

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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XOBJC-41-CII of 1998 in/and
FAO No.208 of 1998 (O&M)
Date of Decision : 16.05.2018

United India Insurance Company Ltd.

..... Appellant

Versus

Mumtaz Ali and another

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present:- Mr. D.P.Gupta, Advocate
for the appellant.

None for respondent No.2.

AJAY TEWARI, J. (Oral)

Mr. Ramesh Hooda, Advocate for respondent No.1 states that the brief has been taken away.

This appeal has been filed by the Insurance Company against the award dated 30.09.1997 passed by the Commissioner, Rohtak under the Workmen's Compensation Act, 1923 (for short 'the Act'). The Insurance Company-appellant has raised very limited issues and consequently detailed reference to the facts would not be necessary.

It has been argued that there is no basis given in the award for the amount awarded. As per learned counsel for the appellant even if all the facts given in the claim petition are admitted then after taking 100% disability the amount would come to Rs.1,08,455/-(though as per him the Commissioner rightly took the disability at 90% and consequently, the compensation should have been even lesser). Since none has appeared on behalf of respondents, I accept the argument regarding the lack of reasons

for the awarded amount and accept that the compensation would be Rs.1,08,455/-.

However, the argument that disability had to be taken at 90% has to be rejected. In *Pratap Narain Singh Deo Vs. Srinivas Sabata (1976) 1 SCC 289* the Supreme Court has clarified that the earning capacity of a person who works by hand could be said to be reduced by 100% if one of his hands is lost and in such a case, it is not the schedule which would be determinative.

There are cross objections which were preferred by the claimants and as per the cross objections the claimants had prayed for higher compensation on account of his income and had further claimed interest and penalty. As regards the claim for interest and penalty, it is the case of the counsel for the appellant that a reading of Section 30 (a) (aa) of Act makes it clear that an order declining interest and penalty is not appealable because as per him Section 30 (a) of the Act mentions that an order awarding compensation or dis-allowing the claim is appealable but sub Section (aa) only makes an order awarding interest or penalty appealable.

Though on a strict and legalistic reading of the Act, the argument of the counsel for the appellant can not be rejected yet it also can not be lost sight of that the Act which is otherwise a beneficial legislation would become arbitrary if it only granted right of appeal to one person and not to another person. It is trite to say that an appeal is a creation of statute and consequently the statute could well have provided that no appeal would lie in an issue of penalty or interest but it can not be said that the issue of

penalty and interest can be appealable only at the behest of one part. This could render the provision discriminatory in the circumstances of the case.

Resultantly, I hold that the cross objections on the account of interest and penalty are maintainable. On this ground I find that though the accident had taken place in the year 1994 compensation was deposited after 4 years. Resultantly, I order interest @6% p.a. from a date one month after the date of accident till the date of payment. I further order 50% penalty on Rs.1,08,455/-.

Out of this the penalty amount can be recovered by the appellant from the employer-respondent No.2. It is further clarified that any amount which is still liable to be repaid by the claimant as a consequence of the adjustment made in this order can be recovered by the Insurance company.

Appeal stands disposed of.

Since the main case has been decided, the pending Civil Misc. Application, if any, also stands disposed of.

16.05.2018

Pooja sharma-I

**(AJAY TEWARI)
JUDGE**

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No