

IN THE HIGH COURT OF ORISSA AT CUTTACK

FAO No.258 of 2016

(From the judgment dated 6th April, 2016 passed by the learned Commissioner for Employees Compensation and Asst. Labour Commissioner, Balasore in E.C. Case No.43/2007)

Abinash Khemka

....

Appellant

-versus-

***The Commissioner for Employees
Compensation-cum-Asst. Labour
Commissioner, Balasore and another***

Respondents

Advocate(s) appeared in this case:-

For Appellant : Mr. S.S. Sahoo, Advocate

For Respondents : Mr. A.S. Nandy, Advocate
For Respondent No.2

CORAM: JUSTICE B.P. ROUTRAY

JUDGMENT

22nd August, 2022

B.P. Routray, J.

1. Present appeal by the employer is directed against judgment dated 6th April, 2016 of the learned Commissioner for Employees Compensation and Asst. Labour Commissioner, Balasore in E.C. Case No.43/2007 wherein compensation to the tune of Rs.1,52,012/- has been granted to the claimant-Respondent No.2 on account of injury sustained in course of and arising out of the employment.

2. The facts of the case are to the effect that the workman-claimant was working as a machine operator under the establishment of Appellant namely M/s. Mayur Biscuits Factory at Baripada. On 26.05.2004, the workman sustained personal injury while cleaning rejected products from the machine and his left hand was accidentally crushed into the machine. He was immediately shifted to the hospital and in course of treatment his left hand from the wrist was amputated.

3. The learned Commissioner upon adjudication of the claim directed for payment of compensation of Rs.1,52,012/-.

4. The employer has come up in appeal challenging of such award of compensation mainly on the ground that the application for compensation was filed beyond the statutory period of two years as contemplated under Section 10 of the Employees Compensation Act, 1923 (hereinafter referred to as “E.C. Act”) and further, the amount spent by the employer for the treatment of the workman as well as the amount of Rs.1,50,000/- paid to the workman are not considered by the Commissioner. It is also submitted that the document like disability certificate under Ext.5 has been considered by the learned Commissioner in violation of Rule 21 of the E.C. Rules for awarding the compensation.

5. On the other hand, the claimant filed his cross objection claiming for payment of interest @12% per annum and to count his disability towards loss of 100% earning capacity.

6. So far as the grounds of the employer on limitation in filing the application is concerned, admittedly the claim application has been presented around 3 and half years after the accident. But the fact remains that along with the claim application, a petition praying to condone the delay was also filed. It is a mistake on the part of the learned Commissioner not to pass any order on such petition filed along with the claim application. The Commissioner perhaps has forgotten to pass any order on the same. But his approach to determine the claim application on merit suggests that the delay in lodging the claim application has been deemingly condoned. Perusal of copy of the order-sheets as filed by the Appellant supports such a conclusion. No fault is seen on the part of the claimant for the delay in his approach to the Commissioner since he has taken all possible steps due on his part and for any fault on the part of the Commissioner due to his inadvertence, the poor claimant-workman should not be allowed to suffer.

7. With regard to next contention of the employer that he has spent Rs.1,02,536/- towards treatment of the workman and has further paid lump sum compensation of Rs.1,50,000/- after his recovery based on an amicable settlement/agreement, the learned Commissioner has not discussed it in the impugned award. Perusal of the copy of the written statement filed by the Appellant reveals his clear averment to that effect at paragraph 5 and 11, which remains uncontroverted. The claimant has admitted the same during his cross-examination. Therefore, the fact of payment of lump sum compensation to the workman and expenses paid for his treatment by the employer is found

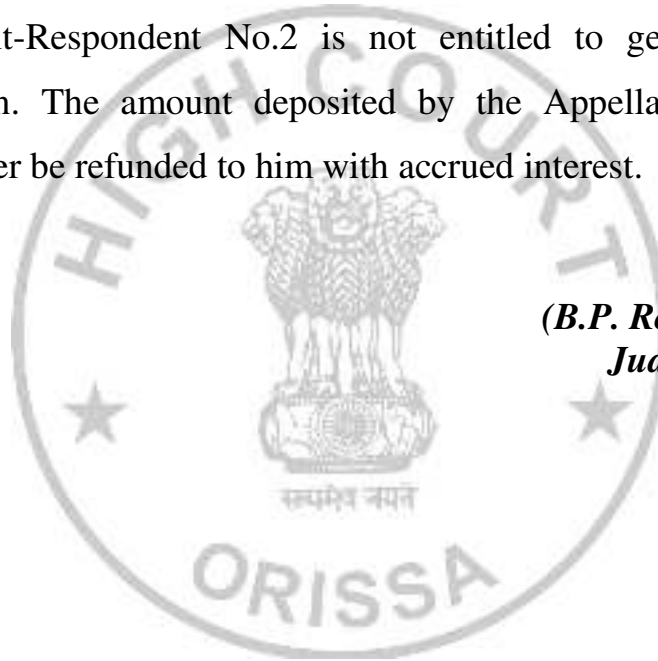
established on record. Failure on the part of the Commissioner to consider and discuss the same in the impugned award amounts to illegality or error apparent on the fact of record. If the employer is found bona fide in offering treatment and lump sum compensation as per agreement of the workman immediately after the accident, the subsequent approach of the workman claiming compensation without disclosing such facts seems unfair on his part. Learned Commissioner has failed to appreciate this and his avoidance to consider such facts certainly amounts to illegal exercise of the jurisdiction vested upon him.

8. The provisions of the E.C. Act entitles the workman to get compensation and authorizes the Commissioner to adjudicate upon the same. But the provisions can only be invoked where the employer does not accept the liability for payment of compensation and to the extent it is claimed. Here in the present fact of the case, the employer is not found in default in paying such compensation due to the claimant as per their agreement. On the other hand, the conduct of the workman is seen malicious for suppressing such receipt of amount from the employer, that too approaching the Commissioner after three and half years of the accident. Under such circumstances since the payment of lump sum amount by the employer upon amicable settlement with the workman and spending of such expenditure towards treatment of the workman remains undisputed, it is held that the claim application at the instance of the workman at such a belated stage is not maintainable and the workman is not entitled for any further compensation from the employer.

9. In view of the discussions made above, the contention raised by the claimants to get interest @12% per annum or loss of earning capacity to the extent of 100%, need not be discussed further. Otherwise also as per Serial No.4 of Part-II of Schedule-I, the extent of loss of dependency is up-to 60% and the detail register of payment of remuneration has been produced by the employer before the learned Commissioner to count loss of earning capacity.

10. In the result, the appeal is allowed and the award is set aside. The claimant-Respondent No.2 is not entitled to get any further compensation. The amount deposited by the Appellant before the Commissioner be refunded to him with accrued interest.

(B.P. Routray)
Judge



B.K. Barik/Secretary