

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

**FAO No.5319 of 2013 (O&M)
Decided on : 22.03.2017**

Subhash

... Appellant

Versus

Sanjay Madan and another

... Respondents

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

Present : Mr. M.S. Khillan, Advocate
for the appellant.

Mr. Neeraj Khanna, Advocate for
Mr. Ravinder Arora, Advocate
for respondent No.2-Insurance Company.

G.S. Sandhawalia, J. (Oral)

CM-22754-CII-2013

The present application has been filed for condonation of delay of 185 days in filing the present appeal.

Notice of the application was issued, but no reply has been filed.

Accordingly, keeping in view the averments made in the application, duly supported by the affidavit of the appellant, the delay of 185 days in filing the appeal is condoned.

CM stands disposed of.

Main case

The present appeal is directed against the order dated 17.09.2012, whereby the Commissioner, Karnal under the Employee's Compensation Act, 1923 has awarded compensation of ₹39,932/- by applying the relevant factor and keeping in view the fact that the appellant

had a 8% disability which is permanent in nature. The statutory interest element was not granted and it was only conditional that if the compensation is not deposited within a period of 30 days from the receipt of the order, the liability would arise of the Insurance Company.

The claim was based on account of the fact that on 20.04.2005 an accident had taken place leading to the fracture of both bones of left leg and fracture of upper end of tibial bone while driving the Canter, on which the appellant was employed as a driver. Disability was, thus, pleaded on account of the fact that implants had been inserted in the fractured bone and he had been disabled to drive the vehicle. Salary was claimed to be ₹5,000/-, which was contested by the employer to the extent that it was only ₹4,500/-.

In view of the vehicle being insured and the fact that there was an admission regarding the fact that the appellant was working as driver and accident had happened out of and during the course of the employment, the amount has been awarded.

The medical certificate was exhibited as Ex.A, which goes on to show that there was 8% disability. The bones were malalanged and united.

Counsel for the appellant has submitted that the said disability would as such disable the appellant from his work as a driver.

However, it is to be noticed that no such evidence has come on record in the form of medical expert that the appellant is handicapped as such as from performing his normal duties of a driver and the disability

is only of 8% as per the certificate. The evidence was only of the implants being put for the purpose of aligning the fractured leg. The certificate is dated 25.07.2007 (Annexure A-1).

Thus, no fault as such can be found in the order of the Commissioner who has applied the relevant factor and calculated the compensation. However, keeping in view the fact that the statutory interest has not been granted from the date it fell due, this Court is of the opinion that the appellant is entitled for the interest on the said amount.

In the present case, since the certificate is dated 25.07.2007 and the order was passed on 17.09.2012, the appellant would be entitled for the interest from the date of the issuance of the certificate, in view of the judgment of the Apex Court in '**National Insurance Co. Ltd. Vs. Mubasir Ahmed and another**' 2007 (2) SCT 224. The relevant portion reads as under:-

*“Interest is payable under Section 4-A(3) if there is default in paying the compensation due under this Act within one month from the date it fell due. The question of liability under Section 4-A was dealt with by this Court in **Maghar Singh v. Jashwant Singh, 1999(1) SCT 265 (SC) : (1998(9) SCC 134)**. By Amending Act, 14 of 1995, Section 4-A of the Act was amended, inter alia, fixing the minimum rate of interest to be simple interest @ 12%. In the instant case, the accident took place after the amendment and, therefore, the rate of 12% as fixed by the High Court cannot be faulted. But the period as fixed by it is wrong. The starting point is on completion of one month from the date on which it fell due. Obviously it cannot be the date of accident. Since no indication is there as when it becomes due, it has to be taken to be the date of adjudication of the claim. This appears to be so because Section 4-A(1) prescribes that compensation under Section 4 shall be paid as*

soon as it falls due. The compensation becomes due on the basis of adjudication of the claim made. The adjudication under Section 4 in some cases involves the assessment of loss of earning capacity by a qualified medical practitioner. Unless adjudication is done, question of compensation becoming due does not arise. The position becomes clearer on a reading of sub-section (2) of Section 4-A. It provides that provisional payment to the extent of admitted liability has to be made when employer does not accept the liability for compensation to the extent claimed. The crucial expression is "falls due". Significantly, legislature has not used the expression "from the date of accident". Unless there is an adjudication, the question of an amount falling due does not arise.

Accordingly, the substantial question of law is answered in favour of the appellant and the appeal is partly allowed. The amount of interest for the said period from 25.02.2007 @ 12% per annum be paid to the appellant within 2 months from the receipt of the certified copy of this order.

MARCH 22, 2017
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No