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CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

Original Application No. 1276 of 1993

Union of India and Ors Petitioners

Versus

Ram Chandra and another Respondents

HON'BLE MR. JUSTICE R.K. VARMA, V.C.

HON'BLE MISS. USHA SEN, MEMBER (A)

(By Hon. Mr. Justice R.K. Varma, V.C.)

By this petition filed Under Section 19 of the Administrative Tribunals Act 1985, the Union of India (Northern Railway) has sought setting aside of the order dated 15.3.93 passed by the Commissioner in Workmen Compensation Case No. 31/92 Ram Chandra and another Vs. A.R.M. and another at Kanpur (Annexure A-1 to the petition) Under the Workmen's Compensation Act 1923 (hereinafter referred to as the Act).

2. The facts giving rise to this petition briefly stated are as follows:

The respondent no.1 Ram Chandra was working on the post of Box Porter in the employment of the petitioner Northern Railway at G.M.C Ward, Juhi, Kanpur, when he met with an accident at 23-15 hrs on 11.6.71 in course of his duty as a Workman. The personal injury caused to the respondent no.1 arose out of and in the course of his employment. The injury caused resulted in amputation of respondent no.1's left leg. The respondent no.1 was admitted in hospital on 11.6.71 and after his leg was amputated, the respondent no.1 was turned out of employment. The respondent no.1 made demand of compensation from the Railway Administration by sending notice to them but he received no response.

3. The respondent No.1 ultimately filed Workmen Compensation case No. 31/92 before the Commissioner, Respondent No.2 claiming compensation for the injury and the medical expenses with interest. The Railway Administration resisted the claim on the ground of limitation and raised the objection that the respondent no.1 be required to prove his allegations by additional evidence.

4. The respondent no.1 filed an application for condoning the delay in filing the claim petition for compensation, stating that the respondent no.1 had continued to make demand of payment of compensation and medical expenses from the Railway Authorities until he filed this petition. The Railway Administration did not particularly oppose the respondent No.1's application for condonation of delay in filing the claim for compensation and the Commissioner found sufficient cause on the ground of diligence and disablement on the part of the respondent no.1 and consequently condoned the delay in filing the claim petition

5. As regards the quantum of compensation the learned Commissioner found that the respondent no.1 was aged about 22 years at the time of accident and he was receiving a salary of Rs.600/- per month. No evidence in opposition to the claim was adduced by the Railway Administration. The learned Commissioner found that the respondent no.1's left leg was amputated at the level of his thigh and the certificate of the Chief Medical Officer dated 5.5.92 certifying the respondent's disablement as 85% was given in pursuance to the reference made to him by the Commissioner.

6. Accordingly, the Commissioner Workmen Compensation computed the amount of compensation as Rs.56,791/- having regard to Schedule IV of Section 4 of the Act and awarded the said amount as compensation. A penalty of 50% of the compensation amounting to Rs.28,395/- has also been directed to be paid for default of payment of compensation in addition to the amount of compensation. The Railway Administration has also been directed to pay interest at the rate of 9% per annum on the amount of compensation and penalty.

7. In the course of arguments before the Commissioner the Railway Administration accepted the disablement as 40% instead of 85% as certified by the Chief Medical Officer, Kanpur.

8. Being aggrieved by the quantum of compensation and penalty as determined by the Commissioner of Workmen Compensation, the Railway Administration has filed this petition.

9. The learned counsel for the petitioner, Union of India (Northern Railway) has contended that the Respondent No.2 Commissioner Under Workmen's Compensation Act 1923 at Kanpur, has failed to exercise the discretion judicially in condoning the long delay of about 20 years in entertaining the claim of the employee, respondent no.1 for compensation under the Act. It has also been submitted that the Respondent No.2 did not say anything on Section 10 of the Act which provided for conditions for the maintainability of the petition for compensation.

10. We find from the impugned order of the Commissioner, Respondent No.2 that the learned Commissioner considered the aspect of delay while dealing with the claim petition of the employee for condonation of delay in filing the claim for compensation. The learned Commissioner has found that the claimant-respondent no.1 had been constantly demanding compensation and medical expenses from the Railway Administration and finding no response to his repeated demands the claimant-respondent no.1 filed the claim petition along with an application for condonation of delay before the Commissioner, Respondent No.2.

