

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

FAO-4976-2018 (O&M)
Date of Decision:-**07.07.2023**

JUBAIR KHAN

... Appellant

Versus

SHOKEEN & ANR.

... Respondents

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CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

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Present:- Mr. Surjit, Advocate for
Mr. Ashish Gupta, Advocate
for the appellant.

None on behalf of respondent No.1.

Mr. Ravinder Arora, Advocate
for the Insurance Company-respondent No.2.

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KARAMJIT SINGH, J. (Oral)

CM-16445-CII-2018

1. The counsel for non-applicant/respondent No.2 pleaded no objection if the delay of 175 days in filing the appeal is condoned.
2. In view of the above and the reasons mentioned in the application, delay of 175 days in filing the appeal is condoned.
3. The application stands disposed of.

Main Case

1. Appellant has filed this appeal to assail the order dated 31.5.2017 passed by the Court of Commissioner under Employees Compensation Act, Gurugram (hereinafter to be referred as 'the Court below'), whereby the application for grant of compensation filed appellant/workman on account of the injuries sustained by him during the course of his employment with respondent No.1-Shokeen was partly allowed and he was granted compensation worth Rs.11,50,478/-.
2. The counsel for the appellant submits that the compensation awarded to the appellant was not properly assessed by the Court below. That on 2.7.2015, appellant was working as a cleaner on Dumper No.HR-74-A-7229, which was owned by respondent No.1-Shokeen and the said vehicle met with an accident, as a result of which, the appellant sustained grievous injuries including fracture of head and both legs and during treatment his right leg was amputated below knee. On account of said injury, the appellant is unable to lead normal life and is deprived of his livelihood as now he is unable to do any hard labour. The counsel for the appellant further submits that the compensation awarded by the Court below is on lower side and even the interest at proper rate has not been awarded. The counsel for the appellant further submits that in the instant case, the employer failed to pay the compensation within 1 month as per the provisions of Section 4-A of Workmen's Compensation Act and as such appellant also claimed the

amount of penalty as per law. That however the Court below ignored this fact while passing the impugned order. So prayer is made that the appellant be accepted.

3. The present appeal is opposed by counsel for respondent No.2, who submits that there is no illegality or infirmity in the impugned order. That all the aspects of the case were taken into consideration by the Court below while passing the impugned order. The counsel further submits that the Court below also awarded interest at the rate of 12% per annum on the total amount of compensation and the said rate of interest cannot be further enhanced. The counsel for respondent No.2 further submits that as far as component of penalty is concerned, the provision of Section 4-A of Workmen's Compensation Act is very specific and only employer is liable to pay such penalty and no such penalty could be imposed on the insurance company. However the counsel has not disputed the fact that the aspect of penalty as per provisions of Section 4-A of Workmen's Compensation Act was not dealt with by the Court below while passing the impugned order.
4. I have considered the submissions made by the counsel for the parties.
5. The question of imposing penalty under Section 4-A of the Employees Compensation Act is to be adjudicated by the Court below after giving show cause notice in this regard to the employer. Admittedly in the present case, the compensation was not deposited by the employer within the stipulated period and while passing the impugned order the aspect of imposing penalty on the employee as per Section 4-A of the

Employees Compensation Act has not been dealt with by the Court below.

6. In the light of the above, the present appeal is allowed and the impugned order dated 31.5.2017 is set aside and the case is remanded back to the Court below to decide the matter afresh in accordance with law after taking into consideration the provisions of Section 4-A of the Workmen's Compensation Act which provides for penalty for default, after issuing show cause notice in this regard to the employer. The parties are directed to appear in the Court below on **21.08.2023**.

07.07.2023
Gaurav Sorot

(KARAMJIT SINGH)
JUDGE

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