with police station, Pala Ram, the respondent No. 5, obstructed them and assured that he and the owner Banwari Lal would give as much compensation amount as possible. It was on account of his assurance that they did not lodge the F.I.R. and got conducted the post-mortem. As the respondents failed to fulfil promise and did not give any compensation to the family, they had to file the claim petition.

5. In order to award compensation, the following material things are to be taken into consideration by the Tribunal that the workman should have died in an accident while under the employment of his employer. From the evidence of Dr. M.K. Soni, it is apparent that the death of the workman has taken place in an accident. The doctor has opined that the injuries received by the deceased were as a result of accident. The witnesses have further explained reasons why the post-mortem was not got conducted as the respondents had given assurance that they would compensate the family. Court cannot lose sight of the fact that after such incident family is in trauma and does not want to get into litigation. They prefer to settle the matter outside court as far as possible. In view of this evidence of witnesses, the Commissioner has rightly held that the deceased workman was under employment of the respondents when he met with accident and died.

6. The Commissioner has also imposed penalty upon the insurance company to the tune of Rs. 31,197 besides awarding interest at the rate of 6 per cent on the amount of compensation from one month after the accident, i.e., w.e.f. 6.12.1995 till the date of actual award and at the rate of 6 per cent per annum after the period of 30 days from the date of communication of the order till actual payment.

7. In view of aforesaid discussion, I do not see any ground warranting interference in the impugned award, i.e., Rs. 1,40,386.

8. It has been held by the Hon''ble Apex Court in the case of Ved Prakash Garg Vs. Premi Devi and others, that the insurance company will not only be liable to pay the principal amount of compensation but also interest thereon, if any, imposed by the Commissioner. But the insurance company will not be liable to reimburse the additional amount of compensation by way of penalty imposed by the Commissioner.

9. As noticed above, in this case the Commissioner ordered the interest at the rate of 6 per cent per annum from the date of one month after the accident till the date of realization of the amount of compensation to be paid to respondent Nos. 1 to 4.

10. In the case of New India Assurance Co. Ltd. Vs. Harshadbhai Amrutbhai Modhiya and Another, , where in the contract of insurance with employer there was no provision of payment of interest by the insurance company, it was held that the workman has to recover the interest from employer and that the insurer has a statutory liability to pay interest under the Motor Vehicles Act, but there is no statutory liability under the Workmen''s Compensation Act. In this behalf, reliance was placed on the authority, P.J. Narayan Vs. Union of India (UOI) and Others, .

11. In this case, learned counsel for the employer (respondent No. 6) has emphasised that liability to pay interest is on the insurance company as it is not excluded from the insurance policy. However, learned counsel for the insurance company has argued that interest component has been specifically excluded from the insurance policy. Be that as it may, keeping in view the observations of the Hon''ble Supreme Court in the case of New India Assurance Co. Ltd. Vs. Harshadbhai Amrutbhai Modhiya and Another, , the insurance company can recover from the insured the amount of interest by taking recourse to appropriate forum if as per the policy conditions the insurer had no liability to pay interest. In view of the above, the insurance company will be liable to pay the amount of penalty as imposed by the Commissioner and respondent Nos. 1 to 4 will be entitled to receive interest at the rate of 6 per cent per annum, as ordered by the Commissioner in the impugned award. Of course, the insurance company can recover the amount of interest and penalty from the insured by taking recourse to appropriate forum if as per the policy conditions the insurer had no liability to pay interest. The impugned award is modified to the extent as

indicated above.

This appeal stands disposed of accordingly.

