

(1996) 11 P&H CK 0020

High Court Of Punjab And Haryana At Chandigarh**Case No:** F.A.F.O. No. 1502 of 1996

Baldev Singh

APPELLANT

Vs

Secretary, P.S.E.B. and Another

RESPONDENT

Date of Decision: Nov. 22, 1996**Acts Referred:**

- Workmens Compensation Act, 1923 - Section 4A(3), 5

Citation: (1997) ACJ 788 : (1998) 3 LLJ 1283 : (1997) 115 PLR 181**Hon'ble Judges:** Sarojnei Saksena, J**Bench:** Single Bench**Advocate:** B.R. Mahajan, for the Appellant; Govind Goel, for the Respondent**Final Decision:** Allowed

Judgement

Sarojnei Saksena, J.

The appellant claimant has assailed the award given by Mr. Darshan Singh, Commissioner, Workmen's Compensation, Amritsar, whereby his claim petition has been dismissed on the ground that an amount of Rs. 27,356/- has already been paid to him by the respondents.

2. The facts of the case are that the appellant-claimant Baldev Singh was employed, as daily wage worker with the respondents and was working at Electricity Office Gawal Mandi, Amritsar. On September 19, 1992, during the course of employment, he met with an accident and was seriously burnt by electric flash. He suffered permanent loss of function of his right hand. Civil Surgeon, Amritsar, assessed loss of claimants earning capacity of working upto 50 per cent due to this accident. He was drawing Rs. 1150/- per month and was aged 25 years at the time of this accident. He claimed Rs. 62,361.62 paise along with interest u/s 4-A(3) of the Workmen's Compensation Act, 1923 (in short, "the Act")-

3. The respondents admitted the accident, the employment of the claimant as well as his average wage paid to him. It was also admitted that Civil Surgeon, Amritsar,

has assessed the loss of claimant's earning capacity of working upto 50 per cent due to this accident. They calculated the amount of compensation u/s 5(a) of the Act and paid Rs. 27,356/- to the claimant-appellant by depositing this amount on April 28, 1994.

4. Learned Commissioner framed issues. Parties adduced their evidence. Service record, pay record etc. were produced by the respondents.

5. The learned Commissioner held that the claimant's case fell u/s 5(a) of the Act and not u/s 5(c) of the Act. He also held that the claimant has failed to prove the disability certificate issued by the Civil Surgeon, Amritsar, on record. He further held that the alleged loss of function of right hand is also not covered under Schedule-I. Since the aforementioned amount of compensation was already paid by the respondents to the claimant, his claim petition was dismissed.

6. The appellant-claimant's learned counsel contended that u/s 5(a) of the Act the wages can be calculated if the workman has, during a continuous period of not less than twelve months immediately preceding the accident, been in the service of the employer and as per Explanation appended thereto a period of service shall, for the purposes of this Section, be deemed to be continuous which has not been interrupted by period of absence from working exceeding fourteen days. He also contended that the respondents themselves have produced the statement of salary of the claimant. From this statement it is obvious that in the months of December 1991 and January 1992 to May 1992 he was not in service with the respondents. He was reemployed in June 1992. He worked in June, July and August 1992 for 91 days. He was drawing Rs. 1056/- as his wages in the months of July and August 1992 and received Rs. 942/- in the month of June 1992 as he worked for 29 days only in that month. Thus, according to him, Clause (a) is inapplicable in his case. According to him, his case falls u/s 5(c) of the Act and calculated as per this provision, his compensation comes to Rs. 62,361.62 paise. Thus, according to him, the learned Commissioner fell into an error in dismissing his claim petition.

7. The appellant-claimant's learned counsel's last contention is that in the claim petition, the claimants also claimed interest u/s 4-A(3) of the Act at the rate of 18 percent per annum, but the learned Commissioner has not adverted to this prayer at all.

8. The respondents' learned counsel argued that the claimant-appellant's case falls u/s 5(a) of the Act. Calculating the compensation u/s 5(a) of the Act, the respondents have already paid him Rs. 27,356/- on April 28, 1994. He also argued that the claimant has failed to prove that he suffered 50 percent loss of earning capacity. Thus, according to him, the learned Commissioner has rightly dismissed his claim petition. As his claim petition was dismissed, the Commissioner has not decided the point of interest.

9. So far as 50 per cent loss of claimant's earning capacity is concerned, that point was not in dispute before the learned Commissioner, as in the written statement in para No. 4 the respondents have clearly admitted that the civil Surgeon, Amritsar, has assessed the loss of claimant's earning capacity of working upto 50 percent due to this accident. Admitting that the claimant has suffered loss of earning capacity upto 50 percent, the respondents have calculated compensation u/s 5(a) and have paid him Rs. 27,356/- on April 28, 1994. Hence the learned Commissioner, obviously fell into an error in holding that the claimant-appellant has failed to prove that he has suffered loss of 50% percent of earning capacity. He has also fallen into an error in holding that the claimant has not suffered permanent partial disablement to the extent of 50 percent as per Schedule-I. Since this point was not in dispute before the learned Commissioner, the claimant-appellant was not required to prove this fact.

10. From the statement of salary given to the claimant-appellant, which was produced by the respondents before the learned Commissioner, it is obvious that the claimant appellant was not working with the respondents in the months of December 1991 and January to May 1992. Admittedly, he was re-employed in the month of June 1992 and he worked for three-Continuous months before this accident. Thus obviously his case does not fall u/s 5(a) of the Act but it squarely falls u/s 5(c) of the Act. Thus, applying the appropriate factor, in my considered view, the claimant is entitled to recover Rs. 62,361.62 paise as compensation, but the respondents have only paid him Rs. 27,356/- Thus, the claimant is entitled to get Rs. 35,005/- more under the head of compensation.

11. So far as the interest is concerned, the claimant-appellant claimed interest. Admittedly, the accident took place on September 19, 1992. The respondents paid Rs. 27,356/- to the claimant on April 28, 1994. As per Section 4-A(3) of the Act, within one month of the accident, the respondents were required to pay compensation to the claimant and as they failed to pay the compensation, the claimant is entitled to get simple interest at the rate of 6 percent per annum on the amount due. The Commissioner fell into an error in not awarding interest to the claimant u/s 4A(3) of the Act, as admittedly within one month of the accident, the respondents failed to pay the amount of compensation which, according to them, was payable to the claimant. Thus, in my considered view, the claimant-appellant is also entitled to recover interest at the rate of 6 per cent per annum of the amount of compensation i.e. Rs. 62,361.62 paise from October 19, 1992, till this amount is paid to him.

12. With the above modification, the appeal is accordingly allowed.