

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-877-2000 (O&M)
Date of Decision: May 08, 2024

Mohinder Kumar Tripathi
...Appellant

VERSUS

Shankar Dass and another
...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Kapish Singla, Advocate for
Mr.Ashit Malik and Mr.Sanjiv Pabbi, Advocate
for the appellant.

Mr.Aseem Aggarwal, Advocate
for respondent No.2-insurance company.

ARCHANA PURI, J.

Challenge in the present appeal is to the Award dated
18.11.1999 passed by learned Commissioner, under Workmen's
Compensation Act, 1923.

The material facts, as culled from the paperbook, are as
follows:-

That, the appellant was working as Driver with respondent No.1-
Shankar Dass, on truck bearing registration No.DL-11B-0182. On
30.11.1996, while he was on duty and he was coming from Delhi to Punjab,
he met with an accident near Kuber Dhaba, with the truck, coming from the
opposite side and sustained multiple injuries, during the course of his

employment with respondent No.1. Further, it is claimed that appellant was shifted to Civil Hospital, Karnal, where from, he was referred to Guruteg Bahadur Hospital, Delhi and remained admitted there for more than two months. He had spent Rs.1 lakh on his treatment and he was 23 years old, at the time of accident and was drawing salary of Rs.2200/- per month, along with Rs.50/- as daily Kharcha, when he remained on out-station duty. As such, the appellant claimed that an Award of Rs.5 lakh be passed, in his favour, together with interest.

In pursuance of the notice issued, respondents made appearance through counsel and filed their respective written statements. Respondent No1-Shankar Dass, in his reply, had taken the plea that the appellant does not fall within the definition of '**workman**'. However, he admitted about employment as well as the occurrence of the accident, during the course of employment. He took the plea that the vehicle involved in the accident was insured with respondent No.2 and therefore, respondent No.2 is liable to pay the compensation. Respondent No.1 had also taken the plea that he had paid a sum of Rs.1000/-, at the time of accident.

Respondent No.2-insurance company, in its reply, had taken the plea that no notice was served upon the company by the appellant and also that the appellant does not fall, under the definition of '**workman**' under the Workmen's Compensation Act. The relationship of employer and employee, as such, had also been denied by the insurance company. Taking place of the accident, as such, was also denied.

After recording of the evidence, on the basis thereof, learned Commissioner, reached the conclusion that appellant was employed as

driver with respondent No.1 and therefore, there was relationship of employer and employee existing between them. The fact of accident was also taken to be established. However, the extent of earnings of the appellant, as such, was concluded to be not established. Thus, taking the Minimum Wages as existing, at the relevant time, the earnings of the appellant was taken as Rs.1542.66, which was rounded off as Rs.1543/-. The disability was concluded to be 61% and taking it to be so, considering the age of the appellant to be 23 years, at the relevant time, factor of 219.95, as per Schedule IV, appended to Workmen's Compensation Act, 1923 was applied and compensation was worked upon as Rs.1,24,240/- and it was accordingly, to be paid together with interest @ 12%, within a period of 30 days, from the date of the Award i.e. 18.11.1999.

Feeling aggrieved by the aforesaid Award, the appellant has filed the present appeal.

At this stage, before proceeding further, it is pertinent to mention that present appeal relates to unfortunate fire incident, which took place in the High Court premises, in the year 2011, wherein, much record was burnt. In the given circumstances, the original record of learned Commissioner, as such, is not available. However, copy of the disability certificate and statement got recorded by the appellant as well as respondent No.1, are there on the reconstructed record. But anyhow, both learned counsel have given statements before this Court that they have no objection, if the appeal in hand, is decided, on the basis of the material coming forth, from the aforesaid record and as culled out from the paperbook.

Learned counsel for the parties heard.

So far as, taking place of the accident and indulgence of the appellant in the employment of driver with respondent No.1 and also about assessment of earnings, on the basis of minimum wages, as Rs.1543/- per month is concerned, it is pertinent to mention that none of the respondents, as such, upon whom, the liability has been fastened, have filed any appeal. Be it noted that it is only the appellant, who had filed the appeal, for seeking enhancement of the compensation. Even, appellant, as such, does not dispute about extent of earnings, so taken as Rs.1543/- per month, on the basis of the minimum wages.

