2025:PHHC:004578

[138] IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-4229-2024 (O&M)
Date of Decision : 14.01.2025

The New India Assurance Company Limited …Appellant

Versus

Pinki Devi and others ….Respondents

Coram : **HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. Pradeep Kumar, Advocate
for the appellant.

Mr. Yashveer Kharb, Advocate
for respondent Nos.1 to 6.

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PANKAJ JAIN, J. (ORAL)

[1] Insurance Company is in appeal, aggrieved of order dated 06.05.2024 passed by the Commissioner under the Employees Compensation Act, 1923, whereby, the claimants have been awarded compensation of Rs.6,89,710/- on account of death of Amarjeet Singh.

[2] Claimants filed petition seeking compensation on account of death of Amarjeet Singh, who died of heart attack while on duty. It was claimed that Amarjeet Singh suffered heart attack on account of stress and strain of the employment. Thus, the deceased died of accident arising out of and in due course of employment. The employer is liable to pay compensation as contemplated under Section 4 of the 1923 Act.

[3] Petition was resisted by respondent No.1, who though admitted employee-employer relationship, but claimed that workman died of heart attack and thus, he is not liable to pay any compensation.

[4] Commissioner framed following issues:-

> *"1. Whether the accident during and out of course of employment of the respondent?*
>
> *2. Whether the claimants are entitled to the claimed amount as mentioned to the claim application. If so to what extent?*
>
> *3. Relief. "*

[5] While answering Issue No.1, Commissioner, held that it is an admitted case that the deceased died of heart attack while on duty in the premises of respondents. This proved that the death of the deceased is on account of an accident arising out of and during the course of employment. This falls within the ambit of Section 3 of the Employees Compensation Act, 1923. Finding that the monthly salary of the deceased was Rs.7000/- per month, Commissioner accordingly awarded compensation of Rs.6,89,710/-.

[6] Counsel for the appellant, while assailing the impugned order passed by the Commissioner, submits that in view of the fact that the statute does not saddle the employer with liability of interest, Insurance Company is not liable to pay interest. He relies upon **'New India Assurance Company Limited versus Harshadbhai Amrutbhai Modhiya and another',** *2006(2) RCR (Civil) 814.* He further submits that from the perusal of Insurance Policy, it is evident that the deceased being an unskilled worker was insured for the monthly wages of Rs.6500/- and thus, Commissioner erred in awarding compensation by treating salary of the deceased beyond Rs.6500/-.

[7] *Per contra*, counsel for the claimants would submit that the statute provides for payment of interest on the compensation in terms of Section 4-A. There is no exclusion of liability to pay interest in the

insurance policy thus, Commissioner rightly awarded interest @ 12% per annum. He further submits that there is no sealing as provided under the policy with respect to salary of a workman. The policy (Exhibit R-1) insures not only unskilled workers but also skilled workers. It having been proved on record that the deceased was getting a salary of Rs.7000/- per month, Commissioner has rightly awarded compensation.

[8] I have heard counsel for the parties and have carefully gone through the record of the case.

[9] There can't be dispute with the proposition laid down by the Supreme Court in the case of '**Harshabdhai Amrutbhai Modhiya**'*(supra)* that the insurer is liable to indemnify the insured only as per contract unlike under the provisions of Motor Vehicles Act where they have a statutory liability towards the third party. Thus, the fate of the argument raised by counsel for the appellant with respect to non- indemnification of the insured *qua* liability of the interest depends upon the terms of the insurance policy. He is not in a position to dispute that as per the insurance policy, the insurance company accepted the premium and promised to indemnify the employer i.e. insured. The relationship between the insured and insurance company being governed by the terms of the insurance policy, the issue boils down to the terms thereof. It can't be laid as a general proposition that insured has no liability to indemnify insured *qua* interest.

[10] The policy (Exhibit R-1) contains specific exclusion clause. The same does not exclude liability to indemnify insured *qua* interest unlike in the case of '**Harshabdhai Amrutbhai Modhiya**' *(supra)*.In view thereof, the submission raised by counsel for the appellant with respect to non-payment of interest *sans* merit and is hereby rejected.

[11] Coming on to the issue with respect to the salary of the deceased, counsel for the claimants does not dispute that deceased was an unskilled worker. Thus, in view of the contract of insurance and the facts and circumstances of the present case, the impugned order passed by the Commissioner is modified to the extent that the liability of appellant shall be not beyond Rs.6500 / 2 x 197.06 = 6,40,445/-. Interest granted @ 9% by the Commissioner is also modified and enhanced to 12% for the period commencing from the date one month post the date of accident till the date of actual realization.

