

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

212

FAO No.496 of 2015 (O&M)
Date of decision: 27.01.2020

NATER PAL

... Appellant

Versus

XEN, SUB URBAN DIVISION NO.1, UHBVNL LTD.
KARNAL AND ANR.

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Barjinder Singh, Advocate for the appellant.
Mr. SK Mahajan, Advocate for the respondents.

REKHA MITTAL, J. (Oral)

CM No.1390-CII of 2015

Prayer in this application is for condonation of delay of 269 days in filing the appeal.

In view of averments made in the application supported by an affidavit of appellant, application is allowed and delay of 269 days in filing the appeal is condoned subject to the condition that appellant shall forgo interest for the period of delay, in case compensation is enhanced.

Main Case

Challenge in the present appeal has been directed against order dated 27.01.2014 passed by the Commissioner under the Employees Compensation Act, 1923 (in short 'the Act') to the limited extent that claim of the appellant for payment of penalty has been rejected.

Perusal of the order impugned would reveal that appellant has been awarded compensation to the tune of Rs.5,10,701/- in respect of injuries sustained during the course of employment. In the penultimate para, the Commissioner has adverted to the question of payment of interest and penalty. A relevant extract therefrom reads as follows:-

The counsel for the applicant has also argued for interest and penalty but the counsel for the respondents has opposed and submitted that the respondents are not liable to pay any interest or penalty. The accident of the applicant was well within the knowledge of the respondents from the day of accident. The amount of compensation was due to the applicant but the respondents have not cared about the payment of compensation and the respondents have committed default in paying compensation due under the Act within one month from the date of accident. The respondents

have not paid the due compensation amount even after filing of the present claim despite the due knowledge of the accident of the applicant. Therefore, the applicant is also entitle for the simple interest at the rate of 12% per annum, on the amount awarded above i.e. on Rs.5,10,701/- from next day to the date of accident i.e. from 01.07.2009 to the date of this order i.e. 27.01.2014 which comes to Rs.2,80,375/- and the same is hereby allowed in favour of the applicant. Liability to pay interest on the amount of compensation is also hereby fastened upon the respondents No.1 and 2. There is no order as to penalty.

Perusal of the aforesaid extract makes it evident that the Commissioner has not assigned any reason to reject plea of the appellant for payment of penalty on account of delay on the part of respondents to pay compensation.

Section 4-A of the Act, deals with compensation to be paid when due and penalty for default. Section 4-A (3)(b) says, reads thus:

if, in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of arrears and interest thereon, pay a further sum not exceeding 50% of such amount by way of penalty.

The Commissioner has not recorded any finding justifying delay in payment of compensation by the employer. On the contrary, it has been held that amount of compensation was due to the applicant but respondents have not cared about payment of compensation and committed default in paying within one month from the date of accident. In the given circumstances, findings of the Commissioner in concluding line of aforesaid extracted para that 'there is no order as to penalty' are bereft of reasoning, thus, set aside. Taking into consideration provisions of the Act and observations of the Commissioner noticed hereinbefore, the appellant shall be entitle to Rs.1 lakh towards penalty.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms. In case the respondent(s) fails to pay amount of penalty within a period of two months, the same shall carry interest @ 7.5% per annum from expiry of 30 days of the accident till realization, except for the period of delay of 269 days in filing the appeal.

27.01.2020

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:

Yes / No

Whether reportable:

Yes / No