

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

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**FAO No.5363 of 2012 (O&M)
Date of decision: 26.04.2017**

Hari Lal Sharma

....Appellant

Versus

Enkay India Rubber Company Pvt. Ltd. & another

...Respondent

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

Present: Mr.R.K.Saini, Advocate, for the appellant.

Mr.Harsh Aggarwal, Advocate, for respondent No.1.

Mr.Vikas Suri, Sr.Standing Counsel, for respondent No.2.

G.S. SANDHAWALIA, J. (Oral)

The present appeal is directed against the order dated 02.11.2011 of the Employees State Insurance Court, Gurugram, whereby the petition, filed under Section 75(e) of the Employees State Insurance Act, 1948, has been dismissed under Order 17 Rule 3 CPC, since the appellant had failed to examine a single witness and to examine himself. The Court was also of the opinion that since costs of Rs.500/- have not been deposited, therefore, it had closed the evidence of the appellant on the same date, vide the impugned order.

Counsel for the appellant submits that the claim was on account of injury suffered which had lead to the loss of right eye and therefore, the petition had been filed on account of no payment having been made, as such, to him. It is further submitted that he was unaware of the status of his case. That the witnesses were not examined by his counsel and even at present, he has been represented through a Legal Aid Counsel and therefore, on account of poverty, the costs were also not deposited. It is submitted that in such circumstances, reasonable opportunity may be granted and the matter be remanded, since the precious rights of the workman-appellant are involved.

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A perusal of the record which has been summoned, would go on to show the factum that issues were framed on the pleadings on 27.11.2009 and the case was adjourned to 27.04.2010 for evidence. On account of no witnesses being present on the said date, the case was adjourned to 19.10.2010 and last opportunity was granted. The plea for adjournment was that the original counsel was not available on the said date. Similarly, on 26.04.2011, on the absence of the witnesses, another opportunity was sought, which was opposed by the respondents and Rs.500/- was imposed as costs. On account of non-payment of costs on 02.06.2011 and in the absence of the witnesses, matter was adjourned to 21.09.2011, subject to Rs.500/- as costs, to be deposited with the District Legal Services Authority. On the said date, it was noticed that Rs.500/- had been paid as costs and the case was adjourned to 02.11.2011, by stating it to be the last opportunity for depositing the remaining costs. Thereafter, the impugned order was passed, that despite five effective opportunities, having been availed, the costs were not deposited and the petition was dismissed.

No doubt the appellant has been put to notice, as such, on account of the non-examination of the witnesses and costs had also been imposed. But the fact remains that out of the costs imposed on 02.06.2011, a sum of Rs.500/- was paid on 21.09.2011. The fact remains that the employee who was working on the post of Storekeeper with respondent No.1 and is agitating for his expenses which he incurred on account of the injuries suffered by him. Though he has been lax, as such, in the prosecution of his case, over one and half years but merely on account of the fact that he himself was not got examined, this Court is of the opinion that another opportunity should be granted to him to

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prosecute his case, by examining himself and summoning the official witnesses, if any. The lack of diligence cannot, as such, be attributed solely to himself.

This Court cannot lose sight of the fact that he is now represented through counsel which has been engaged from the panel of Legal Aid Counsels. Therefore, keeping in view the above factors, the right of the appellant of medical expenses is a genuine claim provided he can give valid proof of the same.

In such circumstances, the present appeal is allowed and the order impugned dated 02.11.2011 is set aside and the matter is remanded to the Employees State Insurance Court, Gurugram. The appellant shall be given 3 effective opportunities for leading his evidence.

26.04.2017
sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*