[12] Coming on to the issue regarding death of the deceased, argument raised by counsel for the appellant is that the deceased having died of heart attack, he cannot be held to be victim of an accident arising out of and during the course of employment. He submits that deceased died of a natural death. The plea raised *sans* merit and deserves to be rejected. As per the record, deceased was 34 years of age. He died on 23.11.2015 while performing his duty. He was engaged to do physical work. There is no prior history of deceased suffering from any heart ailment. As per the claimants, deceased died due to stress and strain of employment. Precise issue was dealt by Supreme Court in the case of **'Smt. Dariyao Kanwar and others** *versus* **M/s United India Insurance Company Limited and another'**, reported as *2023 AIR SC 4161*, observing as under:-

> *"8. The Commissioner accepted the application filed by the appellants. It was noticed in the order passed by the Commissioner that, the employer admitted that the deceased was employed as a driver and he was on duty from Delhi to Baroda on 15.09.2003. The wages being paid to him were also admitted. With these facts on records, the Commissioner accepted the application and assessed the compensation at ₹3,26,140/- (Rupees three lakh twenty-six thousand one hundred and forty). Aggrieved*

against the aforesaid order of the Commissioner, the Insurance Company preferred an appeal before the High Court. The arguments raised by the Insurance Company was that there is no material on record to suggest that the death of Sumer Singh occurred due to strain and stress during employment. In case, the deceased employee was already suffering from any existing disease and died on account of that, it cannot be said to be a case of death during the course of employment. The view of the High Court was that there is no relationship between the death and the work being done by the deceased. Hence, the order of the Commissioner was found to be unsustainable.

9. The judgment of this Court in Param Pal Singh's case (supra) relied upon by the counsel for the appellants, comes to their rescue. In that case, the deceased was a truck driver. While on duty, he suddenly suffered health set back and parked his vehicle on roadside hotel. After parking the vehicle, he fainted and was taken to the hospital. He was declared brought dead. An application was filed by the dependents of the deceased for claiming compensation under the 1923 Act. The Commissioner accepted the claim whereas the order passed by the Commissioner was set aside by the High Court. The dependents filed an appeal before this Court. It is noticed in the aforesaid judgment that additional premium was paid for coverage of compensation payable under the 1923 Act.

10. This Court accepted the appeal filed by the dependents of the deceased and found that even if the death had not occurred on account of any accident but the driver was consistently driving the vehicle, there is every reason to assume that long spells of driving was a material contributory factor, if not the sole cause that accelerated his unexpected death at a young age. Such an untoward mishap can reasonably be described as an accident, only attributable to the nature of employment. In the aforesaid judgment, the employee was 45 years of age. It squarely covers the case of the appellants. The relevant paras of the decision are extracted below:-

> *"29. Applying the various principles laid down in the above decisions to the facts of this case, we can validly conclude that there was causal connection to the death of the deceased with that of his employment as a truck driver. We cannot lose sight of the fact that a 45- year-old driver meets with his unexpected death, may be due to heart failure while driving the vehicle from Delhi to a distant place called Nimiaghat near Jharkhand which is about 1152 km away from Delhi, would have definitely undergone grave*

strain and stress due to such long- distance driving. The deceased being a professional heavy vehicle driver when undertakes the job of such driving as his regular avocation it can be safely held that such constant driving of heavy vehicle, being dependent solely upon his physical and mental resources and endurance, there was every reason to assume that the vocation of driving was a material contributory factor if not the sole cause that accelerated his unexpected death to occur which in all fairness should be held to be an untoward mishap in his lifespan. Such an "untoward mishap" can therefore be reasonably described as an "accident" as having been caused solely attributable to the nature of employment indulged in with his employer which was in the course of such employer's trade or business.

30. ……In such circumstances, we are convinced that the conclusion of the Commissioner of Workmen's Compensation that the death of the deceased was in an accident arising out of and in the course of his employment with the second respondent was perfectly justified and the conclusion to the contrary reached by the learned Judge of the High Court in the order impugned in this appeal deserves to be set aside." (emphasis supplied)

11. Similar view was expressed by this Court in Northeast Karnataka Road Transport Corpn's case. (supra)."

The same view was taken in the case of heart attack in *Civil Appeal No.2568 of 2022* titled as **'C. Manjamma and another** *versus* **The Divisional Manager, The New India Assurance Company Limited**.

[13] In view thereof, this Court finds that neither the employer nor the insurer having led any evidence to prove any prior ailment, no fault can be found with the findings of facts recorded by the learned Commissioner that the deceased died of an accident suffered during and in course of the employment.

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[14] **Dismissed.**

[15] All pending miscellaneous application(s), if any, stands *disposed off*.

(PANKAJ JAIN)
JUDGE

14.01.2025

'R. Sharma'

Whether speaking/ reasoned : Yes/No
Whether reportable : Yes/No