

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

202

FAO No.1066 of 1991

Date of decision: 21.03.2017

Employees State Insurance Corporation

....Appellant

Versus

Diamond Plastic Products

...Respondent

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr.Vikas Suri, Senior Standing Counsel, for the appellant.

G.S. SANDHAWALIA, J. (Oral)

The challenge by the appellant-Corporation is to the order dated 11.05.1991, whereby the Employees' Insurance Court, Chandigarh, set aside the order whereby damages of Rs.10,731/- had been imposed vide order dated 18.03.1988 (Ex.P4) under Section 85-B of the Employees State Insurance Act, 1948.

None has put in appearance on behalf of the respondent despite service having been effected.

The reasoning given by the Court is that no reasonable opportunity of being heard was provided when the order was passed and therefore, the principles of natural justice, as such, were violated. A request had been made, which was received subsequently that the Bar was on strike and therefore, the Advocate was estopped to represent the case. Keeping in view the averments made by PW1 that no date was given for 17/18.03.1988 for personal hearing, it was held that no proper opportunity of hearing was afforded by the respondent. The said order, on the face of it, is not sustainable.

It is not disputed that show cause notice dated 12.02.1988 (Ex.R1) was duly issued to the respondent for 22.02.1998, which was duly received by his Advocate, proposing to levy damages. The counsel, submitted that on 22.02.1988 (Ex.P2), on account of strike, it was not possible to attend the said proceedings and sought an adjournment for 22.02.1998. The appellants vide communication dated 25.02.1988 (Ex.R2) fixed the date as 08.03.1988. On the said date, Sh. R.L.Chopra, Advocate, appeared and submitted that he would give the written reply by 14.03.1988.

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

FAO No.1066 of 1991

-2-

It is a common case that on 14.03.1988, appearance was also not there, which would be clear from the letter dated 18.03.1988 (Ex.R3) whereby the counsel again submitted that he could not give his written arguments and would give his arguments in writing within a period of 10 days on account of strike of the District Bar Association.

Thus, it is apparent from the above perusal that the respondents were well aware of the proceedings. The findings which have been recorded that principles of natural justice were violated on account of subsequent receipt of the said communication dated 25.02.1988, is without any basis. Parties were not to be put to notice for each and every date of hearing. Proviso to Section 85-B lays down that opportunity of hearing is to be provided before recovering the damages. In case the counsel failed to appear or was not in a position to appear, adequate arrangements had to be made by him or by the respondent. In such circumstances, this Court is of the opinion that the order impugned dated 11.05.1991, holding that fresh date should have been given before imposing the damages, is without any justification and the same is, accordingly, set aside.

The present appeal stands allowed, in the above-said terms.

21.03.2017
sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: *Yes/No*
Whether Reportable: *Yes/No*