

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

Date of decision: 01.11.2018

FAO No.2327 of 2013 (O&M)

Uttar Haryana Bijli Vitran Nigam Ltd. and another ... Appellants

Versus

Virender ... Respondent

FAO No.3200 of 2013 (O&M)

Virender ... Appellant

Versus

Uttar Haryana Bijli Vitran Nigam Ltd. and another ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Nitin Rathee, Advocate
for the appellants in FAO No.2327 of 2013 and
for the respondents in FAO No.3200 of 2013.

Mr. R.S. Mamli, Advocate
for the appellant in FAO No.3200 of 2013 and
for respondent No.2 in FAO No.2327 of 2013.

REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.2327 and 3200 of 2013 as these have emerged out of same order dated 28.02.2013 passed by the Commissioner under Employees Compensation Act, 1923 (hereinafter to be referred as 'the Commissioner') in respect of injuries sustained by Virender in an occurrence dated 01.10.2010. For facility of reference, facts are taken

from FAO No.2327 of 2013.

In brief, the facts pleaded by the claimant are that Virender, respondent was working as Assistant Lineman with Uttar Haryana Bijli Vitran Nigam Ltd. (in short 'the Nigam') on contractual basis. On 01.10.2010, he was on official duty for repairing the fault at Sector 2, Power House. He climbed the pole to repair the fault but due to fault of officials of the appellants, they started electricity supply due to which Virender get electrocuted, fell from the pole and received burn injuries. He was admitted in PGIMS, Rohtak for treatment. Due to injuries sustained, he has become permanently disable and spent a huge amount on his treatment. The accident took place due to negligence and carelessness on the part of officials of the appellants.

The appellants filed reply and challenged maintainability of the claim petition. However, the factum of accident and employment is admitted. It is averred that accident was caused due to sole negligence of the respondent/claimant. He suffered electric shock as he pulled the female connect from the ground tied with aluminum strand and end of the strand touched another line which was in running condition. None of the officials or officer of the Nigam is responsible for the accident except the applicant. Departmental investigation was conducted and it was found that the respondent suffered injuries due to his own negligence. FIR No.405 dated 03.10.2010 under Section 337 IPC lodged at Police Station Urban Estate is false. All other material averments of the claim application were denied with a prayer for dismissal of claim for compensation.

The controversy between the parties led to framing of issues, reproduced in para 5 of the impugned order.

Having heard counsel for the parties, in the light of materials on record, the Commissioner awarded compensation of Rs.8,81,717/- with interest @ 12% per annum from expiry of one month of date of accident till deposit with the Commissioner.

Feeling aggrieved against the order, FAO No.2327 of 2013 has been filed by the Nigam and another whereas the other appeal has been preferred by the claimant seeking enhancement of compensation.

The sole submission made by counsel for the appellants is that as the claimant has suffered permanent disability only to the extent of 39%, in view of disability certificate Ex.A62 and testimony of Dr. Suresh Kumar, Professor Orthopaedic Department, PGIMS, Rohtak AW2, the Commissioner has grossly erred by considering his disability to the tune of 100% and assessing compensation on that basis. It is further argued that compensation is liable to be assessed by taking into account income of the victim at Rs.6500/- per month and permanent disability to the tune of 39%.

Counsel representing the respondent/claimant has supported findings of the Commissioner, considering permanent disability to the tune of 100%. It is argued with vehemence that though the victim has been rendered permanently disable to the tune of 39% in view of disability assessed by the Medical Board but Dr. Suresh Kumar has categorically deposed that the nature and extent of disability suffered by the victim would render him permanently disable to work as a Lineman who cannot

climb the pole on account of disability. For this purpose, reference has been made to judgment of Hon'ble the Supreme Court by a Four Judge Bench in **Pratap Narain Singh Deo Vs. Shrinivas Sabata and another, AIR 1976 (SC) 222**. According to counsel, in **Pratap Narain Singh Deo's case (supra)**, the injured was a Carpenter and due to sustaining of injury in the course of employment, there was amputation of left hand above elbow. The Court has held that since the work of carpentry cannot be done with one hand, disablement is held to be total and not partial and accordingly compensation was assessed by treating disability to the extent of 100%.

Another submission made by counsel for the claimant is that though the claimant has been allowed compensation in regard to medical expenses and permanent disability, payable with interest but as the appellants (employer) did not pay compensation in compliance with the provisions of the Act, they are liable to pay penalty for their default.

I have heard counsel for the parties, perused the paper book and records.

Be that as it may, it is undisputed position of the case that Virender was working on contract basis as Assistant Lineman on salary of Rs.6500/- per month. He got electrocuted when he was discharging his official duties as a Lineman. The plea of the appellants that the victim sustained injuries on account of negligence or/and carelessness attributable to him has been rejected by the Commissioner. Counsel for the appellants has not raised any issue to assail findings of the Commissioner in this

regard.

The question that survives for consideration is, whether the respondent/victim is entitle to compensation by treating permanent disability to the extent of 39% or 100%, as has been allowed by the Commissioner. Dr. Suresh Kumar AW2 was examined to prove disability assessed by the Medical Board and disability certificate Ex.A62. In the concluding line of his examination in chief, he has stated that because of disability suffered by Virender, he cannot perform duty which he was supposed to do by climbing the pole. In his cross examination, he has denied that disability assessed can reduce with passage of time or they have shown disability at a higher rate. His testimony that the injured cannot perform his duties by climbing the pole due to disability suffered by him has not been challenged in cross examination and amounts to admission on the part of appellants.

The appellants examined Karambir, JE RW1 and S.K. Hooda, SDO RW2. Both these witnesses were examined to prove that occurrence had happened on account of negligence and carelessness attributable to the victim. Their testimonies are conspicuously silent with regard to nature of duties assigned to an Assistant Lineman or the nature and extent of disability suffered by the victim would not render him unable to discharge his duties as such. Taking into consideration the nature and extent of disability suffered by the victim coupled with unchallenged medical opinion that the victim cannot climb the pole for performing the duties as Assistant Lineman and in absence of any evidence by the appellants that

Assistant Lineman can perform duties other than correcting the line by climbing the pole, when examined in the light of judgment of Hon'ble the Supreme Court in **Pratap Narain Singh Deo's case (supra)**, I find it difficult to accept that the Commissioner has committed an error by treating the disability to the extent of 100% for assessment of loss of income. Counsel for the appellants has not cited any judgment contrary to what has been laid down in **Pratap Narain Singh Deo's case (supra)**. In this view of the matter, findings by the Commissioner with regard to assessment of compensation on account of permanent disability cannot be faulted with.

Indisputably, the appellants did not pay compensation to the victim in terms of relevant provisions of the Act. As disability suffered by the victim has been considered to the extent of 100% because of his inability to perform the duty as Assistant Lineman, in my considered opinion, the victim has been adequately compensated by the Commissioner. In this view of the matter, contention raised by counsel for the claimant for grant of penalty is rejected.

For the foregoing reasons, finding no merit, the appeals fail and are accordingly dismissed, leaving the parties to bear their own costs. As the appeal (FAO No.3200 of 2013) has been decided on merits, application for condonation of delay is of academic relevance only.

01.11.2018

ashok

Whether speaking/reasoned:

Whether reportable:

Yes / No

Yes / No

(REKHA MITTAL)
JUDGE