

HIGH COURT OF PUNJAB & HARYANA

Bench: JUSTICE MEENAKSHI I. MEHTA

Date of Decision: 15.03.2024

FAO No. 277 of 2001

Ishpal @ Shishpal Appellant

Versus

**The Commissioner under the Workmen's Compensation Act, Karnal
and another Respondents**

Legislation:

Section 3, 4 of the Workmen's Compensation Act, 1923

Subject: Appeal against the dismissal of a compensation claim under the Workmen's Compensation Act, 1923, related to injuries sustained by the appellant in a workplace accident.

Headnotes:

Workmen's Compensation Act – Claim for Compensation Dismissed – The High Court affirmed the decision of the Competent Authority under the Workmen's Compensation Act, 1923, dismissing the claimant's application for compensation due to lack of evidence proving loss of earning capacity. [Para 1, 6]

Evidence and Proof – Requirement for Claiming Compensation – The claimant failed to provide adequate evidence to establish the extent of loss of earning capacity due to the injury, as required under Section 4(1)(c)(ii) of the Workmen's Compensation Act, 1923. The claimant's continued employment as a laborer despite the injury was noted. [Para 5-6]

Legal Interpretation – Workmen's Compensation Act, Section 4(1)(c)(ii) – Application of Section 4(1)(c)(ii) in cases of non-specified injuries requiring proof of loss of earning capacity. The court elaborated on the necessity of evidence to establish the percentage of loss of earning capacity for claiming compensation. [Para 5]

Judgment – Upholding Competent Authority's Decision – The High Court upheld the Competent Authority's decision to dismiss the claimant's application for lack of substantial evidence demonstrating a significant loss of earning capacity as per legal requirements. [Para 6]

Referred Cases: None.

Representing Advocates:

Mr. Bharat Bhushan Sharma, Advocate for the appellant.

MEENAKSHI I. MEHTA, J.

Feeling aggrieved by the Award passed by the Commissioner (for short 'the Competent Authority') under the Workmen's Compensation Act, 1923 (for short 'the Act') at Karnal on 21.08.2000, whereby the Claim Application moved by the appellant-claimant (here-in-after to be referred as 'the claimant') for seeking the compensation on account of his having suffered the injuries, has been dismissed, he (claimant) has chosen to prefer the instant appeal to lay challenge to the same.

2. Bereft of the unnecessary details, the facts, as emanating from the perusal of the record and culminating in the filing of the present appeal, are that the claimant filed a Claim Application for seeking compensation to the tune of Rs.(03) three lac from respondent No.2, while averring that he had been engaged by the said respondent as the labourer to help the Mason in the construction of his (respondent No.2's) shop. On 30.05.1996, when he (claimant) was going upstairs to fetch some material lying on the roof of the second storey of the building, he fell down and sustained injuries on his left leg and arm which left him crippled. Respondent No.2 filed his

written statement, contesting the claim of the claimant therein, on various grounds. Then, the parties had been put to the trial by framing the issues and after appreciating and evaluating the evidence as led by them on the record and hearing their respective counsel, the Competent Authority dismissed the above-referred Claim Application, as already indicated in the opening para of this judgment.

3. I have heard learned counsel for the appellant-claimant in the instant appeal and have also perused the record carefully.
4. Learned counsel for the claimant has contended that the claimant had suffered the permanent disability due to the multiple grievous injuries, as sustained by him in the afore-said incident but the Competent Authority did not appreciate this fact in the right perspective and wrongly dismissed his Claim Application vide the impugned Award and in these circumstances, it becomes quite explicit that the said Award is not legally sustainable and hence, the same deserves to be set-aside.
5. However, the above-raised contention is devoid of any force because Section 3 of the Act speaks about the liability of the employer to pay compensation to the workman, in the eventualities as described therein and Section 4 thereof provides for the method/mode for the quantification of the amount of compensation, as payable in the case of the death of the workman or his total or partial permanent disablement, due to the injury suffered by him in the accident arising out of and in the course of his employment. Exhibit P4 is the copy of the Medical-Certificate, as issued to the claimant wherein his disability is shown to have been assessed by the Medical-Board as 04% only, because of the shortening of his left lower limb by one (01) inch. Concededly, the afore-said injury has neither been specified in Part I nor in Part II of Schedule I, as appended to the Act. It being so, Section 4(1)(c)(ii) of the Act becomes applicable to the present case which reads as under:-

“4(1) – Subject to the provisions of this Act, the amount of compensation shall be as follows, namely:-

- (c) Where permanent partial disablement results from the injury,
- (ii) in the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury.”

A bare reading of the above-quoted provisions makes it crystal clear that for claiming the compensation on the score of his afore-certified disability, the claimant was required/supposed to adduce the evidence so as to prove/establish the extent/percentage of the loss of his earning capacity, as duly assessed by the qualified medical practitioner, on account of the injury sustained by him and resulting in his above-assessed disablement but however, he (claimant) did not lead even an iota of evidence on the record in this regard and rather, while appearing before the Competent Authority as AW1, he disclosed his occupation as 'labourer', meaning thereby that even after suffering the afore-referred disability, he had been working as a labourer as he had been doing prior thereto.

6. As a sequel to the fore-going discussion, it follows that the impugned Award does not suffer from any illegality, infirmity, irregularity or perversity so as to warrant any interference by this Court. Resultantly, the same is, hereby, upheld and the appeal in hand, being sans any merit, stands dismissed.

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