

(2016) 10 SHI CK 0036
In the High Court Of Himachal Pradesh
Case No : F.A.O. No. 450 of 2009

Sh. Manoj Kumar

APPELLANT

Vs

Sh. Khel Chand Negi

RESPONDENT

Date of Decision : 03-10-2016

Acts Referred:

Employees Compensation Act, 1923 — Section 4(b)

Citation : (2017) AAC 180

Hon'ble Judges : Mr. Dharam Chand Chaudhary, J.

Bench : Single Bench

Advocate : Mr. Rakesh Manta, Advocate, for the Appellant; Mr. Rohit Chauhan, vice Mr. Suneet Goel, Advocate, for the Respondent No. 2; Mr. B.N. Sharma, Advocate, for the Respondent No. 1

Final Decision : Allowed

Judgement

Dharam Chand Chaudhary, J.(Oral) - Manoj Kumar who is victim of an accident is in appeal before this Court as he is aggrieved by the payment of inadequate compensation towards loss caused to him in the accident of a private bus No. HP-06-1401. As a matter of fact the first respondent Khel Chand has deployed the appellant claimant as driver with the bus in question. On the fateful day i.e. 3.1.2005 he was on the wheel of bus enroute Dansa to Rampur in Tehsil Rampur, District Shimla. The bus met with an accident around 7:00 A.M. at a place namely Shaneri and as a result thereof the appellant (hereinafter referred to as petitioner claimant) received injuries in his chest, back and also legs. There were multiple fractures and as such he remained hospitalized as an indoor patient for a period over one month i.e. one month and five days in IGMC Shimla. When the insured-respondent No. 1 has failed to pay the due and admissible compensation within the stipulated period i.e. one month, therefore, he had to file a petition under Section 22 of the Workmen's Compensation Act before Commissioner under Workmen's Compensation Act (SDM) Rampur Bushahr District Shimla. The petition came to be registered as case No. 11/05. Learned Commissioner after

taking on record the pleadings of the parties and affording them opportunity to adduce evidence as well as hearing arguments has taken the salary of the petitioner-workman as Rs. 4500/- per month and applying 175.54 the relevant factor has awarded a sum of Rs. 80,770/- together with interest @12% as compensation to the petitioner vide impugned award dated 2.7.2009.

2. The petitioner-workman being aggrieved and dissatisfied with the award of compensation has approached this Court by filing the present appeal for enhancement of the compensation on the grounds inter alia that the compensation as awarded is contrary to the provisions contained in the Act, hence not legally sustainable. It has been urged that as per the disability certificate Ext.PW1/A the disability to the extent of 25% is permanent and in relation to whole body. PW1 Shri Desh Raj Chandel has categorically stated that the petitioner cannot adopt driving as his profession with such disability, therefore, according to the petitioner-claimant the present is a case of total loss of earnings.

3. Analyzing the rival submissions with the help of evidence available on record admittedly the petitioner was deployed as driver with ill fated bus by first respondent. The petitioner has successfully pleaded and proved his salary to be Rs. 4500/- per month. His age at the time of accident, however, was not 35 and rather he was +43 years at that time because in disability certificate issued on 4.5.2006 his age has been mentioned as 45 years, meaning thereby that he was 43 years of age at the time of accident. At the time of accident i.e. 3.1.2005 Act No. 46 of 2000 was in force being made operational on and w.e.f. 8.12.2000.

4. In terms of explanation 2 to Section 4(b) of that Act in the event of the monthly wages of the workman exceed to Rs. 4000/- the same was required to be restricted to Rs. 4000/-. The Commissioner below therefore has erroneously taken the monthly income of the petitioner as Rs. 4500/- for the purpose of termination of the compensation payable to him.

5. Learned Commissioner has again went wrong while taking the loss of earning only to the extent of 25% for the reasons that when as per the expert opinion he cannot adopt driving as a profession throughout his life the loss has to be termed as total. The reference in this behalf can be made to the disability certificate Ext.PW1/A issued by Medical Board comprising of Professor & Head, Department of Orthopedics, Consultant, Incharge Unit and Registrar, Department of Orthopedics in Indira Gandhi Medical College, Hospital Shimla. The Medical Board comprising such senior member has, therefore, found the disability i.e. 25% permanent in nature and in relation of whole body. In terms of the statement of PW1, one of the members of the Board, the petitioner cannot drive the vehicle on long routes and even while driving on long routes may feel pain in his body and as such according to him the petitioner cannot now drive the vehicle. Therefore, such evidence available on record is suggestive of that it is a case of total loss of income. The case of the petitioner for the purpose of determination of the loss of earnings is covered by clause (b) of Section 4 of the Act *ibid*. The relevant factor

for determination of the compensation would be 60% of the monthly wages of the injured workman to be multiplied by the relevant factor.

5a. The monthly income of the petitioner-workman has already been assessed as Rs. 4000/-. The 60% thereof would come to Rs. 2400/-. Keeping in view the age of the petitioner 43 years the relevant factor in the present case would be 175.54 by rounding it off the relevant factor has been taken as 175. Therefore, multiplying the loss of earning caused to the petitioner in this accident the same would work out as $2400 \times 175 =$ Rs. 4,20,000/-. Besides, interest @12% is also awardable on this amount from the date of petition till the payment is made to the petitioner-claimant. The compensation i.e. Rs. 87,770/- awarded by the Commissioner below is, therefore, highly inadequate. The respondent No. 2-insurer has deposited this amount together with interest before learned commissioner below. Let the said respondent to deposit the amount now enhanced and proportionate interest accrued thereupon and this amount be now paid together with proportionate interest @12% per annum.

6. On the question of penalty, I have heard learned Counsel representing the insured-respondent No. 1. No reasonable and plausible explanation has come on record as to why the insured is justifying the delay as occurred in making the payment to the petitioner-workman. I can draw support in this regard from the judgment of Hon''ble Apex Court in Ved Prakash Garg v. Premi Devi and others, AIR 1997 SC 3854 relied upon by this Court also in a recent judgment dated August 31, 2016, FAO(WCA) No. 160 of 2009, titled the Oriental Insurance Company v. Smt. Deno & ors. However, the amount of penalty is to be paid by the insured-respondent No. 1 in terms of the provision contained under Section 4-A(3)(b) of the Act. The ratio of the judgment ibid in Ved Prakash's case supra can be applied in this case qua this aspect of the matter also. Therefore, in the given facts and circumstances besides the award of compensation as aforesaid the injured is also burdened with penalty which shall be 20% of Rs. 4,20,000/- the awarded amount.

7. With the above observations, the appeal is allowed and stands disposed of.