

MFA 83/2005

BEFORE

HON'BLE MR JUSTICE B D AGARWAL

This appeal has arisen out of the Judgment and Order dated 4.8.2005 passed by the Commissioner under Workmen Compensation Act, 1923, Hailakandi in Case No. 28M/2003. By this impugned order the learned Commissioner has awarded compensation amounting to Rs.3,24,947.95 with interest @ 12 % from the date of accident. Since the Award has been directed against the Hindustan Paper Corporation Ltd., the said Company has filed this appeal through its Officers.

I have heard Mr S N Sarma, learned counsel for the appellants as well as Mr M G Singh for the respondents/claimants.

As could be gathered from the documents filed with the memo of appeals the claimant was engaged by Cachar Paper Mill Employees Thrift and Credit Co-operative Society Limited. The said Society was engaged by the Hindustan Paper Corporation Ltd. for certain contract works. From the documents, it reveals that the claimant sustained physical injury on 7.8.2007, while he was on duty. Accordingly, a claim application was filed in the Court of the Commissioner, Workmen Compensation Act, 1923, on 25.2.2003 claiming a sum of Rs. 1,30,000/-. In the minutes of the enquiry the claimant filed an application on 22.12.2004 enhancing his claim to Rs. 4,61,000/-. After enquiry a sum of Rs.3,24,947.95 with interest @ 12 % from the date of accident has been awarded.

From the order sheets enclosed with the memo of appeals, I find that the opposite parties/Hindustan Paper Corporation Ltd. were not heard while accepting their amended claim vide order dated 22.12.2004. Besides this, the impugned Award is virtually on the subjective satisfaction of the Commission. In the case of New India Assurance Company Ltd. - Vs- Sanjit Kumar, reported in 2000 (2) GLT 567, this Court has held that a learned Commissioner under Workmen Compensation Act, cannot adopt any special mode or method to assess the compensation, otherwise than what has been provided under the Act. In the said judgment it has also been held that the percentage of disablement has to be assessed on the basis of medical evidence. This view has been reiterated by this Court in scores of judgments. However, in the present case, no Doctor was examined to assess the loss of earning capacity of the claimant as well as the percentage of disablement.

For the above reasons, the impugned Award is unsustainable in law. For the ends of justice, the matter is remanded back to the Commissioner, Workmen's Compensation, Hailakandi for denovo enquiry and passing fresh Award after hearing both the parties.

It is made clear that as per the interim order of this Court, the Hindustan Paper Corporation has deposited the entire amount in the Office of the Commissioner, Workmen's Compensation, Hailakandi and out of that Rs. 1,30,000/- has been disbursed to the claimant. The said amount shall be adjusted in the fresh amount of Award. Besides this the Hindustan Paper Corporation shall be permitted to file objection against the enhancement of claim made by the claimant and both the parties shall also be permitted to adduce their evidences.

With the aforesaid directions, the appeal stands disposed of.