
(2010) 08 MP CK 0001
In the Madhya Pradesh High Court
Case No : M.A. No. 583 of 2003

Bajnath Choudhary and Others	Vs	APPELLANT
Secretary, M.G.M Higher Secondary School		RESPONDENT

Date of Decision : 19-08-2010

Acts Referred:

Workmens Compensation Act, 1923 — Section 12, 30, 4A(3)

Citation : (2010) ILR (MP) 2339

Hon'ble Judges : R.K. Gupta, J

Bench : Single Bench

Advocate : Nitin Agrawal, for the Appellant; S.K. Rao and Ajit Agrawal, for the Respondent

Judgement

R.K. Gupta, J.—Since these two appeals preferred against the same award dated 28.11.2002, therefore, these two appeals were heard simultaneously and a common judgment is passed.

2. These are the appeals preferred u/s 30 of the Workman's Compensation Act challenging the judgment passed on 28.11.02 by the Commissioner for Workmen's Compensation (Labour Court) Jabalpur wherein the claim application has been allowed and the Commissioner has awarded a sum of Rs. 2,11,790/- as the amount of compensation.

3. The claimants have preferred an appeal against the award as the interest has been awarded at a lesser rate and also on the ground that no penalty has been awarded by the Commissioner. So far as the employer is concerned, he has preferred the appeal challenging the award itself.

4. With reference to the appeal submitted by the employer, i.e. M.A. No. 320/03, the only ground during the course of argument raised by the learned Counsel for the Appellant/employer is that the deceased was not a person engaged by the employer but he was an employee who was engaged by the Contractor.

5. The facts leading to the case are that on the relevant date, the deceased was

employed in a construction work. The Appellant was constructing a building to run a school. It was a Multi-storied building and the contractor was engaged. Keeping in view Section 12 of the Workmen's Compensation Act, 1992, if the Principal employer has engaged a contractor then it being a Principal employer, shall be entitled to recover any amount paid towards compensation under the Workmen's Compensation Act, 1923 from the Contractor but that is subject to the terms and conditions so stipulated in the agreement between the Principal employer and the Contractor. In the present case, the employer has not filed any agreement that in terms to Section 12 of the Workmen's Compensation Act, 1923, the Appellant, being a Principal employer shall recover the same from the Contractor. Apart from the aforesaid, the Respondents while arguing the case have raised only a limited ground to urge that being a Principal employer and the employee since was engaged by a Contractor, it was not the liability of the principal employer to pay the amount of compensation.

6. Section 12 of the Workmen's Compensation Act is specific which primarily fix the responsibility of the Principal employer to pay the amount of compensation and accordingly since the only question raised by the employer being a Principal employer that he is not liable to pay the compensation only on the ground that the deceased was an employee employed by a Contractor, cannot get any support from Section 12 of the Act and for this reason, the Principal employer cannot be absolved from its liability to pay the amount of compensation.

7. Under the circumstances, I do not find any substance in the appeal submitted by the employer and accordingly, the appeal filed by the employer being M.A. No. 320/03 stands dismissed.

8. So far as the appeal submitted by the claimants being M.A. No. 583/03 is concerned, as stated herein above, the appeal is preferred on the ground that interest has been awarded at a lower rate and that too from the date of filing of the application before the Commissioner for Workmen's Compensation Act and also no penalty has been awarded.

9. It is contended on behalf of the counsel appearing for the non-applicant that in the present case, the Commissioner for Workmen's Compensation has erroneously not allowed the amount of penalty which is provided u/s 4A Sub-clause 3(b) of the Workmen's Compensation Act, 1923. In this reference, it is submitted by him that amount should have been paid when it fell due and if the amount is not paid then in the absence of any justification for non payment of the amount, the employer has to be suffered with the penalty up to the extent of 60% of the award amount and accordingly it is submitted that Commissioner for Workmen's Compensation has committed illegality in not awarding the amount of compensation.

10. The submission so raised on behalf of the claimant is considered.

11. It is to be seen that in the application which was preferred before the Commissioner for Workmen's Compensation, the amount of penalty was not

prayed for Thus, there was no opportunity for the employer to submit any explanation for non payment of the amount on the date when it fell due. The proviso appended to Section 4A Sub-section 3 provided that an order for payment of penalty shall not be passed under Clause (b) without giving a reasonable opportunity to the employer to show cause why it should not be passed.

12. On the basis of the same, it is clear that when the claimants have not made any prayer in their application for award of penalty and under these circumstances, the employer has no opportunity to file any explanation for giving justification for non payment of the amount of compensation. Thus, in the present case, no prayer to that effect was made, the Commissioner for Workmen's Compensation was justified in not allowing the penalty as per Section 4A, Sub-section 3 and proviso appended to Sub-section 3 which provides that before imposing a penalty, a reasonable opportunity has to be given to the employer which is provided in the Statute but in the absence of any prayer of penalty, there was no reasonable opportunity to the employer to offer any explanation for non payment of amount of compensation within the stipulated period.

13. In view of the aforesaid, I am of the view that the Commissioner for Workmen's Compensation has rightly not granted penalty in the present case.

14. The next question raised is with regard to award of interest at a lesser rate.

15. In the present case, the Commissioner has allowed the interest @ 6%. The date of accident is 16.9.96. The amendment in Sub-section 3 of Section 4A was made by Act No. 30 of 95 made with effect from 15.9.95. Sub-clause (a) provides that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of 12% p.a. or at such higher rate not exceeding the maximum of the lending rates of any scheduled Bank as may be specified by the Central Government, by notification in the Official Gazette on the amount due. Thus, the penalty which is prescribed by virtue of Sub-clause (a) of Sub-section 3 of Section 4A is 12%. The Commissioner in the present case has only awarded interest @ 6%. Accordingly, in the present case, I hold that the claimants are entitled to get the rate of interest @ 12%.

16. The Commissioner for Workmen's Compensation has awarded the interest from the date the application is filed. Prior to that, there is nothing on record to show that the amount fell due before filing of the application. The Commissioner in the present case has awarded the interest from the date the application is filed. Accordingly, I do not find the said discretion exercised by the Commissioner for Workmen's Compensation is illegal in any way.

17. In view of the aforesaid, the appeal preferred by the claimants being M.A. No. 583/03 stands partly allowed.

18. Accordingly, the appeal filed by the employer being M.A. No. 320/03 stands

dismissed and the appeal preferred by the claimants being M.A. No. 583/03 stands partly allowed.