

FAO No.483 of 1992

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO No.483 of 1992

Date of Decision: December 23, 2015

Ajaib Singh

...Appellant

Versus

S.D.O. (Operation), PSEB and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

Present: Mr. Hitesh Kumar Sammi, Advocate
for the appellant.

None for the respondents.

AUGUSTINE GEORGE MASI, J. (Oral):

Challenge in this appeal is to the award dated 23.11.1991 passed by the Commissioner, Workmen's Compensation, Patiala, whereby, the application of the appellant-applicant for compensation under the Workmen's Compensation Act, 1923 (hereinafter referred to as 'the 1923 Act'), has been dismissed.

It is the contention of the learned counsel for the appellant that the appellant had preferred an application for grant of benefit under the 1923 Act, claiming an amount of ₹2,50,000/-. He contends that the dismissal of the said application on the ground of it being filed beyond the period of limitation, cannot be sustained as

the Commissioner has not taken into consideration the proviso to Section 10 of the 1923 Act, wherein, the discretion has been provided to the Commissioner to entertain a claim where reasonable explanation has been given as to why he could not approach the Commissioner prior to the date when the application was filed. He contends that the discretion should have been exercised by the Commissioner in favour of the appellants. His further contention is that as per the assertion in the application, appellant No.1 had suffered 45% disability. He asserts that the injury was suffered during the course of his employment which fact is not disputed by the respondents, therefore, the compensation as claimed should have been granted by the Commissioner. The amount of ₹11,782/- which has been paid as compensation by the respondents was not as per the provisions of the statute and if the calculation is made as per Schedule IV of Section 4, the compensation amount comes to ₹88,548/-. He, thus, contends that the impugned award deserves to be set aside and the present appeal allowed.

I have considered the submissions made by the learned counsel for the appellants and with his able assistance, have gone through the impugned award.

The first assertion of the counsel for the appellants is that the claim application should have been entertained by the

Commissioner under the Workmen's Compensation Act, keeping in view the proviso to Section 10 of the 1923 Act. Perusal of the award does not indicate that any reasons were given for not approaching the Commissioner by the appellants within the period of limitation as has been prescribed. It is true that there is a discretion with the Commissioner and if that benefit is given to the appellants, still on merits, the claim as made by the appellants cannot be accepted. As per the pleadings in the application, assertion has been made that appellant No.1 had suffered 45% disability but there is no evidence on record in support of the said assertion. In the absence of any evidence to this effect, the Commissioner has rightly proceeded to come to a conclusion that the disability has not been proved on record in the absence of the medical evidence as to the physical capacity or diminishing thereof is an important factor to assess the loss of earning capacity. In the absence of the medical evidence, the physical disability of appellant No.1 could not have been assessed by the Commissioner.

That apart, appellant No.1, admittedly, was working as a class IV employee in the office of the respondents and has been granted regular increments as well as the admissible dearness allowance. There has been no loss suffered by appellant No.1 in his earnings because of the disability, if any, as he has been paid the wages as are being paid to the other regular employees

working on the said post. There being no loss of earning capacity as he would continue to work with the respondents till his retirement and a compensation of ₹11,782/- has already been paid to him, the findings as recorded by the Commissioner in its impugned award dated 23.11.1991 cannot be said to be without any basis or there is any illegality in the same which would call for any interference by this Court in the present appeal.

In view of the above, finding no merit in the present appeal, the same stands dismissed.

December 23, 2015
Harish

(AUGUSTINE GEORGE MASIH)
JUDGE