

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

FAO-956-2005 (O&M)
Reserved On :- 19.07.2023
Date of Decision:-11.10.2023

Mahavir Singh

... Appellant

Versus

Sunil Hooda and Others

... Respondents

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by :-

Mr. Surjit Singh, Advocate for
Mr. Vikram Singh, Advocate
for the appellant.

Mr. R.C. Gupta, Advocate
for respondent-Insurance Company.

KARAMJIT SINGH, J.

1. The present appeal arises out of the order dated 4th October, 2004 passed by the Commissioner under Workmen's Compensation Act, Panipat (in short 'the Commissioner').
2. The brief facts of the case of appellant-claimant are that on 27.11.2001, appellant-claimant was working as a driver on Maruti Van No.DL-4CL-2862, which was owned by respondent No.1-Sunil Hooda and was insured with respondent No.2-National Insurance

Company Ltd. The monthly salary of appellant-claimant was ₹3,000/- per month besides ₹50/- per day for meals and ₹50/- per day as and when he was to go out station. On 27.11.2001, appellant-claimant was going to Delhi in said Maruti Van along with Rajni, Bramanand, Parmod etc. At about 5 p.m. when they reached near village Ladsoli, the tyre of the Martuti van got burst and it turned turtle. Appellant-claimant suffered injures due to said accident and was taken to D.N. Sharma Hospital, Sector 14, Sonipat where he remained admitted for 5 days and thereafter he was shifted to Sanjivni Nursing Home, Panipat, where he had undergone surgery. That more than ₹50,000/- were spent on his medical treatment and on account of the aforesaid accidental injuries appellant-claimant suffered permanent physical disability. That the appellant-claimant asked his employer to compensate him for the aforesaid injuries, which were sustained by him during the course of employment. However, respondent No.1 failed to pay any compensation. Hence the claim application was filed before the Commissioner, Panipat by the appellant.

3. The claim application was contested by the insurance company and it filed written statement whereby all the averments of the claim application were denied and it was pleaded that the claim application be dismissed.
4. However, respondent No.1 (employer) failed to appear in the Court concerned despite service and consequently he was proceeded against ex-parte.

5. Appellant-claimant filed replication controverting the averments made by respondent No.2 in its written statement.
6. The Court of Commissioner framed the following issues:-
 - i. Whether there is relationship of employee and employer between the claimant and respondent No.1? OPA
 - ii. Whether the claimant is entitled to amount as claimed for or not? OPA
 - iii. Relief.
7. Counsel for the appellant-claimant examined CW-1 Bhramanand, CW-2 Harminder Singh and CW-4 Dr. S.S. Kalra. The appellant-claimant himself appeared in the witness-box as CW-3.
8. On the other hand counsel for respondent No.2 tendered insurance policy.
9. After hearing counsel for the parties, the Commissioner allowed the compensation application and considered the monthly wages of appellant as ₹3,000/- and insurance company was held liable to pay compensation amount of ₹1,47,148/- to the claimant with interest @ 12 % per annum from the date of order till its realization and at the same time, penalty of ₹5,000/- was imposed on respondent No.1.
10. The appellant-claimant being aggrieved by the aforesaid order of compensation has filed the present appeal.
11. I have heard the counsel for the parties.
12. The counsel for the appellant-claimant while assailing the impugned order has *inter alia* submitted that the compensation awarded by the

Commissioner is on lower side and requires to be enhanced. The counsel has further contended that while passing the impugned order, the Commissioner considered the age of the victim as 36 years, whereas the actual age of the appellant-claimant at the time of accident was 26 years as is evident from copy of his driving license Mark C4, which is available on the record and accordingly factor of 194.64 applied by the Commissioner for assessing the amount of compensation was not proper. It has been further contended that the appellant-claimant suffered 42% permanent disability and as per Section 4(b) of the Workmen's Compensation Act, 60% of monthly wages are to be multiplied by the relevant factor and thus the total loss of earning capacity comes out to be ₹1,260/- but was wrongly computed as ₹756/- by the Commissioner. The counsel for the appellant-claimant further submits that the appellant-claimant is entitled to get interest @ 12% per annum from the date of accident till its realization, that however, the Commissioner granted the said interest from the date of order. The counsel for the appellant-claimant has further contended that the penalty which was imposed on the employer is also on lower side and is not awarded in conformity with the provisions of the Employees Compensation Act.

