

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

CR No.7380 of 2012

Date of Decision: 20.07.2017

National Insurance Company Ltd.Petitioner

Versus

Bohti Devi and others ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Harsh Aggarwal, Advocate
for the petitioner.

Mr. Pankaj Midha, Advocate
for respondents No.1 and 2.

Mr Vishnu Dutt Sharma, Advocate
for respondents No.3 and 4.

RAJ MOHAN SINGH, J.(ORAL)

[1]. Petitioner has assailed the order dated 08.10.2012 passed by the Commissioner under the Employees Compensation Act, Jind, whereby petition filed before the Commissioner under Employees Compensation Act was restored.

[2]. Learned counsel for the petitioner submitted that on 20.03.2009, the claimants appeared through their counsel and made a statement for withdrawal of the petition as they were not interested in prosecuting the same any more. Commissioner accordingly dismissed the petition as withdrawn in the Court and the case was consigned to record room. While passing the aforesaid order dated 20.03.2009, it was noticed by the

Commissioner under Workmen's Compensation Act that the case was fixed for final arguments, but the applicant/petitioners appeared through their counsel and made a statement that they were not interested in carrying on the case and requested for withdrawal of the same. Keeping in view the statements made by the claimants and their counsel, the case was decided and was declared to be dismissed as withdrawn.

[3]. Thereafter, respondents No.1 and 2 filed an application for restoration of the claim petition and for setting aside the order, vide which the case was dismissed as withdrawn. The said application was filed on 06.12.2010 on the ground that the case was argued on 10.09.2009 and was adjourned from time to time and thereafter, it was dismissed in default without specifying any date.

[4]. The application was resisted by the petitioner. The Commissioner under the Act passed the order dated 08.10.2012 after taking cognizance of the fact that no statement qua withdrawal of the petition was available on record, nor the Advocate on behalf of the petitioner-Insurance Company could produce any proof thereof. The proceedings conducted by the Court prior to 20.03.2009 did not reveal anything that the claimants were not seriously prosecuting the case, rather it was found from the record that the claimants once approached the

High Court for the purpose of producing their evidence when the Court had closed the same by order. High Court in CWP No.19554 of 2007 passed the order dated 21.12.2007, granting one opportunity to the claimants to tender documents in their evidence and thereafter, they produced the evidence on record.

[5]. No allegation of any fraud or tampering with the file was alleged by the petitioner during course of proceedings before the Commissioner. Taking into consideration the totality of facts and circumstances of the case, in view of the welfare legislation, the Commissioner vide order dated 08.10.2012 restored the petition to its original number by recalling the order dated 20.03.2009.

[6]. I have heard learned counsel for the parties.

[7]. Perusal of the record shows that though the order was passed by the Commissioner on 20.03.2009, but the same was not after recording the statements of the claimants and their counsel. Claimants were prosecuting the case prior to 20.03.2009 in a *bona fide* manner and it was not explained on record as to why the case was got dismissed as withdrawn on the date fixed for which the claimants have given their version.

[8]. Having considered the issue, I am of the view that *de hors* the stand taken by the claimants in the context of proceedings from 10.09.2009 to 06.12.2010, the order passed

by the Commissioner under the Employees Compensation Act, Jind specifies the test of equity and fair play. There was apparent flow in the order dated 20.03.2009 as the same was passed without recording any statements of the claimants and their counsel. Commissioner has rightly taken cognizance of facts on record and thereafter, passed the order of restoration, which in my considered opinion cannot be faulted with.

[9]. In view of above, this revision petition is found to be totally bereft of merits and the same is accordingly dismissed.

20.07.2017
prince

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No