

FAO No. 4458 of 2011 (O&M)

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

FAO No. 4458 of 2011 (O&M)

Date of Decision: February 18, 2016

New India Assurance Co.Ltd.

...Appellant

Versus

Mohinder Kaur & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Ashwani Talwar, Advocate and
Mr. J.S. Chatrath, Advocate
for the appellant.

Mr. Vipul Aggarwal, Advocate
for respondent No1.

AUGUSTINE GEORGE MASIH, J. (Oral):

Challenge in this appeal is to the award dated 30.03.2011 passed by the Commissioner, Employees' Compensation, Amritsar-I, whereby, the claim petition as preferred by respondents 1 and 2 herein, has been allowed granting compensation amounting to ₹4,39,900/- alongwith interest @ 12% per annum from the date of institution of the claim application and if the compensation alongwith interest accrued thereon is not deposited within 45 days of the award, the rate of interest shall be 18% per annum.

It is the contention of the learned counsel for the appellant that the claim petition was itself not maintainable as the

same is barred by limitation as also by principle of *res judicata*. He further contends that respondents No.1 and 2 had earlier preferred a claim petition in the year 2007 which was withdrawn by them and an order to that effect was passed by the Commissioner on 24.04.2009 (Ex.RX). He contends that no permission has been granted for filing the fresh petition. He, however, contends that the petition which has been preferred in the year 2007 is also barred by limitation as the accident had taken place on 07.03.2004 and the limitation to file the claim was upto 07.03.2006. He, thus, contends that the claim petition, firstly being barred by limitation and secondly, barred by the principle of *res judicata*, would not be maintainable and the award, therefore, cannot sustain. In support of this assertion, he places reliance upon the Section 10 of the Workmen's Compensation Act, 1923 (hereinafter referred to as 'the 1923 Act'). Prayer has, thus, been made for setting aside the impugned award and allowing the present appeal by dismissing the claim petition.

Counsel for respondent No.1, on the other hand, contends that in the earlier claim petition, which has been filed, permission was sought for filing the fresh petition. The intention of the Commissioner appears to accept that prayer although there is no specific mention with regard to the grant of permission but keeping in view the statement of the claimants, the order has to be seen in that context and therefore, the second petition cannot be said to be

barred by the principle of *res judicata*. He further contends that once a permission has been granted to file the fresh petition vide order dated 24.04.2009 and the second claim petition was filed on 17.07.2009, the said petition could not be said to be beyond limitation. He, thus, prays that the impugned award deserves to be upheld.

I have considered the submissions made by the learned counsel for the parties and with their able assistance, have gone through the pleadings as also records and the evidence led by the parties before the Commissioner.

As per Section 10 of the 1923 Act, the period prescribed for filing the claim petition is two years from the occurrence of the accident or in case of death, within two years from the date of death. In the present case, accident is dated 07.03.2004 and on that date, the deceased Gurdeep Singh, truck driver, died. Although, under the proviso, there is a discretion granted to the Commissioner to extend the period to entertain the petition beyond the period of limitation as well but with a rider that there is due and sufficient cause for not approaching the Commissioner within a period prescribed. A perusal of the claim petition does not indicate that there is any reason assigned for not approaching the Commissioner prior to the date which would fall within the period of limitation. Even if the first petition is taken to be the one which was preferred by the

respondents 1 and 2 and the time spent in pursuing the said claim which was ultimately permitted to be withdrawn on 24.04.2009 could be ignored, the same was beyond the period of limitation and there is nothing on record which would indicate that any reason was given/mentioned which would justify the non-filing of the claim petition within the period of limitation. If the second claim petition is taken which has been filed on 17.07.2009, the said claim petition is hopelessly time barred. The claim petition being barred by limitation could not have been entertained by the Commissioner.

As regards the contention of the counsel for the appellant that the claim petition would be barred by the principle of *res judicata*, the same also appears to be correct as although the statement which was recorded qua the claimants on 24.04.2009 indicates that a permission was sought to file a fresh petition, but in the order of even date, i.e. 24.04.2009 (Ex.RX), no such permission has been granted and the petition has simply been permitted to be withdrawn. The principal of *res judicata* would also be applicable to the present petition as it is admittedly, the second claim petition.

In view of the above, the present appeal is allowed. The impugned award dated 3.03.2011 passed by the Commissioner under the Employees' Compensation, Amritsar-I, is hereby set aside and the claim petition of the claimant-respondents No.1 and 2 is dismissed being barred by limitation.

FAO No. 4458 of 2011 (O&M)

CM No.16439-CII of 2011

In view of the order passed in the main appeal, no order is required to be passed in the present application as the same has been rendered infructuous.

Disposed of as such.

February 18, 2016

Harish

**(AUGUSTINE GEORGE MASIH)
JUDGE**