# Ishwar Singh Vs The Workman Compensation Commissioner, Panipat and Others

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** March 3, 2011

**Citation:** (2011) 131 FLR 271 : (2011) 163 PLR 443

**Hon'ble Judges:** Ranjit Singh, J

**Bench:** Single Bench

**Final Decision:** Allowed

## Judgement

Ranjit Singh, J.
The petitioner is employed in Sugar Mill, Prnipat. On 09.03.2004, while course of duty he sustained injuries i.e. breakage

of hip joint. The petitioner filed a claim under Workman Compensation Act before the Workman Commissioner, Panipat on 01.06.2007. The

counsel for the respondent-Insurance Company as well as of the Sugar Mill appeared and compromised the matter by agreeing to pay sum of Rs.

1,95,880/-. Soon thereafter, however, the respondents made an application before the Commissioner on 19.01.2009 pleading that they had

wrongly calculated the amount of compensation as was payable to the petitioner. The Commissioner, thereafter, has reviewed the earlier order and

has calculated the amount payable as Rs. 56,587/-. It is noticed that the earlier calculation was done by the mistake and fey applying the relevant

factors the amount, which was payable as compensation has, now been reassessed as Rs. 56,587/-. The counsel representing the petitioner did

not object to this correction and, accordingly,, the impugned order, Annexure P-3, was passed,

2. The petitioner now has challenged this order through the present writ petition to plead mat once the matter had been compromised between the

parties by allowing the compensation of sum of Rs. 1,95,880/-, the same was wrongly changed on the ground that the amount of compensation

was assessed wrongly by mistake. As per the petitioner, his counsel had agreed for this correction without any instructions from him and he,

accordingly, would pray for grant of same amount of compensation to him as was agreed to between the parties initially i.e. Rs. 1,95,880/-.

3. In response to notice of motion, written statement has been filed by respondent No. 3. It is not disputed that the respondents had agreed to

payment of Rs. 1,95,880/- by way of compromise. It is pointed out that this amount was calculated by taking into account the disability of the

petitioner to be 100%. Infact the petitioner had suffered the disability of 20% and the calculation was, accordingly, required to be made on

percentage of disability suffered. On this basis, the amount of compensation works out to be Rs. 56,587/- and so it is stated that the Commissioner

was justified in carrying out the correction. As per the respondents, it is only a correction of mistake and as such no cause is made out calling for

interference in exercise of writ petition.

4. No doubt, the method of calculating compensation provided under the Act may have to be adopted while agreeing to pay a sum of Rs.

1,95,880/-. This was a sum agreed for payment upon which the petitioner did not press his claim. If the matter had not been compromised, the

petitioner could have certainly disputed the amount payable which is to be calculated on the basis of his income. There is no indication in the order

that the amount was calculated as per any formula. The petitioner would not have agreed to compromise the matter if the offer was only payment

of Rs. 56,587/-. The compensation agreed before the Commissioner was Rs. 1,95,880/- and so the petitioner had accepted this amount on the

basis of compromise. The respondents are now backing out from this compromise. Once they agreed to pay some amount by way of a

compromise then the provisions of the Workman Compensation Act would lose significance. Order, Annexure P-l passed by the Commissioner

under the Workman Compensation Act on 20.12.2008, clearly shows that respondent-Insurance Company was ready to pay sum of Rs.

1,95,880/- under the Workman Compensation Act and so the petitioner withdrew his claim petition. It would, thus, be seen that it was not a case

where the amount of compensation was worked out on the basis of some formula, which could be corrected. One would have accepted

submission that it is a case of correction of the amount assessed if some formula had been noticed in the order while arriving at the amount of

compromise. It was an agreed amount which respondents had agreed to pay. If two parties while fully being conscious have agreed on something,

they can be expected to respect the same.

5. I am, thus, not inclined to go into the submission made on the basis of provisions contained in the Workman Compensation Act to hold what

amount was payable or to calculate the amount that actually was payable on the basis of percentage of the injuries suffered by the petitioner. The

method of calculating the income of the petitioner on the basis of his disability and working out the amount would have been adopted if the original

order, Annexure P-l had contained any indication that the amount of compensation was calculated on that basis. What all is recorded in Annexure

P-l is as under:

Both the parties have settled the dispute. The worker wants to give the statement in this regard.

