

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1)

FAO No.1358 of 1989 (O&M)

Date of Decision:07.01.2015

New India Assurance Company Ltd.

....Appellant

Versus

Lakhi Ram alias Lakhmi Chand and another

....Respondents

(2)

FAO No.130 of 1990 (O&M)

Date of Decision:07.01.2015

Lakhi Ram alias Lakhmi Chand

....Appellant

Versus

M/s B.R. Enterprises and another

....Respondents

CORAM: HON'BLE MS. JUSTICE NAVITA SINGH

Present:

Mr. Neeraj Khanna, Advocate for
 Mr. L.M. Suri, Advocate for the appellant in FAO No.1358 and
 for respondent No.2 in FAO No.130.

Mr. Sagar Aggarwal, Advocate for
 Mr. Ashit Malik, Advocate for respondent No.1 in FAO
 No.1358 and for the appellant in FAO No.130.

NAVITA SINGH, J.

1. The order under challenge was passed by the Commissioner under the erstwhile Workmen's Compensation Act, whereby compensation to the tune of Rs.98,977.50 paisa was given to Lakhi Ram. He came up in appeal stating that penalty was not awarded and income was not rightly assessed. The Insurance Company came up in appeal on the ground that amount was

excessive as it was proved on record that the injured had suffered 80% disability whereas taking his disablement to be 100%, award was passed in his favour.

2. In the appeal filed by the injured, Lakhi Ram, it was only urged that penalty should have been awarded, liability of which would be of the owner. The part of the grounds of appeal, which related to the income that it should have been Rs.1250/- per month and not Rs.900/-, was not pressed.

3. So far as the penalty is concerned, counsel for the Insurance Company submitted that it was to be paid by the employer and the Company had nothing to do with it. This proposition of law was not disputed by counsel for the injured. Also it was held in Pratap Narain Singh Deo Vs. Shrinivas Sabata and another 1976 AIR (SC) 222, Ved Prakash Garg Vs. Premi Devi and others, 1998 ACJ 1 and Oriental Insurance Company Ltd. Vs. Siby George and others (2012) 12 Supreme Court Cases 540 that the liability to pay penalty under Section 4-A of the Workmen's Compensation Act, applicable at that time and also now under the Employees Compensation Act, is to be saddled on the employer.

4. In view of the position as above, the appeal filed by Lakhi Ram is partly allowed holding that the employer shall be liable to pay an amount of Rs.30,000/- as penalty to the appellant with interest at the rate of 6% per annum.

5. Regarding the appeal filed by the Insurance Company, the contention of the appellant is not acceptable about the disability. The Commissioner rightly held that since the injured was a skilled worker being a driver, loss of upper right limb amounted to 100% disablement in relation to the nature of profession which was being pursued by the injured. He was a young man of 23 years when the accident occurred and he had to face amputation of the right arm. His career as a driver was destroyed.

6. No fault can be found in the impugned order regarding the disability.

The appeal filed by the Insurance Company is, therefore, dismissed.

(NAVITA SINGH)
JUDGE

07.01.2015
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Whether to be referred to reporter: Yes