

(2012) 02 P&H CK 0028

High Court Of Punjab And Haryana At Chandigarh

Case No: F.A.O. No. 4697 of 2010

Oriental Insurance Co.
Ltd.

APPELLANT

Vs

Jasbir Kaur and Others

RESPONDENT

Date of Decision: Feb. 14, 2012

Acts Referred:

- Workmens Compensation (Amendment) Act, 2009 - Section 7(a)(iv)
- Workmens Compensation Act, 1923 - Section 4(1)

Citation: (2013) 2 SLJ 42

Hon'ble Judges: Rakesh Kumar Jain, J

Bench: Single Bench

Advocate: Vishal Chaudhary, for the Appellant; Saurabh Dalai, for the Respondent

Final Decision: Allowed

Judgement

Rakesh Kumar Jain, J.

This appeal is directed against order dated 06.5.2010 passed by the learned Commissioner under the Employees Compensation Act, 1923 (for short, "the Act"), whereby respondents/claimants Nos. 1 and 2 have been awarded a sum of Rs. 5,49,875/- with interest @ 7.5% per annum from the date of accident till the date of order and @ 12% per annum from the date of award till the date of realization. In short, deceased Jaspal was driver on TATA Tractor bearing No. HR-63/5571 which was owned by respondent No. 3. He was 23 years of age and was drawing monthly salary of Rs. 5000/-. The deceased met with an accident during the course of his employment and died on 16.4.2007.

2. Learned Commissioner took his salary as Rs. 5000/- per month and his age as 23 years at the time of death and assessed the compensation.

3. Learned Counsel for the appellant has submitted that the learned Commissioner has committed an error in taking the salary of the deceased @ Rs. 5000/- per month while determining the compensation although the accident had taken place in the year 2007. The claim petition was filed in the same year and at that time, the Workmen's Compensation Act (for short/the Act") had an Explanation (ii) to Section 4(1) as per which either in case of death or disablement, the amount could not exceed Rs. 4000/- per month but the learned Commissioner had taken salary of the deceased @ Rs. 5000/- per month may be in terms of provisions of Section 4(1) of the Act in which Explanation (ii) has since been deleted w.e.f. 18.1.2010 because the case was decided on 6.5.2010 as there is no such embargo of limiting salary of the deceased to the extent of Rs. 4000/- per month only. He submits that since the claim petition was filed under the Old Act, therefore, the salary should have been considered to be Rs. 4000/- per month and not Rs. 5000/- per month as any alteration in law during the pendency of the petition cannot operate retrospectively. He thus raised the question of law as to "whether the learned Commissioner had committed an error in law in considering the salary of the deceased @ Rs. 5000/- per month at the time when the lis was decided after Explanation (ii) to Section 4(1) of the Act was omitted or should have decided on the basis of Explanation (ii) of Section 4(1) of the Act when the claim petition was filed?".

4. In reply, learned Counsel for the respondent has submitted that the provisions of the Act would apply when the lis was decided by the learned Commissioner and the statute of compensation/damages which is frequently regarded as remedial should be liberally construed.

5. I have heard learned Counsel for the parties and have perused the record with their able assistance.

6. In order to appreciate the arguments raised by the learned Counsel for the appellant, it would be relevant to refer to the provisions of Section 4(1) of the Workmen's Compensation Act, 1923 (for short "the Act") which is reproduced below:--

4. Amount of compensation--(1) Subject to the provisions of this Act the amount of compensation shall be as follows namely:--

Where death results from the injury--An amount equal to fifty per cent of the monthly wages of the deceased workman multiplied by the relevant factor;

Or

An amount of fifty thousand rupees whichever is more;

Where permanent total disablement results from the injury--An amount equal to sixty per cent of the monthly wages of the injured workman multiplied by the relevant factor;

Or

An amount of sixty thousand rupees whichever is more.

Explanation I: For the purpose of clause (a) and clause (b) relevant factor in relation to a workman 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 workman on his birthday immediately preceding the date on which the compensation fell due.

Explanation II: Where the monthly wages of a workman exceed two thousand rupees his monthly wages for the purposes of Clause (a) and Clause (b) shall be deemed to be two thousand rupees only.

7. The aforesaid Act was amended by way of Workmen's Compensation (Amendment) Act, 2009 and has been rechristened as the Employee's Compensation Act, 1923 of which Section 4(1) now reads as under:--

4. Amount of compensation--(1) Subject to the provisions of this Act the amount of compensation shall be as follows namely:--

Where death results from the injury--An amount equal to fifty per cent of the monthly wages of the deceased workman multiplied by the relevant factor;

Or

An amount of fifty thousand rupees whichever is more;

Where permanent total disablement results from the injury--An amount equal to sixty per cent of the monthly wages of the injured workman multiplied by the relevant factor;

Or

An amount of sixty thousand rupees whichever is more.

Explanation I: For the purpose of Clause (a) and Clause (b) relevant factor in relation to a workman 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 workman on his birthday immediately preceding the date on which the compensation fell due".

8. It is pertinent to mention here that Explanation (ii) has been omitted by virtue of Section 7(a)(iv) of the Workmen's Compensation (Amendment) Act, 2009 (Act No. 45 of 2009) w.e.f. 18.1.2010. Hence, there is no ceiling of the salary of Rs. 4000/- for the purpose of grant of compensation as it has become unlimited. As the embargo has been lifted, the learned Commissioner can award the compensation to the claimant by taking into account the actual salary drawn by the deceased.

9. In my view, the Employee's Compensation Act, is a remedial statute as it is limited to compensated damage. Remedial statute is one which remedied defect in the pre-existing law or otherwise and it's purpose is to keep pace with the view of the society.

10. In the earlier statute, salary/income of the deceased/injured was fixed up to a ceiling of Rs. 4000/- per month even if the injured/deceased was drawing more than that. In order to relax severity of that provision, while enacting the Workmen's Compensation (Amendment) Act, 2009, Explanation (ii) has been deleted from the statute so as to make the claimants entitled to get their rightful dues arising out of the untimely accidental death or injury. In this view of the matter, I do not agree with the submissions made by the learned Counsel for the appellant that the provisions of the Act would apply at the time when the case was decided by the learned Commissioner when the New Act had already come. Hence, this appeal is found to be without any merit and the same is hereby dismissed.