

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.224 of 2016

1. General Manager N.F.Railway, Maligaon, Gowahati (Assam)
2. Divisional Railway Manager, N.F. Railway, Katihar

... .. Appellant/s

Versus

Moti Lal Karn Son of Late Singheshwar Prasad resident of Mohalla -
Railway Emergency Colony, Quarter No. 730 (M), Police Station Sahayak,
District - Katihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Anil Singh Mr. Amrit Anurag
For the Respondent/s	:	Mr. Prabhakar Sen

**CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA
JAISWAL**

ORAL JUDGMENT

Date : 18-08-2018

Ref: I.A. no. 2668 of 2016

The aforesaid interlocutory application has been filed by the appellants for condonation of delay of about five months 28 days in preferring this appeal with the case that after passing order and award by the learned Labour court, considerable time was taken in taking decision by several superior offices of the appellants for preferring this appeal and in completing the formalities required for filing the appeal and after completing the aforesaid formalities, this appeal has been preferred and there is no deliberate and intentional laches on the



part of the appellants in preferring this appeal in time.

Respondent filed no rejoinder against the aforesaid interlocutory application.

Considering the aforesaid facts and circumstances, I find sufficient grounds in the said application for condoning the delay. Hence, the aforesaid delay made in preferring this appeal is condoned and said interlocutory application is accordingly, allowed.

M.A. no. 224 of 2016

Heard learned counsel for the appellants and learned counsel for the respondent on this Miscellaneous Appeal.

2. This miscellaneous appeal has been preferred against the order and award dated 08.07.2015 passed by P.O. Labour Court, Purnea in W.C. Case no. 01 of 2014 whereby the learned labour court allowing the claim petition filed by the applicant, directed the opposite party to pay compensation to the tune of Rs. 8,16,083/- along with interest @ 5% per annum from the date of accident till the date of payment to the applicant.

3. Factual matrix of the case is that W.C. Case no. 01 of 2014 was filed by the applicant-respondent Moti Lal Karan under W.C. Act-1923 for awarding compensation to the



tune of Rs. 3,00,000/- on account of permanent disablement sustained by him during discharge of his duty with the case in succinct that the applicant was employed as points man under S.M.G. Katihar having gross salary of Rs. 10,009/-. On 30.05.2007, while he was connecting rail engine with bogies, his left thumb was badly injured. He was brought to the Railway Hospital, Katihar to accord him medical aid, where he remained under treatment from 30.05.2007 to 20.07.2007 and due to said accident, the applicant became completely unfit to discharge his duty as points man. The Medical Board has found the loss of earning capacity of the applicant to the extent of 65% due to said physical incapacity. The applicant was placed as a dresser in the Medical Department in the same pay-scale. He had lodged a claim before D.R.M(P) Katihar, who repudiated his claim. Hence, he filed the aforesaid case. It has further been submitted that due to aforesaid accident, the applicant has suffered great physical, financial and mental loss.

4. Both the opposite parties put their appearance in the case and filed their written statement. Both parties have adduced evidence in buttress of their respective cases.

5. After hearing the parties and perusing the record, learned Labour court passed the aforesaid order and



award as detailed in the earlier paragraph.

6. Being aggrieved and dissatisfied with the aforesaid order and award, the opposite parties have preferred the present appeal.

7. It is submitted by learned counsel for the appellants that the learned Labour court has wrongly calculated quantum of compensation on the basis of gross-salary of the applicant-respondent. As the accident is of 30.05.2007, the said accident is covered under the Workmen's Compensation Amendment Act-2000 and as per the provision of Explanation-II of Section 4(a)(b) of the aforesaid amended Act, where the monthly wages of a workman exceed, four thousand rupees, his monthly wages for the purposes of clause (a) and clause (b) of Section 4(1) shall be deemed to be Rs. 4000/- only and the case of respondent is covered under clause (b) which is meant for the compensation where permanent total disablement results from the injury. It is further submitted that the injury sustained by the respondent-applicant is non-schedule injury and as per the report of Chief Medical Superintendent (Ext.A), the respondent-applicant has sustained permanent disablement to the extent of 65% in his left thumb and loss of earning capacity to the extent of 65% due to said physical incapacity.



Hence, the respondent-applicant would be entitled to get only 65% of total amount of compensation, but the learned Labour court has assessed quantum of compensation without considering the aforesaid important aspects of the case which involves substantial question of law.

8. On the other hand, it is submitted by learned counsel for the respondent-applicant that actually the respondent-applicant used to get Rs. 16869/- as his net salary, but learned Labour court has considered only gross salary of the respondent-applicant as Rs. 10,009/- per month in working out quantum of compensation which is just and proper. The quantum of compensation is to be assessed on the basis of the aforesaid gross salary and not at Rs. 4000/- per month.

9. From perusal of record, it appears that the accident had taken place on 30.05.2007, hence, the provision of Workmen's Compensation Amendment Act-2000 prevalent at the relevant time of accident will apply in the case under hand and as per Explanation-II of Section 4(a) (b) of the said Act, where the monthly wages of a workman exceed, four thousand rupees, his monthly wages for the purposes of clause (a) and clause (b) shall be deemed to be Rs. 4000/- only. The case of respondent comes under clause (b) which is meant for



permanent total disablement resulting from the injury. The respondent has sustained permanent disablement to the extent of 65% in his left thumb and loss of earning capacity to the extent of 65% due to said physical incapacity caused by the injury sustained by him in the said accident met during duty hour. Considering the aforesaid monthly wages of the respondent-applicant, the total amount of compensation comes to the tune of Rs. 3,26,140/- (4000/2x163.07). As the respondent-applicant has sustained loss of earning capacity to the extent of 65% by virtue of permanent disablement in his left thumb, 65% of the aforesaid amount of compensation to the tune of Rs. 2,11,991/- is awarded to him by way of compensation. Not considering the aforesaid important aspects by the learned Labour court in working out the amount of compensation, in my considered opinion, involves substantial question of law.

10. In the facts and circumstance, the appellants are directed to make payment of aforesaid amount of compensation along with interest @ 5% per annum from the date of accident till the day of payment to the respondent-applicant within two months from the date of this judgment.

11. Accordingly, this miscellaneous appeal is



disposed of with the aforesaid modification in the order and
award passed by the learned Labour court.

(Prakash Chandra Jaiswal, J)

rohit/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	23-08-2018
Transmission Date	N.A.

