
(2022) 09 SHI CK 0025

In the High Court Of Himachal Pradesh

Case No : First Appeal From Order (WC) No.32 Of 2013

Bajaj Allianz General Insurance Company Ltd

APPELLANT

Vs

Shakuntala And Others

RESPONDENT

Date of Decision : 05-09-2022

Acts Referred:

Workmen's Compensation Act, 1923 — Section 4, 4(A), 4(II), 4(1)

Citation : (2022) 09 SHI CK 0025

Hon'ble Judges : Satyen Vaidya, J

Bench : Single Bench

Advocate : Aman Sood, B. N. Sharma, Kamlander Bhardwaj

Final Decision : Disposed Of

Judgement

Satyen Vaidya, J

1. By way of instant appeal, the appellant has assailed award dated 09.08.2012 passed by learned Commissioner under the Employee's Compensation Act, Rampur Bushehr, District Shimla, H.P. in case No.5 of 2008/32-2 of 2012.

2. Brief facts necessary for adjudication of the appeal are that respondents No.1 to 4 herein (hereinafter referred to as "claimants") filed application for grant of compensation under the Employee's Compensation Act, 1923 (for short 'Act') on account of death of Sh. Tota Ram in a road accident. The claimants were the legal heirs of deceased Sh. Tota Ram, who was employed as driver of vehicle No. HR-37B-2597 owned by respondent No.5 herein (hereinafter referred to as "owner". The vehicle was insured with the appellant herein (hereinafter referred to as the "insurer"). It was alleged that Sh. Tota Ram had died in the course of his employment with the owner while driving the vehicle of the owner on his instructions. The monthly salary of the deceased was alleged to be Rs.5,000/-. It was also claimed that deceased was getting Rs.100/- per day as subsistence allowance in addition to his monthly salary. The deceased was stated to be 31 years old at the time of death.

3. In response, the owner admitted that the deceased was his employee. However, as per the owner deceased was being paid Rs.4000/- per month as salary and Rs.50/- per day as died money.

4. The insurer contested the claim on the ground of maintainability. The relationship of employer and employee between the owner and deceased was denied. It was alleged that the deceased was under influence of liquor at the time of accident and claimed exclusion under the insurance policy. In addition, various other breaches of terms and conditions of insurance policy were alleged. The claim of the claimants towards the income of deceased was also denied.

5. The learned Commissioner framed the following issues:

i) Whether the deceased was workman within the meaning of workman's compensation Act? OPP

ii) Whether the deceased died during the course of employment with respondent No.1? OPP

iii) Whether the deceased was getting wages, as claimed? OPA

iv) Whether the applicants are entitled to get the compensation as claimed? OPP

v) Relief.

6. Issues No. 1 to 4 were decided in affirmative and an award of Rs.16,64,076/- was passed in favour of the claimants. The awarded amount was calculated under the following heads:

(i) Age 31 years, factor 205.95, which comes to Rs.205.95x4,000 =Rs.8,23,800/-.

(ii) Simple interest @ 12% from 08.04.2008, till date, comes out to Rs.4,28,376/-.

(iii) Penalty @ 50% comes out to Rs.4,11,900/-.

(iv) Total amount comes out to Rs.16,64,076/-(Sixteen lacs sixty-four thousand and seventy-six) only.

7. The learned counsel for the appellant contended that the award passed by learned Commissioner required interference by this Court as the same was based on wrong premise. He contended that the accident had taken place on 07.04.2008 and as per second explanation appended to Section 4 (1) of the Act, the monthly wages were to be confined to the maximum of Rs.4,000/- per month notwithstanding the fact that the workman was proved to have been earning amount more than that. On the strength of such submission, it is further contended that the calculation of the compensation made by learned Commissioner was patently wrong. It should have been calculated by taking the monthly income of deceased at Rs.4,000/- and after dividing it by two, it was to be multiplied with relevant factor of 205.95. Learned counsel for the appellant

has further contended that learned Commissioner has also erred in awarding the interest from the date of accident, whereas it would have been awarded from the date of compensation.

