

(2017) 02 P&H CK 0167
In the Punjab And Haryana At Chandigarh
Case No : FAO No. 5171 of 2012

Vijay Kumar

APPELLANT

Vs

M/s. Shree Ram Corg Packs

RESPONDENT

Date of Decision : 14-02-2017

Acts Referred:

Employees Compensation Act, 1923 — Section 3

Citation : (2017) 1 LawHerald 726

Hon'ble Judges : Mr. G.S. Sandhawalia, J.

Bench : Single Bench

Advocate : Mr. R.S. Budhwar, Advocate, for the Appellant; Mr. Suvir Dewan, Advocate, for the Respondent No. 2-Insurance Company

Final Decision : Partly Allowed

Judgement

G.S. Sandhawalia, J.(Oral)—The present appeal by the claimant is directed against the order of the Commissioner dated 17.08.2011 whereby a sum of Rs. 5,20,289/- had been awarded which is inclusive of the interest on account of the fact that the appellant had suffered an injury on his right hand and which led to the amputation of his hand and he became permanently handicapped to the extent of 80%.

2. The said accident had taken place arising out of and in the course of his employment and resultantly the respondent-employer had been arrayed as party before the Commissioner along with the Insurance Company. The Commissioner found that the employee was earning Rs. 3,800/- per month and considering his disability by applying the relevant factor, awarded compensation to Rs. 3,92,671/-.

3. A plea was raised for interest and penalty and resultantly the interest element was granted upto the tune of Rs. 1,27,618/- from the date of the filing of the petition to the date of the order. The liability to pay interest was fastened upon the Insurance Company and the penalty aspect was decided in favour of the

employer on account of the fact that he had not caused hardship to the applicant and there was no liability.

4. Notice of the appeal was issued to the respondent-employer, but has been received back with the report of refusal. The reasoning which has been given to deny the penalty would be apparent since one partner of the employer-firm, namely, Durgesh Goel as such had been appeared as RW-1 before the Commissioner and had given his affidavit Ex.RW-1/A that they had spent Rs. 1,50,000/- on the treatment of the appellant and the employee was insured with the Insurance Company. It is in such circumstances the penalty aspect has been denied to the claimant injured. The purpose as such is to grant immediate relief to the injured employee, which was done by the employer at that point of time. In such circumstances, the order passed by the Commissioner seems to be justified on the non imposition of penalty and, therefore, no substantial question of law would arise. However, the claimant can be granted benefit regarding the element of interest which has been granted from the date of the filing of the petition which was on 02.12.2008, whereas the accident took place on 22.03.2008.

5. In "Oriental Insurance Co. Ltd. v. Siby George" 2012 (4) SCT 299, it has been reiterated by the Apex Court that interest would be payable from the date it became due. Thereafter, in "Saberabibi Yakubhai Shaikh and others v. National Insurance Co. Ltd. and others" 2014 (2) SCC 298, it has been held that the interest will be granted from the date of the accident and, therefore, the award passed by the Commissioner is modified to this extent that interest would be calculated from the date of the accident instead of date of filing of the petition till payment. The additional amount will be made good by the Insurance Company and will be paid to the claimant within a period of two months from the receipt of the certified copy of this order in the absence of any clause for contracting out of the interest liability.

6. With the above said observations, the present appeal is partly allowed.