13. The counsel for the Insurance Company while rebutting the aforesaid contentions raised by the counsel for the appellant-claimant has *inter alia* submitted that there is no illegality or infirmity in the impugned order, which has been passed by the Commissioner after proper appreciation of the evidence. It has been further contended that the

monthly wage of the appellant-claimant was properly assessed as ₹3,000/- and the age of the appellant as 36 years was rightly calculated by the Commissioner. It has been further contended that the interest awarded @ 12% per annum by the Court below is also proper and the appellant claimant is entitled to get the said interest from the date of order and not from the date of accident as has been claimed by the counsel for the appellant-claimant. It has been further contended that the quantum of penalty imposed on the employer, does not require any enhancement.

14. I have considered the submissions made by counsel for the parties.
15. The appellant-claimant filed claim application for grant of compensation on account of the injuries sustained by him in a motor vehicle accident, which took place on 27.11.2001 and at that time claimant was in the employment of respondent No.1 Sunil Hooda and he was driving Maruti Van belonging to respondent No.1 and was working as a driver with the said respondent at monthly salary of ₹3,000/- and was getting ₹50/- per day for meals and ₹50/- per day as and when he was to go out of station. After going through the evidence the Commissioner awarded compensation worth ₹1,47,148/- along with interest to the claimant. The appellant has filed the present appeal seeking enhancement of said amount of compensation.
16. As per Section 4 of the Employees Compensation Act only the workmen/employees who have sustained permanent total disablement, permanent partial disablement or temporary disablement (whether

total or partial) during course of their employment are entitled to get compensation and in case of death of workmen their dependents are entitled to get compensation. In the present case, the claimant examined CW-4 Dr. S.S. Kalra, who proved his physical disability certificate Ex.C2. From perusal of the said disability certificate, it appears that appellant suffered 42% 'Sensorineural Hearing Loss'. In the disability certificate Ex.C2, it has not been mentioned as to whether the aforesaid physical disability is permanent, permanent partial or temporary (total or partial). Even the concerned doctor while appearing in the witness box as CW-4 failed to clarify as to whether the aforesaid physical disability is permanent, permanent partial or temporary. So in the present case it is not clear as to whether the case of the appellant is covered under Clause (b), (c) or (d) of Section 4 (1) of the Employees Compensation Act. Further while taking into consideration the aforesaid 42% physical disability, the Commissioner did not assess the functional disability qua the entire body of the victim, which could have been much lesser than 42%. The Hon'ble Supreme Court in **Civil Appeal No.7430 of 2010** titled as **Palraj vs. Divisional Controller, NEKRTC** decided on **07.09.2010**, while dealing with the order passed by the Commissioner under Workmen's Compensation Act, held that while computing compensation for disabilities being suffered by a workman in the case of his employment, it is the functional disability resulting in loss of earning capacity, which is the criteria, which is followed in assessing compensation.

17. Admittedly in the present case, no appeal has been filed by the employer or the insurance company. No doubt as per the information available on the internet, 'Sensorineural Hearing Loss' is permanent type of hearing loss. Admittedly in the instant case, the aforesaid physical disability is not due to exposure to loud noise (industrial noise). The Government of India (Ministry of Road Transport and Highways) vide letter dated 28.10.2016 made request to the State Government Authorities that the application for driving licenses to the hearing impaired persons may be considered as per para-2 above while deciding the issue of any hearing impaired applicant under Section 8 (4) of the Motor Vehicles Act, 1988. It being so, one cannot say that hearing impaired persons could not drive a vehicle in India.
18. In light of the above, as the disability certificate Ex.C2 is not disclosing about the exact nature of the physical disability of the appellant i.e. whether the disability is permanent, partial permanent or temporary, for the purpose of disposal of this appeal, the functional disability of the appellant is considered as 22% to 23% and the age of the appellant at the time of accident is taken to be 26 years on the basis of copy of his driving license Mark C4 as per which the date of birth of applicant is 01.09.1976. As per Schedule IV of Employees Compensation Act factor of 215.28 is to be applied in the present case and thus the total amount of compensation comes out to be approximately same as has been awarded by the Commissioner vide impugned order. So no interference is warranted in the impugned

order with regard to amount of compensation awarded by the Commissioner.

19. From the perusal of the impugned order it appears that penalty of ₹5,000/- has been imposed by the Commissioner, which was directed to be paid by the employer. As per the provisions of Section 4A, penalty could be imposed on the employer upto the extent of 50% of the amount of compensation. This Court is of the view that the penalty imposed by the Commissioner requires to be enhanced. Accordingly the amount of penalty imposed is increased by ₹20,000/- and as such the employer is liable to pay amount of ₹25,000/- in place of ₹5,000/- by way of penalty. Further, as per the settled position of law the amount of compensation is to be paid by the insurance company and penalty is to be paid by the employer along with interest @ 12% per annum from the date of accident till its realization.
20. The appeal stands partly allowed in the aforesaid terms.

11.10.2023
Gaurav Sorot

(KARAMJIT SINGH)
JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No