

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

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FAO No.1303 of 2012(O&M)

Arun Kumar

....Appellant

Versus

Ranvir Singh & another

...Respondents

FAO No.2236 of 2012(O&M)

Ranvir Singh

....Appellant

Versus

Arun Kumar Jha & another

...Respondents

Date of decision: 17.02.2017

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

Present: Mr.A.S.Kang, Advocate, for
Mr.Anil Shukla, Advocate,
for the appellant in FAO-1303-2012
and for respondent No.1 in FAO-2236-2012.

None for the appellant in FAO-2236-2012.
Mr.Krishna Kant, Advocate, for
Mr.Tajender K.Joshi, Advocate, for respondent No.2.

G.S. SANDHAWALIA, J. (Oral)

CM-5345-CII-2012 in FAO-1303-2012

Application for condonation of delay of 3 days in filing the appeal, is allowed, in view of the averments made in the application, duly supported by an affidavit.

CM-9854-CII-2012 in FAO-2236-2012

Application for condonation of delay of 163 days in filing the appeal, is allowed, in view of the averments made in the application, duly supported by an affidavit.

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The present judgment shall dispose of two appeals, bearing FAO-1303 & 2236-2012, since the same are arising out of the common order of the Commissioner under the Workman's Compensation Act, 1923, dated 24.08.2011.

Challenge in FAO-1303-2012 is to the order dated 24.08.2011, whereby a sum of Rs.3,87,187/- has been awarded as compensation, which is payable by respondent No.2-Insurance Company. The appellant, being the employee, seeks enhancement of the amount.

Vide the said order, the Commissioner has also awarded penalty to the tune of Rs.1,54,876/- which is 40% of the amount which was awarded as compensation. The employer and the Insurance Company were directed to deposit the said amount within 60 days from the date of the order and were held liable to pay interest in case deposit was not made within the said period.

Thus, the substantial question which will arise for consideration of this Court is whether the appellant/employee was entitled to the interest element from the date it fell due, in view of the judgment of the Apex Court in **Oriental Insurance Company Ltd. Vs. Siby George 2012 (4) SCT 299.**

The position of law having been settled and therefore, no exclusion clause having been pointed out by counsel for the Insurance Company, regarding the liability of the interest element, the appeal of the claimant is, accordingly, partly allowed, to the extent that he would be

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entitled for the interest element from one month from the date of the accident till the date of payment. It was held by the Apex Court that the interest liability can be excluded out, by contracting out, which could not be pointed out by the counsel for the Insurance Company. Accordingly, the said amount be paid by the Insurance Company within 2 months from the date of receipt of the certified copy of this order.

Keeping in mind the fact that the wage limit was Rs.4000/- per month when the incident happened and the relevant factors have been applied, keeping in view the age which was calculated at 33 years. Resultantly, no other substantial question of law arises which finds merit by this Court.

Challenge in FAO-2236-2012, is to the penalty proceedings and imposition of Rs.1,54,876/- upon the appellant. The employer had denied the relationship of employment *inter se* the workman, as such, which has been found to be incorrect, in view of the statement of the injured himself who suffered amputation of his right leg while driving the truck. It is, in such circumstances, the penalty quantum has been fixed upon the employer, who was duly represented before the authority, at that point of time when his plea had been rejected. A legal notice had also been served upon him to tender the amount which was got exhibited as Ex.AW-1/7, which had not been replied to also. In such circumstances, the finding of fact which has been recorded by the Commissioner that the accident arose out and in the course of employment with respondent No.1, is well founded and therefore, on account of there being no justification for the

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delay in payment of the compensation which fell due, the Commissioner has rightly imposed the penalty upon the employer. The Apex Court in **Ved Parkash Garg Vs. Premi Devi & others (1997) 8 SCC 1** held that penalty is payable by the employer. Therefore, in the absence of any substantial question of law, the appeal is dismissed.

With the above-said observations, the present appeals stand disposed of.

February 17th, 2017

(G.S. SANDHAWALIA)
JUDGE

Sailesh

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No