

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

CR No. 8471 of 2015(O&M)

Date of decision: 04.03.2016

Naresh Arora

... Petitioner

versus

Saroj Devi and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Kunal Dawar, Advocate, for the petitioner.

K.Kannan, J. (ORAL)

The revision is against the order declining to set aside the ex-parte award passed by the Employes Compensation Commissioner, since, the status of an employee is an admitted fact and the fact of death in the course of employment was also admitted. I asked the counsel whether the calculation made contained any mistake that would require a reappraisal after setting order. The decisive component for such appraisal was the salary itself and I had directed the petitioner on 19.02.2016 to show if the salary had drawn by the person was less than Rs. 6,210/-, the amount taken by the petitioner as the amount that was taken by the Commissioner as salary. The counsel says that there is no proof for modifying the salary taken.

There is a plea that the employer had paid Rs. 2,00,000/-, after the accident and that has not been given any credit. Any payment otherwise than before the Commissioner is impermissible for being reckoned and Section 28 of the Employees Compensation Act of 1923

requires that an agreement by way of lumpsum payment as compensation that is settled between the employer and employee is required to be in writing and it shall be fixed before the Commissioner, who on being satisfied about the genuineness, shall record the memorandum of agreement in Registry prescribed therefor. Section 29 specifically deals with the situation of failure of the entry in the register and agreement and states that if any memo of agreement is failed to be registered under Section 28, the employer shall be liable to pay the full amount of compensation which he is liable to pay under Section 4 of the Act. The Division Bench of this Court has in Malkiat Kaur Vs. M/s Star Auto Engineer 2000 (1) PLR 616, held that there is a complete bar to arrive at an agreement or compromise where a workman may relinquish his right of compensation from the employer even an agreement that reduces the statutory amount of compensation held in the said judgment null and void. In Nagapattinam Import and Export Nagapattinam Vs. K. Lakshmi 1993 (1) CLR 74, the Madras High Court held that amount of Rs. 2,500/- received by widow in full and final settlement of her claim for compensation against the employer that remained without being registered under Section 28 of the Act could not be taken into reckoning for consideration of an application of widow for compensation. The payment pleaded for deduction cannot, therefore, be countenanced and the case need not be set aside only for consideration of non-issue. The claimants have sought for imposition of penalty for not making the payment within a month from the date of the

accident. The Court has ordered notice in the manner of eliciting reply for imposing penalty or not. The Commissioner shall consider the truth or otherwise of the assertions made by the employer that an amount of Rs. 2,00,000/- had been paid to the representatives of the deceased. The Commissioner will take an appropriate decision, if proof of payment is made, for consideration of imposition of penalty or not, uninfluenced by the fact that the award had been passed ex-parte and proof of alleged payment of Rs. 2,00,000/- was not adduced before the award was passed.

The civil revision petition is disposed of with the above observations.

04.03.2016
kv

(K.KANNAN)
JUDGE