

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

FAO No.2335 of 1999

Date of Decision: 26.02.2024

Baljinder Singh

... Appellant

Versus

Shri Jaspal Singh and another

... Respondents

CORAM: *HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA*

Present:- Mr. Sagar Aggarwal, Advocate appearing for
Mr. Ashit Malik, Advocate
for the appellant.

Service of notice upon respondent No.1
has been dispensed with.

Mr. N.K. Manchanda, Advocate
for respondent No.2-Insurance Company.

MEENAKSHI I. MEHTA, J. (ORAL)

Feeling aggrieved and dis-satisfied with the Award as handed down by the Commissioner (for short 'the Competent Authority') under the Workmen's Compensation Act, 1923, for District Karnal on 31.05.1999, whereby the appellant-claimant (here-in-after to be referred as 'the claimant') has been awarded compensation to the tune of Rs.1,58,688.60Ps, along-with the interest thereon @ 12% per annum from the date of filing of the claim application, on account of the injuries as sustained by him in an accident, he (claimant) has chosen to prefer the instant appeal to seek the enhancement in the amount of compensation.

2. Bereft of the unnecessary details, the facts, as emerging from the perusal of the file and culminating in the filing of the present appeal,

are that the claimant filed a claim application for seeking compensation of Rs.05 lac from respondent No.1-employer and respondent No.2-Insurance Company, while averring that he had been employed by respondent No.1 as the driver on the Truck bearing registration No.PB-11-H-8926. On the fateful day, i.e 25.01.1998, he was on his way to Shahjanpur while driving the afore-said Truck during the course of his employment and he met with an accident near Village Kakwahi, P.S. Hardoi and suffered the injuries, finally resulting in the amputation of his right leg and thus, rendering him incapable of earning his livelihood. Respondent No.1-employer had been proceeded against *ex-parte* before the Competent Authority. Respondent No.2-Insurance Company filed its written-statement, contesting the claim of the claimant therein, on various grounds. Then, the parties were put to the trial by framing the issues and after appreciating and evaluating the evidence as led by them on the record and hearing their respective counsel, the Competent Authority allowed the above-referred claim application and awarded compensation to the claimant, as already discussed in the opening para of this judgment.

3. I have heard learned counsel appearing for the appellant-claimant as well as learned counsel for respondent No.2-Insurance Company in the instant appeal and have also perused the file carefully.

4. Learned counsel appearing for the appellant-claimant contends that the right leg of the claimant was amputated during the treatment for the injuries sustained by him in the afore-mentioned accident and though, his disability was assessed as 70% and had been so taken into consideration by the Competent Authority for calculating the amount of compensation but the said loss of his right leg had actually resulted in his 100% functional disability, as he could not earn his livelihood as a driver thereafter and in

these circumstances, his disability should have been construed to be 100%, to compute and grant compensation to him. To buttress his contention, he places reliance upon the judgment as passed by Hon'ble the Supreme Court in **K. Janardhan Vs. M/s United India Insurance Co. Ltd. and another, Civil Appeal No.5831 of 2002, decided on 09.05.2008, Law Finder Doc Id # 145629.** He also contends that the Competent Authority has erroneously awarded the interest on the amount of compensation from the date of filing of the claim application whereas the claimant is entitled to the same from the date of the accident, in view of the verdict rendered by the four Judges' Bench of the Apex Court in **Pratap Narain Singh Deo Vs. Shrinivas Sabata and another, 1976 AIR (SC) 222.**

5. Per contra, learned counsel for respondent No.2-Insurance Company argues that the claimant has already been awarded more than sufficient compensation and it being so, there is no occasion for him to seek any further enhancement in the same.

6. As regards the disability of the claimant, his right leg had to be amputated for treating the injuries suffered by him in the above-referred accident. Though, his disability has been assessed as 70% but it has been observed by Hon'ble Supreme Court in **K.Janardhan (supra)** that "*where the accident had taken place between a Tanker and a Tractor and the Tanker driver-claimant had sustained serious injuries and his right leg up to the knee had been amputated, he had suffered 100% disability and incapacity, as he would also be disqualified from getting the driving licence and therefore, the compensation had to be computed on the basis of loss of 100% earning capacity*". These observations are fully applicable to this case and in view thereof, it is held that the amount of compensation is to be calculated by considering the disability of the claimant as 100%.

7. So far as the contention regarding the date for granting the interest on the amount of compensation is concerned, it has categorically been held by the Apex Court in **Pratap Narain Singh Deo (supra)** that “*the employer became liable to pay the compensation as soon as the personal injury was caused to the workman by an accident which admittedly arose out of and in the course of the employment*”. In the light of afore-discussed observations, it becomes crystal clear that the liability of the insurer to pay the compensation and the corresponding entitlement of the claimant, had commenced from the date of the accident but since the insurer had not paid the same to the claimant accordingly, therefore, he (claimant) is entitled to the interest on the amount of compensation from the date of the above-said accident. Accordingly, the net enhanced amount of compensation, as would be payable to the claimant, is worked out as under:-

Monthly wages of the applicant	Rs.1816.40Ps/-
60% of the monthly wages of the injured workman	Rs.1089.84Ps.
Factor applicable	207.98
Amount of compensation	Rs.1089.84Psx207.98=2,26,664.92/- (rounded off as Rs.2,26,665/-)
Disability suffered	100%
Net amount of compensation	2,26,665x100%=Rs.2,26,665/-
Amount already awarded	Rs.1,58,688.60Ps/- (rounded off as Rs.1,58,688/-)
Net enhanced amount	Rs.2,26,665-1,58,688=Rs.67,977/-

8. As a sequel to the fore-going discussion, the appeal in hand is hereby allowed to the effect that the claimant is entitled to the net enhanced compensation of Rs.67,977/- over and above the amount of Rs.1,58,688.60Ps, as already awarded to him by the Competent Authority, along-with interest @

12% per annum, on the total amount of compensation from the date of the accident till the actual payment.

26.02.2024
pooja

(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: Yes