Statement be recorded. Statement of Sh. Ishwar Singh S/o Lachchman Singh Applicant.

On SA Stated that I was met with accident in Sugar Mill Panipat, in which I was disabled 20%. Co-op-Sugar Mill has got insured his worker and

ready to give the amount of Rs.l,95,880/- under the WC Act. Therefore, I withdrew my case.

6. There is no indication, thus, in the order that the amount of compensation payable was worked out on the basis of any formula contained under

the Workman Compensation Act.

7. Even otherwise, to me it appears that the manner of determining compensation -under the Workman Compensation Act have to work out on

the basis of income which is not available on record. The method perhaps may not be taking into consideration the loss of income, which the

petitioner would suffer because of his permanent disability. The petitioner is going to suffer this handicap and his capacity to work will stand

reduced. Apparently, only the aspect of damage suffered on account of injury is taken into consideration. The formula as has been shown and

pressed before me gives an indication of calculating the amount on the basis of percentage of injury suffered and income of the workman

concerned. Obviously this is only to calculate the damage, which one would suffer. Thus, no consideration apparently is being paid to the loss

suffered by the individual on account of loss of his earning capacity forever. In this context, the observation made by the Yadava Kumar v. The

Divisional Manager, National Insurance Co. Ltd. and another (2010) 160 P.L.R. 242 (S.C.) may need a notice. As observed by the Hon''ble

Supreme Court, there is a distinction between the compensation and the damages. The expression compensation may include a claim for damages

but compensation is observed to be more comprehensive. It is further stated that normally damages are given for an injury which is suffered,

whereas compensation stands on a slightly higher footing. As noticed, compensation is given for the atonement of injury caused and the intention

behind grant of compensation is to put back the injured party as far as-possible in the same position, as if the injury has not taken place, by way of

grant of pecuniary relief. It is in this background observed that in the matter of computation of compensation, the approach has to be slightly more

broad based than what is done in the matter of assessment of damages. As observed, there cannot be any rigid or mathematical precision in the

matter of determination of compensation. Thus, some guess work rule to assess the compensation may be permissible to work out the loss of the

earning capacity. It is a recognized mode and can be adopted.

8. In cases of injuries which result in permanent disability, a position can be said to be worse than that of fatal cases. Hon"ble Supreme Court in

the case of R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others, has observed as under:

Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as

pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which is capable of being

calculated in terms of money, whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In

order to appreciated two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of

profit up to the date of trial; (iii) other material loss. So far lion-pecuniary damages are concerned, they may include; (i) damages for mental and

physical shock, pain suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which

may include a variety of matters, i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation

of life, i.e. on account of injury the normal longevity of the person concerned is shortened; disappointment, frustration and mental stress in life.

9. Ordinarily no amount of compensation can restore physical frame of the injured. That is why it has, been said by Courts that whenever any

amount is determined as the compensation payable for any injury suffered during an accident, the object is to compensate such injury ""so far as

money can compensate"" because it is impossible to equate the money with the human sufferings or personal deprivations. Money cannot renew a

broken and shattered physical frame.

10. Thus, a case of fair compensation is certainly made out. The parties had compromised the matter when the Insurance Company had agreed to

pay sum of Rs. 1,95,880/-, which was inclusive of damage and compensation. The petitioner is a daily wager. He has suffered 20% permanent

disability. With this disability, he certainly has lost his earning capacity forever. This aspect obviously has been ignored by the compensation

Commissioner. I would, thus, uphold the compensation initially agreed to between the patties to do the substantial justice.

11. Accordingly, the writ petition is allowed. The impugned order, Annexure P-2, is set aside. The petitioner is held entitled to sum of Rs.

1,95,880/-, which the insurance company had initially agreed to pay as a compromise. Let the balance amount be paid to the petitioner within one

month from the date of receipt of the copy of the order, if modified amount awarded has been paid.