

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

**FAO No.5613 of 2012 (O&M)
Date of Decision: March 26, 2015**

Kewal Chand

.... Appellant

vs.

Ramesh Singh and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Vikas gupta, Advocate for
Mr. Vikram Bali, Advocate for the appellant.
Mr. Radhey Shyam Sharma, Advocate
for respondent No.2.

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?

2. To be referred to the Reporters or not?

3. Whether the judgment should be reported in the Digest?

Kuldip Singh J.(Oral)

The claimant has challenged the order dated 19.07.2012 passed by the Commissioner under the Employee's Compensation Act, 1923 (in short 'the Act'), Union Territory, Chandigarh, whereby on account of the injury suffered by the applicant-appellant, he was awarded compensation of ₹2,65,205/- (Rupees two lacs sixty five thousand two hundred five only).

Suffice to say that the applicant-appellant was a driver on the truck bearing registration No.HR-68-4672, employed with respondent No.1 on the monthly wages of ₹6,000/- plus daily diet allowance of ₹100/- per day. On 09.02.2010, the said truck met with

an accident and the applicant-appellant suffered serious injuries. His right leg was amputated and a rod was inserted in the left leg. The truck was insured with respondent No.2. The Commissioner took into consideration the fact that the age of applicant-appellant was 40 years and he was drawing ₹6,000/- per month and he suffered 60% physical disability as per disability certificate Ex.A-3. However, in view of Section 4 of the Act, the monthly wages of the applicant-appellant was taken @ ₹4,000/- per month, multiplied by 60% disability and after considering the relevant factors, the compensation of ₹2,65,205/- was awarded.

I have heard learned counsel for the parties and have also carefully gone through the case file.

A perusal of Section 4 of the Act, shows that vide Act No.45 of 2009, an amendment was made with effect from 18.01.2010, vide which the cap of ₹4,000/- in explanation II was omitted. Meaning thereby that income of the deceased can be taken more than ₹4,000/-.

It being so, there is apparently an error in computing the compensation. Therefore, the income of the applicant-appellant is to be taken as ₹6,000/- per month.

Keeping in view the fact that right leg of the applicant-appellant, who was truck driver was amputated and a rod was inserted in his leg, the physical disability of 60%, is taken to be 100%

functional disability for calculating earning capacity. Therefore, the amount of compensation comes to ₹11,05,020/- (₹6000x184.17). Accordingly the compensation is enhanced to ₹11,05,020/-. If the compensation amount is not paid within the time, it will carry interest @ 12% per annum.

In view of the aforesaid, the present appeal is allowed with the aforesaid extent.

March 26, 2015
sarita

(KULDIP SINGH)
JUDGE