(1998) 06 GAU CK 0042

In the Gauhati High Court

Case No : L.P.A. No. 8 of 1997

Ashit Roy Choudhury APPELLANT

Vs

United India Insurance Co. Ltd. and Others RESPONDENT

Date of Decision : 10-06-1998

Acts Referred:

Employees Compensation Act, 1923 — Section 4, 4A

Citation : (1999) ACJ 849 : (1998) 3 GLT 10

Hon'ble Judges : J.N. Sharma, J;H.K.K. Singh, J

Bench : Division Bench

Advocate : S. Deb and R. Dasgupta, for the Appellant; D.K. Biswas and S. Chakravarty, for the Respondent

Final Decision : Dismissed

Judgement

J.N. Sarmah, J.—This appeal has been filed against the judgment passed by the learned single Judge on 30.4.1997 in M.A. (F) No. 14 of 1995 whereby the learned Judge held that the amount of penalty under the Workmen''s Compensation Act shall be the liability of the employer. It was further stated that the owner of the vehicle was liable to pay the penalty, that is, 50 per cent of the amount.

2. A claim petition was filed before the Commissioner, Workmen''s Compensation at North Tripura, Kailasahar. That was registered as Case No. TS (W/C) No. 1 of 1993. In order to decide the present controversy in this appeal it is necessary to refer to paras 8 and 9 of the claim petition. They are quoted below:

(8) That the petitioner approached the O.P. No. 1 for the compensation who had already been informed of the accident and the resultant death, but he refused to pay it on the ground that he held a policy of insurance valid at the time of the accident and as such any amount of compensation, if payable, would be paid by the O.P. No. 2.

(9) That the compensation due to the petitioner fell due on 2.12.1992, but the

amount of compensation not being paid the petitioner is further entitled to 50 per cent of the compensation as computed hereinabove in addition to the interest for the delay in payment.

3. So a bare perusal of this claim petition will show that it is specifically stated that the compensation due to the petitioner fell due on 2.12.1992. The petitioner is further entitled to 50 per cent as computed herein in addition to the interest for the delay in payment. An objection was filed by the owner with regard to this claim and therein this liability was not denied. That para 7 has been dealt in para 4 of the written objection wherein it is stated, inter alia, as follows:

(4) With reference to the averments made in paras 4, 5, 6 and 7 of the petition it is stated that the compensation claimed corresponding to Schedule IV of the Workmen''s Compensation Act is not correct.

4. Paras 8 and 9 dealt in para 5 it is stated as follows:

(5) With reference to the averments made in paras 8 and 9 of the petition it is stated that the same are not true. On the contrary the answering opposite party informed the insurance company about the accident and the death of the said Nikhil Chandra Das, Even some money was paid to the petitioner by the opposite party on compassionate ground.

The vehicle No. TRL 3957 belonging to the opposite party was insured with the United India Insurance Co. Ltd. under policy No. 130802/30/21/16/170 under certificate No. 740/92 for the period 17.1.1992 to 16.1.1993 and the said policy included the insurance liability to persons employed in connection with the operation and/or loading, unloading of motor vehicle. As such the insurance company is alone liable to pay the compensation and no liability lies with the answering opposite party to pay the compensation.

In the premises whereof the claim as against the answering opposite party is liable to be dismissed.

5. Before the Commissioner the wife was examined as a witness and she had deposed, inter alia, as follows:

The owner of the vehicle paid Rs. 500 for the purpose of sradha ceremony of my husband and did not pay any further money.

The owner examined himself as PW 1 and nowhere he denied the liability to pay the penalty.

6. The learned Commissioner in para 6 of the judgment has held as follows:

(6) Learned Advocate Mr. Deb very fairly and frankly submitted that he did not dispute the claim of the petitioner Mira Das but he raised some technical point stating that the instant application was not properly filed. The minor son and daughter as stated by the applicant in the deposition were not properly represented in this case. He further submits that the insurance company is to

pay the compensation as claimed.

7. He further found as follows:

It is also admitted fact on record that the petitioner was not paid any compensation which she was entitled to get under the Workmen''s Compensation Act and thereby she is entitled to get further amount of compensation u/s 4A of the Workmen''s Compensation Act, in total Rs. 84,716 + Rs. 42,000 = Rs. 1,26,716 (Rupees One lakh twenty-six thousand seven hundred and sixteen only).

