

**Dharmender Singh Vs. Dildar Singh and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/1127831](http://sooperkanoon.com/1127831)

**Court :** Delhi

**Decided On :** Feb-18-2014

**Judge :** Valmiki J. Mehta

**Appellant :** Dharmender Singh

**Respondent :** Dildar Singh and ors.

**Advocate for Pet/Ap. :** Ms. Pratima M. Chauhan

**Judgement :**

\* IN THE HIGH COURT OF DELHI AT NEW DELHI + FAO No.53/2014 18th February, 2014 % DHARMENDER SINGH Through: .....Appellant Ms. Pratima M. Chauhan, Adv. VERSUS DILDAR SINGH & ORS. Through: ..... Respondents CORAM: HONBLE MR. JUSTICE VALMIKI J.MEHTA To be referred to the Reporter or not?. VALMIKI J.

MEHTA, J (ORAL) CM No.3317/2014 (delay) & CM No.3318/2014 (delay in refiling) 1. For the reasons stated in the applications, delay in filing and refiling is condoned. CMs stand disposed of. CM No.3316/2014 (Exemption) 2. Exemption allowed subject to just exceptions. CM stands disposed of. FAO532014 3. By this first appeal which is stated to be filed under Section 30 of the Employees Compensation Act,1923 (in short the Act) challenge is laid to the impugned order dated 19.2.2013 which has dismissed an application for enhancement of compensation by taking the disability as 100%, although, there was an earlier

judgment passed in the main proceedings for compensation filed under Section 22 of the Act. The earlier judgment is dated 11.6.2008.

4. First of all I am doubtful whether at all an appeal will lie under Section 30 of the Act inasmuch as an appeal under Section 30 of the Act lies against an order determining compensation or determining an amount of penalty or interest which is payable under Section 4A of the Act. Against a misconceived application which did not lie in the first place, and which is dismissed, I do not think that an appeal lies under Section 30 of the Act. Be that as it may, I have considered the issue also on merits.

5. Admittedly, the first compensation claim was adjudicated in favour of appellant-applicant by the judgment of the Commissioner dated 11.6.2008. Disability was ascertained at a particular percentage of the employee. Compensation was accordingly awarded and paid. 11.6.2008 has become final. The judgment dated There is no provision in the Employees Compensation Act for filing a second or successive application(s) seeking enhancement of compensation on the ground that earlier the disability has been wrongly determined at a lesser percentage. If the applicant-appellant was dissatisfied with the percentage of disability which was fixed in the judgment dated 11.6.2008, the remedy was to challenge that earlier judgment dated 11.6.2008, but it was not challenged, and therefore, the matter rested there. The present application therefore did not lie by which enhanced compensation was sought on the ground of higher disability.

6. In view of the above, there is no merit in the appeal, and the same is therefore dismissed, leaving the parties to bear their own costs. FEBRUARY18 2014 ib FAO532014

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