

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

FAO No. 4141 of 2013

Reserved on: 08.07.2026

Date of decision: 16.07.2026

**Date of uploading on the
website: 16.07.2026**

M/s Saichem Pharma

.....Appellant

Versus

Devinder Kumar (deceased) through LRsRespondents

Coram

The Hon'ble Mr. Justice Sushil Kukreja, Judge.

¹ *Whether approved for reporting?*

For the appellant:

Mr. Sanjeev Bhushan, Senior
Advocate with Mr. Sohail Khan,
Advocate.

For the respondents:

Mr. Sudhir Thakur, Senior
Advocate with Mr. Karun Negi,
Advocate.

Sushil Kukreja, Judge.

The instant appeal has been maintained by appellant, who was respondent No. 1 before the Commissioner, Employee's Compensation, Solan, District Solan, H.P., (hereinafter referred to as "the learned Commissioner") under Section 30 of the Employee's Compensation Act, 1923 (for short 'the Act') against the impugned award, dated 03.06.2013, passed by the learned

¹ *Whether reporters of Local Papers may be allowed to see the judgment?*

Commissioner below, whereby WCA Petition No. 16/2 of 2011, filed by the petitioner was allowed and respondent No. 1, being employer, was held liable to pay the compensation in the sum of Rs. 78,650/- with interest @ 12% per annum w.e.f. 23.11.2008, i.e. one month after the date of accident, till the deposit of the amount, with a prayer to allow the present appeal by setting aside the impugned award.

2. The brief facts of the case are that petitioner-Devinder Kumar was working with respondent No. 1 for the last more than two years, as an operator and had been handling the multi machine and his salary had been fixed at Rs. 3,000/- per month. The machine, which was being handled by the petitioner, developed some defect and said fact was reported by the petitioner to respondent No. 1. However, no steps were taken to fix the defect. The petitioner was instructed and directed to put machine powder into the multi machine. On 23.10.2008 at about 11:00 A.M., when the petitioner was putting the powder in the multi machine, all of a sudden, the right hand of the petitioner came into contact

with grinder/blade of the machine, due to which, four fingers of the right hand of the petitioner were amputated. The petitioner was treated at Sanjivani Hospital, Solan, where he remained admitted w.e.f. 23.10.2008 to 25.10.2008. As per the petitioner, at the time of accident his age was 26 years and he was the sole bread earner of the family and his wife and two sons were dependent upon him, however, due to injury suffered by him, he lost his earning capacity. On the basis of these submissions, the petitioner filed the claim petition under Section 22 of the Act seeking compensation from respondent No. 1.

3. Respondent No. 1, contested the petition by filing reply, wherein, preliminary objections qua maintainability, locus standi, suppression of material facts have been taken. On merits, it has been admitted that the petitioner was employee of respondent No. 1 and he has been getting Rs. 3,000/- per month as salary. Factum of accident in question has also been admitted, however, it has been denied that the same had occurred due to negligence on the part of respondent No. 1. It has further been denied that four fingers

of the petitioner were amputated in the accident. However, it has been stated that the petitioner was got medically treated at Sanjivini Hospital and he was still working with respondent No. 1. It has also been denied that the petitioner suffered permanent disability in the accident.

4. On 09.07.2012, the learned Commissioner below had framed the following issues for consideration and adjudication:

- “1. Whether the petitioner being employee of respondent No. 1 suffered permanent disablement in an accident on the morning of 23.10.2008 in the course of his employment as alleged? OPP***
- 2. Whether the petitioner was getting a sum of Rs. 3,000/- per month as salary from respondent No. 1 as alleged? OPP***
- 3. Whether the petitioner is entitled for compensation as prayed for? OPP***
- 4. Whether the petition is not maintainable in the present form? OPR***
- 5. Whether the petitioner has no locus standi to file the present suit? OPR***
- 6. Whether the petitioner has suppressed the material facts from this Court? OPR***
- 7. Relief.”***

5. After the parties led evidence and after hearing the learned counsel for the parties, the petition was allowed

and respondent No. 1, being employer, was held liable to pay the compensation in a sum of Rs. 78,650/- with interest @ 12% per annum w.e.f. 23.11.2008, i.e. one month after the date of accident, till the deposit of the amount.

6. Feeling aggrieved and dissatisfied, the appellant preferred the instant appeal against the impugned award dated 03.06.2013 for setting aside the same, which was admitted for final hearing on the following substantial questions of law:-

“(1) Whether the learned Court below has completely misread and mis-appreciated the evidence on record and which has vitiated the impugned order?”

(2) Whether the Court below has erred in taking disability of the respondent to be of 10% when there was another disability certificate showing disability of the respondent to be of 5%?

(3) Whether the Court below has erred in taking the age of the respondent as 24 years whereas admitted age of the respondent was 26 years at the time of accident?

(4) Whether the Court below has ignored the concealment and suppression of real and true facts and thus the impugned order got vitiated.?”

7. I have heard the learned counsel for the appellant, learned counsel for respondents and have

carefully examined the entire records.

8. The learned Senior Counsel for the appellant contended that the learned Commissioner below has erred in taking disability of the petitioner as 10%, whereas, there was another certificate showing disability of the petitioner to the extent of 5%.

9. The perusal of the record reveals that the petitioner has suffered permanent disability, as his fingers got amputated in the accident, which had occurred during the course of his employment with respondent No.1. As per disability certificate, Ext. PW-1/C, issued by Chief Medical Officer, Solan, District Solan, H.P., the petitioner has suffered permanent disability to the extent of 10%. However, no suggestion has been put to the petitioner at the time of cross-examination by the Id. counsel for the respondents to the effect that he has not suffered permanent disability to the extent of 10%. No evidence to the contrary has been led by the respondents to prove that the petitioner has not suffered permanent disability to the extent of 10%. Therefore, the learned Commissioner below has rightly taken the disability

suffered by the petitioner to the extent of 10% while assessing the compensation.

10. Learned Senior Counsel for the appellant next contended that learned Commissioner below has erred in taking the age of the petitioner as 24 years, whereas, age of the petitioner was 26 years at the time of the accident. In support of this contention, he placed reliance upon Ext. PW-1/B, copy of identity card, wherein, date of birth of the petitioner has been reflected as 12.01.1983. This contention of learned Senior Counsel for the appellant is not devoid of any force, as the learned Commissioner below has taken the age of the petitioner as 24 years, at the time of the accident whereas as per the identity card, Ext. PW-1/B, age of the petitioner at the time of accident was about 25 years 9 months and 11 days. Therefore, by taking the age of the petitioner at the time of accident as 26 years, the relevant factor as per Schedule IV of the Act has to be taken as 215.28 instead of 218.47, as taken by learned Commissioner below.

11. Hence, the appeal is partly allowed. Impugned

award dated 03.06.2013 is modified and compensation, as awarded by learned Commissioner below is reduced to Rs. 77,500 from Rs. 78,650/-, as awarded by learned Commissioner below. Rest of the terms of the award, including the interest component shall remain the same. Substantial questions of law are answered accordingly.

12. No other point was urged before me.

13. Accordingly, the appeal is disposed of, so also pending application(s), if any.

(Sushil Kukreja)
Judge

16th July, 2026
(raman)