11. The learned Commissioner has observed that the Railway Administration did not particularly oppose the claimant's application for condonation of delay and that from the documents filed relating to the delay, it becomes clear that claimant-workman has been sending letters demanding compensation to the Railway Administration and when the claimant workman was not paid compensation, he filed the instant claim. The learned Commissioner has taken into account the factor of disablement on account of amputation of the claimant's left leg as a result of the injury sustained by him in the accident arising out of and in the course of his employment as a cause for the delay in filing the claim.

12. This the learned Commissioner has apparently exercised discretion having regard to the discretionary power contained in proviso to Section 10 of the Act whereby the Commissioner has power to entertain and decide any

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claim of compensation in any case notwithstanding that the notice has not been given or the claim has not been preferred in due time, if he is satisfied that the failure so to give the notice or to prefer the claim, as the case may be, was due to sufficient cause.

13. In view of proper consideration of the question for condonation of delay in filing of the claim for compensation and the learned Commissioner's observation that the Railway Administration did not particularly oppose the claimant's application for condonation of delay, we find no scope for reagitating the matter of delay already condoned by the learned Commissioner, respondent no.2. The contention on behalf of the petitioner, Union of India that the claim was barred by time, is therefore rejected.

14. The learned counsel for the petitioner has contended that full opportunity was not given to the Railway Administration for defending the case for compensation. We find no substance in this contention and nothing has been pointed out from the record in support of this contention. No grievance on this score appears to have been made in the written arguments submitted on behalf of the petitioner before the Commissioner under the Act (Annexure A-4 to the petition). The learned Commissioner has observed that no evidence was adduced nor any documents filed on behalf of the Railway Administration in defence. The contention of not giving full opportunity appears to be baseless and cannot be accepted.

15. The last contention raised on behalf of the petitioner is that the award of compensation, penalty

and interest is contrary to the provisions of the Act. It has been urged that the provisions as they stood in 1971 were applicable which the respondent No.1 has failed to notice.

16. It has been submitted on behalf of the petitioner that the Railway Administration has re-employed the respondent no.1 w.e.f. 26.10.1987. It has been urged that the workman, respondent no.1 suffered disability to the extent of 40% and not 85% as a result of amputation of leg. However, no convincing material was pointed out by the learned counsel in support of the submission that the disablement suffered by the claimant-workman should be adjudged 40% and not 85% as determined by the learned Commissioner. The circumstances that the petitioner has been provided re-employment has been urged for reducing the amount of compensation and panalty. Nothing has been pointed out from the statutory provisions to show that re-employment could be taken into account for reducing the amount of compensation or the penalty payable in respect of the injury due to non-payment of compensation.

17. The rate of interest chargeable on the amount of compensation as pointed out by the learned Commissioner is 6% as per provision of Section 4-A of the Act and not 9%. It has also been pointed out that in computing the amount of compensation the learned Commissioner has taken into account the table provided in Schedule IV Under Sec. 4 as amended by Act 22, 1984, Section 7 w.e.f. 1.7.84, whereas the compensation arises in respect of injury sustained in an accident which took place in 1971. It has been submitted that the determination of compensation could have been made on the basis of unamended provisions

of the Act as existing in 1971. This submission of the learned counsel in our opinion, merits acceptance. As such, while holding the claimant-workman, respondent No.1 entitled ^{to} compensation with interest @ 6% together with 50% of the amount of compensation as penalty, ~~we~~ set aside the award as computed by the learned Commissioner and hereby remand this case to the Commissioner for a fresh determination of the amount of compensation within a period of four months on the basis of the un-amended provisions of the Act as stood in the year of accident 1971. The amount of compensation so determined shall carry interest of 6% per annum and the petitioner shall also pay penalty equal to 50% of the amount of compensation.

18. Accordingly, this petition stands disposed of with no order as to costs.

Utk. Sr.
Member (A)

R. K. Verma
Vice Chairman

Dated: April. 27th 1994

Uv/