8. On the other land, learned counsel for the claimants has supported the impugned award.

9. Vide order dated 03.07.2013, the appeal was admitted on the following substantial questions of law: -

1. Whether the award/judgment as passed by the learned Commissioner below is sustainable, as the same has been passed in contravention and violation of Section 4 (a) and Explanation-II of Section 4 of the Workmen's Compensation Act, 1923 (Act No. 8 of 1923), especially when the amount of compensation payable to the claimants on account of death of deceased Tota Ram is to be calculated on the basis of monthly wages of the deceased and which in any case cannot exceed to or more than Rupees 4,000/-when the accident has occurred on 07.04.2008?

2. Whether the learned Commissioner below is justified while passing the impugned award and awarding interest @ 12% p.a. especially when the Hon'ble Supreme Court in such and similar situated cases had awarded interest @ 7.5% p.a. from the date of the petition and not from the date of accident?

3. Whether the learned Workmen Commissioner below was justified in passing the impugned award/judgment and granting compensation from the date of accident against the appellant especially when the date of adjudication of claim and amount payable to the claimant is the date of filing of the petition and not the date of the accident?

10. I have heard learned counsel for the parties and have gone through the records of the case carefully.

11. As regards the first substantial question of law, as noted above, the question arises whether the Commissioner had wrongly calculated the compensation payable to the claimants by taking the income at Rs.8,000/- per month ? The answer, without any doubt, is "No". The date of accident is 07.04.2008 and at that stage, the second proviso to Section 4 (1) of the Act, provided for capping of monthly wages of an employee at Rs.4,000/- even where an employee was able to prove the payment of monthly wages in excess of Rs.4,000/-.

This was the situation prior to 18.01.2010, whereafter by virtue of amending Act 45 of 2009 Explanation-II to Section 4 was deleted. Thus, the learned Commissioner clearly erred in calculating the compensation payable to claimants by ignoring the provisions of second Explanation to Section 4 of the Employee's Compensation Act. The first substantial question of law is answered accordingly.

12. It is no more res integra that a person becomes entitled to compensation under the Act on the date on which cause of action arises. In this case, the cause

of action arose on 07.04.2008 i.e. the date of accident. Reference can be made to the judgment of the Hon'ble Supreme Court in Partap Narain Singh Deo Vs Siriniwas Sabata and others (1976) 1 SCC 289 and also Oriental Insurance Co. Vs Khajuni Devi and others (2002) 10 SCC 567. Further, the liability of interest has to be borne by the insurer as the said liability is attached to the amount of awarded compensation under the Act, which the insurer is liable to indemnify and as necessary corollary the liability to pay interest would run from the date on which right to receive compensation accrues. Reference in this regard can be made to the judgment passed by the Hon'ble Supreme Court in Ved Prakash Vs Premi Devi (1997) 8 SCC 1. The third substantial question of law is answered accordingly.

13. As regards the second substantial question of law, as noticed above, the Act provides for payment of simple interest at the rate of 12% per annum. By virtue of its provision contained in Section 4A of the Act, the second substantial question of law is accordingly answered.

14. The impugned award is accordingly modified and it is held that the claimants are entitled to following amounts:

(i) Compensation : Rs.4000-/- 2×205.95 = Rs.4,11,900.00

(ii) Simple interest @ 12% P.A.from 8.4.2008

Till date of Award. = Rs.2,14,188.00

(iii) Penalty @ 50% = Rs.2,05,950.00

Total Rs. 8,32,038.00

(iv) Simple interest @ 12% P.A. on

Rs.4,11,900/- from date of Award

Till date of payment/deposit.

The liability to pay the amount of compensation and interest shall be borne by the insurer, whereas the liability to pay the amount of penalty shall be on the owner.

15. The appeal is accordingly disposed of in the aforesaid terms, so also the pending miscellaneous application(s), if any.