

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

-.-

FAO 5032 of 2013 (O&M)

Date of decision: 08.05.2019

Kashmir Singh

.....Appellant

Versus

Karamjit Singh and another

.....Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. Munish Gupta, Advocate
for the appellant
None for the respondents

-.-

Rekha Mittal, J. (Oral)

The claimant is in appeal seeking enhancement of compensation assessed by the Commissioner, Hosiarpur under Employee's Compensation Act, 1923 (in short, 'the Act') in respect of injuries sustained in an occurrence that took place on 22.09.2010.

The Commissioner awarded Rs.2,07,024/- in regard to loss of income qua disability and Rs.1,19,000/- towards medical expenses making total sum of Rs.3,26,024.00, payable with interest @ 9% per month from 27.10.2010 till realization. However, in case compensation is not paid within one month from date of order, the insurance company has been held liable to pay interest @ 12% per annum with effect from 27.10.2010.

Counsel for the appellant would argue that the claimant was a truck driver before unfortunate occurrence on 22.09.2010 that rendered him disable to the extent of 40% which is permanent in nature but because of aforesaid disability, he would no longer be able to drive the truck as a professional driver and as such, the entire income of the victim is to be

taken into account for computing compensation in respect of disability.

Another submission made by counsel is that as per averments raised in the application for compensation, the appellant was paid salary of Rs.5,000/- per month besides Rs.100/- per day towards diet money. The appellant reiterated his plea in his testimony on oath but there is hardly any challenge to his statement in this regard. The employer did not appear in the witness box to counter testimony of the claimant with regard to his entitlement to diet money @ Rs.100/- per day. It is argued that the appellant cannot be condemned if the employer had not maintained any record with regard to payment of salary and diet money etc. In this context, reference has been made to judgment of Hon'ble the Supreme Court ***Jaya Biswal and others vs Branch Manager, IFFCO Tokio General Insurance Company Limited and another 2016 (1) R.C.R. (Civil) 1003.***

Counsel would further argue that interest has been allowed @ 9% per annum in case the compensation is paid within one month but the appellant is entitle to interest @ 12% per annum, statutorily provided, irrespective of whether the compensation is paid within the stipulated period or otherwise.

The last submission made by counsel is that the Commissioner has not adverted to the question of entitlement of appellant to penalty for failure of the employer to pay compensation within the prescribed period of 30 days from the date of occurrence.

There is no representation on behalf of the respondents despite service.

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

There is no dispute that the appellant was a truck driver and was the employee of respondent No. 1 on truck No. PB 07 Q 6655 on the fateful day of 22.09.2010. The appellant examined Dr. Jaswinder Pal, M.S. (Ortho) Civil Hospital, Hoshiarpur (AW3) to prove disability and disability certificate Ex.AW3/A. The witness would depose that Kashmir Singh had fracture on left thigh in which plate and screws were inserted. There was discharge from wound on the thigh and bone had not properly united. There was stiffness in left knee and he was able to rotate his knee upto 90 degree. There was stiffness in the left pelvis. The skin under the left knee and on its front side was bad. He had difficulty in sitting crossed legs and squatting position. He will have difficulty in driving because of disability.

Taking into consideration testimony of Dr. Jaswinder Pal, (AW3), the appellant would not be in a position to pursue his career as professional driver on a heavy vehicle. When the case is examined in the light of judgment of Hon'ble the Supreme Court ***Partap Narain Singh Deo vs Shrinivas Sabata and another, 1976 (1) SCC 289***, disability of the victim is to be taken as 100% for assessing compensation qua disability. In the referred authority, the injured workman was a Carpenter and he sustained injury resulting in amputation of left hand above elbow. The Apex Court held that since the work of carpentry cannot be done with one hand, disablement is total and not partial.

The Commissioner has assessed income of the victim at Rs.5,000/- but did not extend benefit of diet money at the rate of Rs.100 per

day. Perusal of testimony of Kashmir Singh would reveal that there is no serious challenge to his plea with regard to his being paid Rs.100/- per day for diet money. Karamjit Singh-respondent No. 1 did not appear in the witness box to counter testimony of the claimant in this regard. As has been rightly argued by counsel for the appellant, if the employer was not maintaining any record with regard to appellant's salary/diet money etc., the appellant cannot be condemned for non-production thereof. The Commissioner has not assigned any reason to reject claim of the appellant with regard to diet money. In this view of the matter, the appellant shall be entitle to loss of income at the rate of Rs.7,000/- including diet money @ Rs.100/- per day for a period of twenty days in a month. The factor applied by the Commissioner is correct and affirmed. As such, loss of dependency qua disability is calculated at Rs.7,24,584.00 (7,000 x 172.52 x 60%). A sum of Rs.1,19,000.00 towards medical expenses allowed by the Commissioner is affirmed. Accordingly, total compensation comes to Rs.8,43,584.00 (Rs.7,24,584.00 + Rs.1,19,000.00). The aforesaid amount shall carry interest @ 12% per annum from the date of occurrence till realization.

So far as plea of the appellant qua penalty to be paid by the employer, perusal of the impugned order would reveal that the Commissioner has not adverted to the question of payment of penalty despite a specific plea raised by the claimant in this regard. In the given scenario, the appellant is left at liberty to file an appropriate application before the Commissioner concerned for deciding the question of penalty within a period of two months. In case such an application is filed by the

appellant within the stipulated period, the same shall be decided by the authority concerned after notice to respondent No. 1, in accordance with law.

In view of what has been discussed hereinabove, the appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

08.05.2019
Mohan Bimbura

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