IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

204 FAO No.5332 of 2014 (O&M)

Date of decision: 09.05.2019

RAJ KUMAR ... Appellant

Versus

M/S SUN RISE WOOL TEX & ANR ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Diwan S. Adlakha, Advocate for the appellant.
Mr. Punit Jain, Advocate for the insurance company.
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REKHA MITTAL, J. (Oral)

CM-14921-CII-2014

Prayer in this application is for condonation of delay of 261 days in filing the appeal.

Reply to the application for condonation of delay filed on behalf of the insurance company in the Court, is taken on record.

In view of averments made in the application supported by an affidavit of the appellant coupled with that provisions of the Employees Compensation Act, 1923 (in short 'the Act) providing for compensation are benevolent social legislation, application is allowed and delay of 261 days in filing the appeal is condoned subject to the condition that the claimant shall forgo interest for the period of delay, in case compensation is enhanced.

Main Case

The injured is in appeal seeking enhancement of compensation on account of injuries sustained in an occurrence that took place on 09.12.2002, during course of employment as machine man with M/s Sun Rise Wool Tex, GT Road, Kohand, District Karnal.

The Commissioner, Karnal awarded Rs.21,757/- which shall carry interest @ 12% per annum in case the compensation is not deposited within 30 days from the date of receipt of order dated 30.07.2013.

Counsel for the appellant would argue that as per disability certificate Ex.A1, the appellant has suffered disability to the extent of 10%

but as he lost whole middle finger and two phalanges each of ring and little finger, in view of Schedule 1 part II particularly Sr. Nos.31 and 36 of part II, loss of earning capacity is 24% and accordingly, compensation is liable to be assessed at a higher rate.

Another submission made by counsel is that interest @ 12% per annum, statutorily provided, may be allowed w.e.f date of occurrence till realisation.

Counsel for the insurance company, on the contrary, would argue that interest is payable w.e.f. 30 days from the date of accident.

Counsel for the insurance company has not disputed that in view of nature of injuries sustained resulting in loss of middle finger as a whole and two phalanges each of ring and little finger, loss of earning capacity is to be assessed in the light of provision made in part II of Schedule 1 appended to the Act. Accordingly, percentage of loss of earning capacity comes to 24%. By applying factor of 169.44 and wage of the victim as Rs.2140/- per month, compensation payable to the victim comes to Rs.52,214/- (2140 x 24% x 169.44 x 60%).

The Commissioner has awarded interest @ 12% per annum on the awarded amount in case compensation is not deposited within 30 days from the date of receipt of order. He has not assigned any reason to extend concession of non-payment of interest in case compensation is deposited within 30 days. Taking into consideration the provisions of the Act enacted with an intent to make good loss the injured or family of the deceased has suffered, interest would be payable from the date of accident till realization on the amount of compensation assessed by the Commissioner. However, on the additional amount i.e. Rs.30,457 held payable by this Court, interest would be payable from the date of accident till realization except for the period of delay of 261 days in filing the appeal.

The appeal is partly allowed in the aforesaid terms.

09.05.2019 **(REKHA MITTAL)**
ashok **JUDGE**

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