

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

**FAO No. 459 of 2012 (O&M)
Date of Decision: 05.07.2017**

National Insurance Company Ltd., Chandigarh

..... Appellant

Versus

Om Parkash and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. Ashwani Talwar, Advocate
for the appellant.

Respondent No. 1 proceeded ex parte
vide order dated 19.07.2013.

None for respondent No. 2.

JASWANT SINGH, J. (ORAL)

Appellant-Insurance Company has filed the present first appeal against the order dated 08.11.2011 passed by the learned Commissioner under the Workmen's Compensation Act, 1923 (for short 'the Act').

At the time of hearing, the following substantial question(s) of law is raised:

i) Whether the claim petition filed by respondent No. 1-workman-Om Parkash was barred by law of limitation keeping in view the provisions of Section 10 of the Act.

The undisputed facts are that respondent No. 2-Rajesh Yadav is the owner of vehicle Tanker bearing registration No. RJ-13G-8141, which was insured by the appellant-Insurance Company. Respondent No. 1-Om

Parkash was concededly employed as a Cleaner-Helper on the said vehicle

being driven by the employer-Rajesh Yadav himself at the time of accident on 09.11.2004. It is also conceded that on account of the accident of the Tanker with another truck, Om Parkash had suffered the amputation of right leg, resulting into permanent disability. It is also not in dispute that Om Parkash filed a claim petition on 21.04.2007 under the Motor Vehicles Act before the learned MACT, Fatehabad.

Upon notice, the parties had entered into appearance including the insurance company, however, the same was withdrawn on 12.06.2008 to file a claim petition under the Workmen's Compensation Act. Accordingly, the present claim petition under Section 10 of the Act was filed. The said claim petition vide impugned order dated 08.11.2011 has been allowed, and a sum of Rs. 2,77,137/- as compensation alongwith interest of Rs. 92,102/- was allowed and the Insurance Company has been vicariously held responsible to compensate the workman.

After hearing learned counsel for the appellant, no ground for interference is made out as no substantial questions of law is involved.

The learned Commissioner, Fatehabad, in his order has dealt with the issue and rightly decided that the claim of the workman cannot be thrown out on the ground of delay when he had earlier pursued his claim within three years before the learned MACT, Fatehabad. The relevant part dealing with the issue has been extracted below for ready reference:-

“ The counsel for the respondent No. 2 has argued that the claim is time barred and the same is not maintainable as the applicant has chosen the effectual remedy of filing the claim before the Hon'ble MACT. The said argument was opposed by Ld. Counsel for the applicant. It is an admitted fact on record that the

applicant has submitted his claim before MACT, Fatehabad on 21-04-07/29-5-08 and he withdraw the same on 12-06-08 with the prayer that he wants to file his claim before the appropriate forum under the W.C. Act, 1923. The applicant has presented his claim on 20-02-09 i.e. within eight months after withdrawal of case from the MACT court. Since the applicant has not attained remedy on merit and filed his claim after withdrawing the same from the MACT Court, as such the claim of the applicant cannot be thrown out merely on the ground of delay, thus, the claim of the applicant is maintainable. I hold accordingly.”

In view of above, no ground for interference is made out, accordingly, the present petition stands dismissed.

July 05, 2017
'dk kamra'

(JASWANT SINGH)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No