

(2001) 08 RAJ CK 0096
In the Rajasthan High Court

Assistant Engineer (O and M) R.S.E.B. and Another	APPELLANT
Vs	
Suwa Puri	RESPONDENT

Date of Decision : 21-08-2001

Acts Referred:

Employees Compensation Act, 1923 — Section 2, 3, 4A

Citation : (2003) 1 ACC 257 : (2002) 4 WLC 739

Hon'ble Judges : H.R. Panwar, J

Bench : Single Bench

Judgement

H.R. Panwar, J.—This appeal is directed against the judgment dated 29.1.1992 passed by Workmen's Compensation Commissioner, Bikaner Region, Bikaner (for short "the Commissioner") in Case No. WCC/9/91 whereby the learned Commissioner awarded a sum of Rs. 1,26,328/- in favour of the respondent and, against the appellants. Aggrieved by the judgment and award impugned, the appellants, who are employer of the respondent workman, have filed this appeal.

2. I have heard the learned Counsel for the appellants. Perused the judgment impugned and the record.

3. It was contended by the learned Counsel for the appellants that the Commissioner fell in error in determining the disablement to the extent of 90%. He contended that the total disablement resulted due to the said accident would remain only to the extent of 45%. He further contended that the Commissioner fell in error in imposing the penalty for a sum of Rs. 21,615.50. He contended that the appellant had already deposited Rs. 43,231.50 on 27.6.1991 and, therefore, the Commissioner ought not to have imposed the penalty.

4. It was also contended that the claim petition filed by the respondent before the Commissioner was barred by the period of limitation and, therefore, the Commissioner further erred in entertaining the claim filed by the respondent beyond the period of limitation as provided under the Workmen's Compensation Act, 1923 (for short "the Act").

5. The facts in nut shell are that on 23.5.1988 at about 8.30 a.m. while attending the L.T. Line Fault of consumer complaint on the electric pole at Rayanbadi, district Nagaur, the respondent under the employment of the appellants, received injury on the back, due to electric shock and fell down from the electric pole. He received injuries on the spinal cord. The spinal injury resulted in paralysis of both the legs and as such, the respondent sustained permanent disablement due to employment injury. He was examined by the Medical Board on 2.8.1989 and on 15.9.1989. The Medical Board noticed complete paralysis of both ankle and foot and assessed the permanent disability and loss of earning capacity to the extent of 45%. The Commissioner held that loss of earning capacity or the extent of it is a question of fact. It has to be determined by taking into account the diminution or destruction of physical capacity as disclosed by the medical evidence and then it is to be seen to what extent such diminution or destruction could reasonably be taken to have disabled the affected workman from performing the duties which a workman of his class ordinarily performs. Therefore, medical evidence as to physical capacity or diminution of physical capacity is an important factor in the assessment of loss of earning capacity. The Commissioner relied on the judgment of the Calcutta High Court in the case of Calcutta Licensed Measurers Bengal Chamber of Commerce Vs. Md. Hossain, He has relied on the provisions of Schedule I read with the foot note given in Schedule I and reached to the conclusion that due to the accident, both the ankle and foot of the respondent workman have been paralysed and now he cannot walk without sticks and cannot perform the normal work of Helper or any other work, which he would have performed had both his ankle and foot were not paralysed. Relying on the foot note to Schedule I, he reached to the conclusion that loss of earning capacity resulted to the extent of 90% and accordingly computed the compensation.

6. It is not disputed that the respondent was under the employment of the appellants and sustained the injuries as noticed above, which resulted in paralysis of both the legs, ankle and foot permanently. He was engaged as Helper and his duty was to attend the L.T. Line Fault of consumer complaint on electric pole and on the relevant date of the accident, he was dealing with a fault on a consumer complaint on an electric pole and due to electric shock, he fell down from the pole and sustained injuries resulting in complete paralysis. Thus, he sustained injuries out of and in the course of the employment. In Pratap Narain Singh Deo v. Shrinivas Sabata and Anr. 1976 ACJ 141 four Judges Bench of the Hon"ble Supreme Court while considering the expression "total disablement" as defined in Section 2(1)(1) of the Act held that total disablement means such disablement, whether of a temporary or permanent nature, as incapacitates workman for all work which he was capable of performing at the time of the accident resulting in such disablement. In that case, the injured workman was carpenter by profession. By loss of the left hand above the elbow, he has evidently been rendered unfit for the work of carpenter as the work of carpentry cannot be done by one hand only. The Hon"ble Supreme Court held

loss of earning capacity to the extent of 100% as the work of carpentry cannot be done by one hand. In the instant case, the respondent workman was Helper and because of the employment injury sustained by him, which resulted in complete paralysis of both the legs, he became unfit for the work of Helper or any other work. He would not be able to do the work which he has been doing prior to the accident. As such, the disablement is total and not partial as the work of Helper cannot be done without effective legs. In my considered opinion, the Commissioner was well justified in reaching to the conclusion of the disablement of the respondent workman.

7. The learned Counsel for the appellants has further assailed the imposition of penalty. 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 compensation if "personal injury is caused to a workman by accident arising out of and in the course of his employment". 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 in the instant case admittedly arose out of and in the course of the employment. Section 4-A(3) of the Act provides that 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 shall--(a) direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of 6% (now 12%) per annum on the amount due together with, (b) if in the opinion of the Commissioner, there is no justification for the delay, a further sum not exceeding 50% of such amount, shall be recovered from the employer by way of penalty. A bare look at the aforesaid provision shows that Section 4-A deals with the compensation to be paid, when due and penalty of default. Section 4-A(1) thereof mandates that the compensation shall be paid as soon as it fell due. Sub-Section (3) of Section 4-A provides that where any employer is in default in paying the compensation due under the Act within one month from the date it fell due, the Commissioner shall--(a) direct that the employer shall in addition to the amount of arrears, pay simple interest thereon at the rate of 6% as then it was applicable (now @ 12% w.e.f. 15.9.1995.) Sub-Section (3)(b) of Section 4-A of the Act further provides that if the Commissioner is of the opinion that there is no justification for the delay, direct that the employer shall, in addition to the amount of arrears and interest thereon, pay a further sum not exceeding 50% of such amount by way of penalty.

8. In the instant case, the respondent workman sustained employment injury on 23.5.1988 and the compensation became payable on the date of the accident and the appellant employer failed to pay the compensation within one month from the date it fell due and in these circumstances, the learned Commissioner was justified in directing the appellant employer to pay interest and the penalty. In my considered opinion, the conclusion arrived at by the learned Commissioner is just and proper. More so, these are findings of fact and no substantial question of law is involved in this case. It is settled law that an appeal lies to High Court

against any order only if a substantial question of law is involved in the appeal. In this appeal, no substantial question of law is involved and even on merits, there is no substance in this "appeal.

9. In view of the aforesaid discussion, this appeal fails and accordingly, it is hereby dismissed. No order as to costs.