

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

**FAO No.589 of 2015 (O&M)
Date of decision: 17.03.2015**

Shri Ram General Insurance Company Ltd.

..... Appellant

versus

Ishraq & others

..... Respondents

CORAM: Hon'ble Mr. Justice Kuldip Singh

Present: Mr. Tajender K. Joshi, Advocate for the appellant

- 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.

CM No.1589-CII of 2015

This application has been filed for condonation of 69 days delay in filing the appeal. The application is accompanied by an affidavit. For the reasons mentioned therein, it is allowed and delay of 69 days in filing the appeal stands condoned.

FAO No.589 of 2015 (O&M)

Challenged in the present appeal is the order dated 14.8.2014, passed by the Commissioner, under the Employee's Compensation Act, 1923, Mewat, vide which, the Commissioner

granted compensation to the tune of Rs.13,11,730/- to the applicant (respondent No.1 herein) on account of injuries, treatment, interest and the case expenses. 12% per annum interest was also allowed if the amount of compensation was not deposited within 60 days from the date of order till the date of actual payment was also awarded.

Ishraq applicant was working as a second driver on truck bearing No.HR-55-P-4169 on the monthly salary of Rs.7000/- plus Rs.100/- as daily diet expenses. On 1.8.2012, the truck met with an accident with another vehicle due to which he received serious injuries. He was admitted to NIMS Hospital, New Delhi where his right leg was amputated. Applicant had to spend Rs.one lac on his treatment. He has become permanently disabled.

Respondent No.1-owner of truck (respondent No.2 herein) did not appear before the Commissioner. However, respondent No.2 (appellant herein)- Insurance Company contested the case. The Commissioner, noted that as per the disability certificate, the applicant had suffered 37.5% permanent disability. However, the Commissioner, took into consideration the case law and held that in case of workman like the present one, loss of earning capacity is 100%. The wages of the applicant has been taken as Rs.8000/- per month. The age of the applicant was 28 years. The relevant factor to his age was taken as 211.79 and accordingly, as per formula laid down in Section 4(i)(b) of the Employee's Compensation Act, 1923, the compensation was calculated at Rs.10,16,592/- Before the Commissioner, medical bills Ex.P18 to Ex.P83 for Rs.38,073/- were also proved. The interest @

12% per annum from the date of application till the date of order was calculated as Rs.2,49,065/- and accordingly, the following compensation was awarded:-

<i>Compensation plus treatment charges</i>	<i>Rs.1054665/-</i>
<i>Interest</i>	<i>Rs.249065/-</i>
<i>Case Expenses</i>	<i>Rs.8000/-</i>
<i>Total</i>	<i>Rs.1311730/-</i>

The learned counsel for the Insurance Company has challenged the order on the following two grounds, namely:-

- i) Income of Rs.8000/- assessed by the Commissioner is on the higher side
- ii) The disability was wrongly taken to be 100%.

I am of the view that a truck driver gets wages plus allowance for the diet and night stay. In this way, there is no error in the order of the Commissioner taking the salary of the injured to be Rs.8000/- per month.

The contention of the learned counsel for the appellant is that loss of 100% earning capacity was wrongly calculated. I am of the view that the applicant was working as a driver. His right leg was amputated. The permanent disability of the body is to be distinguished from the loss of the earning capacity. The learned Commissioner had taken into consideration the case law on the point wherein it was held that even though the disability was 40%, the loss of earning capacity was 100%. In this way, due to amputation of the right leg, the applicant will never be able to drive the vehicle. He was working as a truck driver. Therefore, loss of earning capacity was

rightly calculated as 100%. There is no error in the order under appeal.

Therefore, the appeal is accordingly dismissed.

17.03.2015

gk

**(Kuldip Singh)
Judge**