

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

MA No. 182/2008

IA No. 254/2008

**Officer Commanding,
114 R.C.C. Bhaderwah,
C/o 56 APO**

..... Appellant(s)/Petitioner(s)

Through: Mr. Suneel Malhotra, CGSC
Vs

**Ali Mohd.
S/o Ghulam Rasool
R/o Bhaderwah Tehsil Bhaderwah,
District Doda**

..... Respondent(s)

Through:

Coram: HON'BLE MR. JUSTICE MOHD. YOUSUF WANI, JUDGE

**ORDER
31.05.2024**

1. Impugned in the instant appeal filed in terms of the provisions of Section 30 (1) of the Workmen Compensation Act (now Employees' Compensation Act), 1923, (hereinafter referred to as the 'Act', for short), is the order dated 15.07.2008 passed by learned Authority under the Workmen's Compensation Act (Assistant Labour Commissioner) Doda (hereinafter referred to as the Commissioner, for short), whereby learned Commissioner while disposing of a claim petition filed by the respondent- Ali Mohd. S/o Ghulam Rasool R/o Bhaderwah Tehsil, Bhaderwah and District, Doda, has awarded a total compensation amounting to Rs. 84,855/- in favour of the said respondent-employee in respect of the

injury received by him in the course of his employment under the appellant.

2. The impugned award has been assailed mainly on the grounds that learned Commissioner has not worked out the compensation on the basis of a legal criteria having regard to the injury/disablement suffered by the respondent-employee and percentage thereof; that learned Commissioner has not ascertained the age and the rate of wages of the respondent-employee and that the Union of India, being a necessary party in the application was not arrayed as such by the respondent.
3. The respondent upon being put to notice did not choose to appear which led to the initiation of ex-parte proceedings against him.
4. I have heard the learned counsel for the appellant on admission.
5. Learned counsel, in support of his contentions reiterated the stand taken by him in the memo of appeal and submitted that substantial question of law is involved in the appeal which justifies the formulation of such question and hearing of the appeal on merits. The learned counsel, in addition, to the grounds already taken by him in his memo of appeal submitted that the respondent-employee, after his recovery, resumed his duty and, thereafter, continued to work with the organization of the appellant as a labour. He further contended that the respondent-employee had not received any fatal injury which warranted the award of compensation and that too on a higher side.
6. Learned counsel placed reliance on the judgment cited as **CIMA No. 119/2009 decided on 06.06.2012 titled, “Divisional Manager vs. Mohd.**

Hanief & Anr.” and 2009 ACJ 2742 titled, “Oriental Insurance Co. Ltd. vs. Mohd. Nasir & Anr.”

7. On a perusal of the memo of appeal as well as the impugned order passed by the learned Commissioner, I do not find that any substantial question of law is involved in the matter, which justifies adjudication.
8. It reveals from the impugned award/order dated 15.07.2008 that respondent-employee produced the evidence before learned Commissioner to the effect that he received a scheduled injury prescribing for loss of earning capacity. The respondent-employee as well as the Medical Officer, Doctor-Mohd. Rafi of the rank of Orthopaedic Surgeon, who had treated the respondent-employee and issued certificate were examined by learned Commissioner on the application. In his statement, the Doctor, deposed that the respondent-employee has suffered head injury with cervical spine injury of C5,C6 subluxation with nonoparcesis of right of upper limb and fracture of scapula neck. These injuries made him permanently disabled and incapable of performing any kind of hard or manual labour. The said Medical Officer, in his statement recorded that respondent-employee has suffered 45% of physical disability. The Commissioner has taken the age of the respondent-employee as 45 years on the basis of medical record and his minimum wages as Rs. 70/- per day as fixed by the Government. The Commissioner has stated that on account of scheduled injury, the respondent-employee had lost 30% of earning capacity.
9. I have gone through the record of learned Authority below which reveals that the order impugned has been passed upon consideration of the

evidence, direct and documentary, especially, as regards, the injury suffered by the applicant, his age and the amount of wages he was receiving.

10. In the backdrop of the aforementioned discussion, I do not think that there is involvement of any substantial question of law in the matter, which justifies the admission of the appeal for its adjudication.
11. The first proviso of Section 30 (1) of the Act states that no appeal shall lie against any order unless a substantial question of law is involved. The said proviso has been incorporated in the section with the object that workers shall not be dragged into unending litigation in the highest forums.
12. A period of more than fifteen years has lapsed since the passing of the impugned award. The facts and circumstances of the case relied upon by the learned counsel for the appellant are distinguishable from the facts and circumstances of the present cases.
13. In view of the above discussion, the instant appeal is dismissed. The award amount, if not having been already released in favour of the respondent-employee, shall be immediately released in his favour wherever deposited. The record of the Authority below shall be sent back immediately along with a copy of this order.
14. Disposed of.

(Mohd. Yousuf Wani)
Judge

Jammu
31.05.2024
Meenakshi