

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

473

FAO No. 1037 of 1997 (O&M)

Date of decision: 18.04.2018

Jawahar Singh

...Appellant

Vs.

Automax Ltd. and Another

...Respondents

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. B.R. Rana, Advocate for the appellant.

None for respondent No. 1.

Mr. Harsh Aggarwal, Advocate for respondent No. 2.

AJAY TEWARI, J. (ORAL)

This appeal has been filed against the award dated 31.10.1996 passed by the Commissioner, Gurgaon under the Workmen's Compensation Act, 1923 complaining of in-adequate compensation.

The brief facts are that the appellant was working as a helper with respondent No. 1. When on fateful day his hand got struck in the machine and four fingers of left hand were partially amputated. The Commissioner took the disability as per Schedule-II and fixed it 22% and computed the compensation accordingly.

Learned counsel for the appellant has argued that as per the case of the appellant he had lost his earning capacity completely to do anything after the accident and therefore, was entitled to count his disability as 100% and relied upon *Pratap Narain Singh Deo vs.*

Srinivas Sabata and another, AIR 1976 SC 222, wherein the Supreme Court has clearly held that the main determinate for compensation is loss of earning capacity and Schedule-II cannot over write Section 2(g).

In the circumstances, it has to be held that the compensation computed by the Commissioner only on the basis of Schedule-II is wrong. That, however, does not mean that the appellant has lost his entire earning capacity with the loss of four fingers partially. In view of the facts, I deem it appropriate to compute his disability as 50% rather than 22%. The rest of the award would remain same.

It is further clarified that the enhanced interest @12% compounded which was awarded by the Commissioner, is also set aside and respondent No. 2 would be liable only to pay interest @ 6%.

Since the main case has been decided, pending civil miscellaneous, if any, shall be disposed of.

April 18, 2018

Poonam (II)

**(AJAY TEWARI)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No