However, the appellant seeks enhancement of the compensation, as it is submitted that there is denial of benefit of functional disability. It is submitted that since it stands established that the appellant was employed as driver with respondent No.1 over the truck, therefore, in view of the disability certificate, which is Ex.A1, his disability, as such, should be considered as functional disability, as on account of this disability, he had rendered himself unfit for driving vehicle and therefore, he has suffered total disablement. As such, learned counsel for the appellant submits that, while taking permanent total disablement, resulting from the injuries in question, equal amount of 60% of the total monthly wages of the injured appellant, should be taken and should be multiplied by the relevant factor, which, considering the age of the appellant to be 23 years, is 219.95. While applying the same, it is submitted that the compensation, worked upon, calls for extensive enhancement.

On the contrary, learned counsel for the insurance company has resisted the claim of the appellant. He assiduously submits that as per the

disability certificate Ex.A1, 61% was the disability of the left lower limb and learned Commissioner had already made the assessment of the compensation, while considering 61%, as whole body disability. In the given circumstances, he submits that the compensation, as such, does not call for any further enhancement. As such, he made a prayer for dismissal of the appeal.

Undisputedly, from the testimonies of appellant as well as respondent No.1-Shankar Dass, copies whereof have been placed on record, it stands established that employment of the appellant with respondent No.1, in capacity of being driver, as such, is not disputed. The taking place of the accident is also not disputed and the fact of injuries, having sustained, as such, is also not disputed. Very true, as pointed out, from the impugned Award, it cannot be gathered that any doctor was examined, vis-a-vis, injuries sustained by the appellant, in the accident in question. Only photocopy of the disability certificate is coming on record, which is Ex.A1. Perusal of the same reveals that the appellant was case of multiple fractures, left lower limb and on that basis, permanent disability was assessed to be 61%. This is the body part disability, but anyhow, the extent of disability was assessed to be 61% by learned Commissioner, as whole body disability. This was taken into consideration, while considering the nature of employment of the appellant, being the driver. Though, prayer is made for enhancement of this compensation, on account of functional disability, as it is submitted that appellant has been rendered unfit for work of driver, but however, the aforesaid submission is not tenable.

As already observed aforesaid, no doctor has been examined.

The disability certificate was tendered into evidence. It reveals only about multiple fractures left lower limb. Even if, it is so taken to be permanent i.e. with regard to body part, which is 61%, then also, there is no evidence, as such, coming on record about impact of the said disability, on the vocation followed by the appellant. It is necessary to note that this extent of disability, as to whether appellant was rendered unfit, to follow his vocation as driver, could be answered by the doctor, who had examined the appellant, for assessment of his disability. In the absence of such evidence, coming forth, it is difficult to reach such conclusion, on the basis of the submissions made by learned counsel for the appellant.

Though, during the course of arguments, learned counsel for the appellant has also referred to cross-examination of appellant, when he stepped into witness box as PW-1, wherein, he had stated that his left leg has shortened, but relating to the same, there is no satisfactory evidence, coming on record. In the disability certificate, there is no mention made, about shortening of leg. Efficiency, though may be affected, on account of the this disability, but it does not stand established that it is to this extent that he is unable to follow his pursuit.

In the given circumstances, the disability of whole of the body to be 61%, as taken by learned Commissioner, for work out of the compensation, is just and appropriate. The amount of compensation has to be worked upon as per provisions of Schedule-IV appended to Workmen's Compensation Act, 1923. As per the same, to this extent of disability i.e. 61%, considering the age of the appellant, the relevant factor is 219.95. While application of this factor, the compensation works out to be

Rs.1,24,214/-. However, in the impugned Award, it has been mentioned as Rs.1,24,240/-, but this appears to be a typographical error, while mentioning the amount. But in any case, after such a long time, making correction in this compensation, by reducing it by few rupees, shall not be appropriate and therefore no intervention is made in the impugned Award.

Such being the fact situation, the impugned Award brooks no interference. Hence, the present appeal sans merit and the same is hereby dismissed.

May 08, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No