

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.5958 of 2011 (O&M)
Date of Decision:04.02.2015

Amit Kumar

....Appellant

Versus

M/s Packing House and another

....Respondents

CORAM: HON'BLE MS. JUSTICE NAVITA SINGH

Present: Mr. J.S. Bedi, Advocate for the appellant.

Mr. Rajeev Gupta, Advocate for respondent No.2.

NAVITA SINGH, J.

1. The appeal is directed against the order passed by the Commissioner under Workmen's Compensation Act, Ambala (Commissioner for short) dismissing the claim of the appellant.

2. Counsel for the appellant argued that the Commissioner had dismissed the claim on the ground that there was no disablement of permanent nature. It was categorically held that the appellant was an employee with the respondent and he had suffered injuries during the course of his employment but the claim was declined on the ground that disability was temporary in nature.

3. Counsel for the respondent, however, argued that the Workmen's Compensation Act (Act for short) spoke of compensation regarding death or permanent disability. The claim preferred by the appellant before the Commissioner was, therefore, rightly rejected.

4. Counsel for the appellant referred to Section 3 of the old Act, which is now Employees Compensation Act, where it was provided that the employer would be liable to compensate the workman on account of personal injury, which would result in total or partial disablement lasting for more than three days. He then adverted to Section 4 where in clause (d) under sub Section 1 of the said

Act, it was provided as to what would be the compensation to be paid in case of temporary disablement, whether total or partial. However, the said provision of law would not be applicable here because partial disablement is defined in the Act, which would be of temporary nature but it must reduce the earning capacity of the workman in any employment in which he was engaged at the time of accident.

5. As per the statement of the doctor concerned, who appeared as AW1, the disability was due to fracture and weakness. It was not permanent and could reduce to only 10% after physiotherapy. The doctor also opined that if the patient had taken treatment on following medical advice, the injury could be treated. The injury in the wrist was found to be unconnected. The doctor also said that the disability could be assessed later on, only on fresh examination. The appellant did not present himself for fresh examination nor is it proved that he had been following medical advice.

6. It was neither pleaded nor proved that on account of the injuries, his capacity to carry on the work, which he was doing at the time of accident, had reduced. Also it was not asked from the doctor regarding that.

7. Thus, even if it be taken that for partial disablement, compensation can be awarded, nothing can be awarded in the case in hand for the reasons given above.

8. The appeal is dismissed.

**(NAVITA SINGH)
JUDGE**

04.02.2015

Ishwar

Whether to be referred to reporter: Yes