(2011) 11 P&H CK 0035

In the Punjab And Haryana At Chandigarh

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

United India Insurance Co. Ltd. APPELLANT

Vs

Krishna and Others RESPONDENT

Date of Decision : 09-11-2011

Acts Referred:

Citation : (2012) 132 FLR 683

Hon'ble Judges : Mohinder Pal, J

Bench : Single Bench

Advocate : Rajesh K. Sharma, for the Appellant; L.S. Sandhu for the Respondent No. 1, for the Respondent

Judgement

Mohinder Pal, J.—United India Insurance Company Limited (hereinafter referred to as ''the Insurance Company'') has preferred this appeal

against the order/award dated 15.2.2010 passed by the Commissioner under Workmen''s Compensation Act, 1923, Sirsa Circle whereby

Krishana, Vikram, Jaibir and Pushpa (claimants-respondents No. 1 to 4 herein) dependents 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) (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 from 6.12.1995

(Rs. 1,19,257/-) i.e. one month after the accident and penalty to the extent of 20% (Rs. 31,197/-). However, since the vehicle of respondent No.

6 had been insured with the Insurance Company (appellant), the Commissioner held that the 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 upto 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

Mr. Pala Ram (respondent No. 5) who was working as care taker, and was earning Rs. 1,500/- per month. The 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 10.00 or 11.00 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 the Canter, denied the accident and employment of Subhash. He submitted that Subhash did not die while driving the Canter,

Under the circumstances, the Commissioner awarded the compensation as noticed above.

I have heard learned Counsel for the parties and have perused the record.

2. 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 the canter in question as there was no PMR and FIR to prove the

factum of the death of the deceased Subhash in the accident during the course of employment.

3. 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 Shri 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 (Ex. P. 1) 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, (PW-3) has deposed that he knew Pala Ram-respondent No. 5 (care taker of the

canter) personally and deceased Subhash was engaged as driver on the canter of Shri Banwari Lal (owner). Wife of the deceased workman

deposed that they did not lodge the FIR as when she and other family members of the deceased were preparing to go to lodge the FIR with Police

Station, Shri Pala Ram (respondent No. 5), obstructed them and assured that he and the owner Shri Banwari Lal would give as much

compensation amount as possible. It was on account of his assurance that they did not lodge the FIR and got conducted the PMR. As the

respondents failed to fulfill promise and did not give any compensation to the family, they had to file the claim petition. 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 has not been got conducted as the respondents have given assurance that they will compensate the family. Court

cannot lost sight of the fact that after such incident family is in trauma and do 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 met with accident and died.

4. 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.

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

6. It has been held by the Hon''ble Supreme 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.

7. 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 respondents No. 1 to 4.

8. 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 Motor Vehicles Act, but there is no statutory liability under Workmen''s

Compensation Act. In this behalf, reliance was placed on the authority reported as P.J. Narayan Vs. Union of India (UOI) and Others, .

9. In this case, learned Counsel for the employer (respondent No. 6) has emphasized 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

Harshadbhai Amrutbhai Modhiya (supra), 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 respondents No. 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.

