

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

FAO No. 3861 of 2014 (O & M)

Date of decision: 24.01.2017

Nasib Singh

....Appellant(s)

Versus

Workmen Commissioner and another

...Respondent(s)

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

Present: Mr. Hem Raj Bhardwaj, Advocate,
for the applicant-appellant.

G.S.SANDHAWALIA, J. (Oral)

The present appeal has been filed by the employee after a delay of 3481 days against the ex parte order dated 26.08.2004 passed by the Commissioner, Rajpura. The father of the deceased-employee Shiv Raj, who was employed on truck no. HR 37-6545 had filed the claim that the accident had taken place on 10.05.2003 and the FIR was lodged by the present appellant. Resultantly, a sum of ₹4,15,960/- has been directed to be paid alongwith compensation and interest @ 12% per annum from one month when it fell due as per Section 4-A(3)(a) of the Employee's Compensation Act, 1923 (in short 'the Act').

A perusal of the paper book would go on to show that thereafter an application for setting aside of the said order dated 26.08.2004 dated 26.08.2004 was moved on 28.08.2005 but the same was dismissed in default on 28.10.2005 due to the non-appearance of the applicant. Thereafter, another application was filed on 14.05.2007 in which it was stated that ₹50,000/- had been given as compensation to the claimant, which was to be adjusted at the time of the final claim. The said application was thereafter

allowed on 26.11.2007 and the ex parte order dated 26.08.2004 was set aside and the case was adjourned to 14.01.2008.

Counsel for the appellant has submitted that in spite of that also on 20.02.2014, on account of non-deposit of the amount, proceedings under Land Revenue Act, 1890 were proposed to be initiated regarding the Truck No. PB 11 BF 9982.

Counsel for the appellant has failed to explain that once ex parte order dated 26.08.2004 already stood set aside on 26.11.2007 (Annexure A-1), how the appeal is maintainable against the order of 2004. Nothing has been brought on record that thereafter a fresh order was passed as such by the Commissioner which could have been challenged accordingly.

Even otherwise, the appeal is barred by an inordinate delay of 3481 days having been filed after a decade. The amount awarded has not been deposited and an application for exemption i.e. C.M. No. 11801-CII of 2014 has been filed that exemption be granted from depositing the amount. The appeal, on this ground also, is also not maintainable as Section 30 of the Act provides that no appeal shall lie by an employer under clause (a) unless the memorandum of appeal is accompanied by a certificate by the Commissioner to the effect that the appellant has deposited the amount payable under the order appealed against. Under Section 30-A of the Act, this Court can direct withholding of the payment provided the amount has been deposited.

In such circumstances, no ground is also made out for allowing the application as it would amount to subverting the provisions of the Act itself as the exemption application would come in each case frustrating the

purpose of quick disbursal to the employees aggrieved against the injuries and the legal representatives in death claims.

Resultantly, this Court is of the opinion that the appeal itself is liable to be dismissed on this ground also.

Accordingly, the present appeal is dismissed on account of the above said reasons.

All the applications also stand disposed of accordingly.

24.01.2017
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No