8. This matter is covered by the earlier Workmen''s Compensation Act, 1923 and not by the amended Act. Earlier to it Section 4-A (3) provided as follows:

4-A (3). Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner may direct that, in addition to the amount of the arrears, simple interest at the rate of six per cent per annum on the amount due together with, if in the opinion of the Commissioner there is no justification for the delay, a further sum not exceeding fifty per cent of such amount shall be recovered from the employer by way of penalty.

9. The Apex Court in Pratap Narain Singh Deo Vs. Srinivas Sabata and Another, , in paras 6, 7 and 8, has laid down the law as follows:

(6) It has next been argued that the Commissioner committed a serious error of law in imposing a penalty on the appellant u/s 4-A (3) of the Act as the compensation had not fallen due until it was ''settled'' by the Commissioner u/s 19 by his impugned order dated 6.5.1969. There is, however, no force in this argument.

(7) Section 3 of the Act deals with the employer''s liability for compensation. Sub-section (1) of that section provides that the employer shall be liable to pay the compensation if ''personal injury is caused to a workman by an accident arising out of and in the course of his employment''. It was not the case of the employer that the right to compensation was taken away under Sub-section (5) of Section 3 because of the institution of a suit in a civil court for damages, in respect of the injury, against the employer or any other person. The employer therefore became liable to pay the compensation as soon as the aforesaid personal injury was caused to the workman by the accident which admittedly arose out of and in the course of the employment. It is therefore futile to contend that the compensation did not fall due until after the Commissioner''s order dated 6.5.69 u/s 19. What the section provides is that if any question arises in any proceeding under the Act as to the liability of any person to pay compensation or as to the amount or duration of the compensation it shall in default of agreement, be settled by the Commissioner. There is therefore nothing to justify the argument that the employer''s liability to pay compensation u/s 3, in respect of the injury, was suspended until after the settlement contemplated by Section 19 . The

appellant was thus liable to pay compensation as soon as the aforesaid personal injury was caused to the appellant, and there is no justification for the argument to the contrary.

(8) It was the duty of the appellant, u/s 4-A(1) of the Act to pay the compensation at the rate provided by Section 4 as soon as the personal injury was caused to the respondent. He failed to do so. What is worse, he did not even make a provisional payment under Sub-section (2) of Section 4A for, as has been stated, he went to the extent of taking the false pleas that the respondent was a casual contractor and that the accident occurred solely because of his negligence. Then there is the further fact that he paid no heed to the respondent''s personal approach for obtaining the compensation. It will be recalled that the respondent was driven to the necessity of making an application to the Commissioner for settling the claim, and even there the appellant raised a frivolous objection as to the jurisdiction of the Commissioner and prevailed on the respondent to file a memorandum of agreement settling the claim for a sum which was so grossly inadequate that it was rejected by the Commissioner. In these facts and circumstances, we have no doubt that the Commissioner was fully justified in making an order for the payment of interest and the penalty.

10. The Supreme Court has pointed out that it is not the requirement of law that in order to impose the penalty first the compensation is to be determined by the Commissioner. One of the main objects of the Workmen''s Compensation Act is to secure payment of compensation as soon as it falls due. Where an employer does not even make the provisional payment based on the accident, the workman is entitled to get the penalty and interest. A penalty is to be imposed as pointed out by the Supreme Court for withholding payment. The statutory duty of the employer to pay the compensation amount with the penalty because this principle is to be applied strictly once default is found on the part of the employer. This has been rightly done by the Commissioner. But the Commissioner fixed the liability of the insurance company and accordingly the insurance company filed this appeal before this Court being M.A. (F) No. 14 of 1995 and the learned single Judge rightly came to the finding that penalty will be the liability of the employer and not of the insurance company.

11. Accordingly there is no merit in this appeal and the same is dismissed. We have heard Mr. S. Deb, learned advocate for the appellant, Mr. D.K. Biswas, the learned advocate for the claimant and Ms. S. Chakravarty, learned advocate for the insurance company.

12. Before we part with the record we make it clear that it will be the liability of the insurance company to pay compensation with interest at the rate of 6 per cent per annum from the date on which it became due, because it was the duty of the Commissioner to impose that interest. That was not done and while in deciding this appeal we thought it fit and proper to rectify that mistake. The insurance company shall pay the interest within 2 months.

13. It is contended by Mr. Deb that the owner is not liable for the payment of the compensation amount if the vehicle is insured. The owner must pay the amount and may get it back by way of reimbursement.

