

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

-.-

FAO 1369 of 2014 (O&M)

Date of decision: 19.03.2019

Ami Chand

.....*Appellant*

Versus

Ram Chander and another

.....*Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. S K Verma, Advocate
for the appellant

Mr. Suman Jain, Advocate and
Ms Mrignaki Nagpal, Advocate
for respondent No. 2

-.-

Rekha Mittal, J. (Oral)

The claimant is in appeal seeking enhancement of compensation on account of injuries sustained in an accident that took place on 01.01.2010 while the injured was working as labour in the fields of Ram Chander-respondent No. 1.

The Commissioner under the Workmen's Compensation Act, 1923 has awarded Rs.3,71,902/-, in view of its finding that wage of the injured is Rs.4,000/- per month and considering admissible wage to the extent of 60% and disability to the extent of 70%. He has also been awarded interest of Rs.84,578/- from 03.03.2010 to 25.01.2012 and future interest @ 12% per annum on the amount of compensation from the date of order till realization.

The sole submission made by counsel for the appellant is that

as the victim suffered 70% disability on account of amputation of left hand, he would not be able to work as agricultural labour in future, therefore, compensation may be assessed by treating his disability to the extent of 100%.

Counsel representing the insurance company, on the contrary, would argue that Dr. Pawan Kumar, Medical Officer, Govt. Hospital, Sirsa (PW2) was examined to prove disability and he has deposed that wrist of left hand of Ami Chand was found amputated/cut and disability certificate Ex.PW2/A was issued in this regard. It is further argued that as per schedule-I Part-II of the Employee's Compensation Act, 1923 (in short, 'the Act'), loss of hand or of the thumb and four fingers of one hand or amputation from 4½" below tip of olecranon, percentage of loss of earning capacity is to be taken at 60% and the Commissioner has rightly assessed loss of earning capacity to the extent of 60%.

Counsel for the appellant, in reply, would argue that there was amputation of fore arm and not hand and the said fact has been recorded in the disability certificate Ex.PW2/A proved by Dr. Pawan Kumar.

As has been noticed hereinbefore, Dr. Pawan Kumar was examined by the claimant. He had stated that wrist of left hand of Ami Chand was amputated and the Medical Board assessed his disability to the extent of 70% and disability certificate is Exhibit PW2/A. No clarification was sought from the doctor with regard to discrepancy in his oral statement and observations in disability certificate Ex.PW2/A.

Taking into consideration serial No. 4, Part II of the schedule I of the Act, I do not find an error in findings of the Commissioner to allow

percentage of loss of earning capacity to the extent of 60% in view of nature of disability suffered by the victim. However, the Commissioner has accepted plea of the victim that he was getting salary of Rs.3,000/- + Rs.50/- per day making it Rs.4,500/- per month but assessed his wage at Rs.4,000/- per month as per limitation provided in the Act but amount of Rs.50/- per day as perks paid to the victim cannot be treated as a part of wage, therefore, benefit of entire amount of Rs.4,500/- per month for assessing loss of compensation is required to be given. Accordingly, compensation is calculated at Rs.4,18,389.30 (4,500/- x 60% x 70% x 221.37). The appellant shall be entitle to additional amount of Rs.46,487.30 with interest at the rate of 12% per annum from the date of occurrence till realization. The insurance company is directed to deposit the additional amount with interest, with the Commissioner concerned within a period of two months.

In view of the above, the appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

19.03.2019
Mohan Bimbura

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No