(2014) 01 RAJ CK 0015

In the Rajasthan High Court

Case No : Civil Misc. Appeal No. 1809/2013

Bansal Transport Company APPELLANT

Vs

Rashika Jain and Others RESPONDENT

Date of Decision : 20-01-2014

Acts Referred:
Employees Compensation Act, 1923 — Section 4A, 4A(3)(a), 4A(3)(a)(b), 4A(3)(b)

Citation : (2014) 01 RAJ CK 0015

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : Ajay Gupta, Advocates for the Appellant; Sudhit Jain, Advocates for the Respondent

Judgement

Alok Sharma, J.—This civil misc. appeal has been filed against the order dated 06.12.2012, passed by the Commissioner, Employees'' Compensation Act, Sawai Madhopur (hereinafter ''the Commissioner'') whereby the learned Commissioner has awarded compensation of Rs. 4,07,700/- to the respondents-claimants (hereinafter ''the claimants'') against the defendant-Insurance Company. Interest payable @ 12% on the compensation was apportioned between the two defendants and further imposed a penalty of Rs. 2 lakhs on the appellant-defendant-Company (hereinafter ''the defendant-Company'').

2. The facts of the case are that one Rajesh Kumar Jain, husband of the respondent-claimant No. 1 (hereinafter ''the claimants'') was working as a driver on the truck of the defendant-Company, which is engaged in transport business. On 19.09.2008 after delivering LPG gas at Delhi, on the way he met with a serious accident. The defendant-Company got the said Rajesh Kumar Jain admitted to Safdarjung Hospital, New Delhi where he was treated at the cost of the defendant-Company. It appears that the injured Rajesh Kumar Jain and his family being uncomfortable at the Safdarjung Hospital, got shifted to Jaipur, where the injured was admitted at SMS Hospital. Thereafter the injured Rajesh Kumar Jain moved to his hometown at Sawai Madhopur where his treatment

continued. Unfortunately he died on 28.04.2009 from the injuries sustained in the accident of 19.09.2008. The defendant-Company''s case is that it was not informed of the death of Rajesh Kumar Jain and only came to know of it on the receipt of notice of the claim petition filed by his legal heirs, as claimants, before the Commissioner, Sawai Madhopur on 01.06.2010. In reply to the claim, the factum of the accident dated 19.09.2008 in the course of employment was not disputed nor was the factum of Rajesh Kumar Jain''s employment with the defendant-Company at the relevant time. It was however stated that in view of the vehicle on which Rajesh Kumar Jain was the driver being insured, the Insurance Company was responsible to pay the compensation under the Employees'' Compensation Act, 1923 (hereinafter ''the Act of 1923'') as also interest and Penalty thereon.

3. The learned Commissioner, Sawai Madhopur by the impugned award dated 06.12.2012 found the claimants entitled to the compensation of Rs. 4,07,700/- in the context of the age of the deceased and his salary @ Rs. 4,000/- p.m. along with interest @ 12% p.a. thereon from 01.06.2010 till the date of payment. The said amount was payable by the Insurance Company. Interest on the compensation between 28.04.2009 and 01.06.2010 was to be paid by the defendant-Company. The Commissioner also finding that there had been delay without justification in payment of compensation to the claimants, held them entitled to a penalty of Rs. 2 lakhs in terms of Section 4A(3)(b) of the Act of 1923. Hence this appeal to the extent of levy of penalty and part interest liability on the defendant-Company.

4. Mr. Ajay Tyagi, appearing for the defendant-Company, has submitted that interest and penalty under Section 4A(3)(a)(b)of the Act of 1923 can be levied only when circumstances so warrant. He submitted that in the facts of the case, the defendant-Company was not even aware of the death of Rajesh Kumar Jain till receipt of notice of the claim petition filed by the claimants on 01.06.2010. And in view of the fact that the vehicle on which Rajesh Kumar Jain was a driver was insured, the claimants were entitled to compensation from Insurance Company. The defendant-Company could therefore not be held responsible or liable for non-payment of compensation within 30 days of the death of Rajesh Kumar Jain. It has been submitted that in the facts of the case, the learned Commissioner ought not to have found lack of justification for the delay in payment of compensation also for reason that the matter was pending before him and the delay in payment of compensation was not attributable to the defendant-Company. He further submitted that in any event of the matter Section 4A(3)(b) of the Act of 1923 provides for penalty "not exceeding 50%". He submitted that in the facts of the case the penalty of Rs. 2 lakhs on the defendant-Company was close to 50% limit provided under Section 4A(3)(b) of the Act of 1923 and no reason has been stated by the Commissioner as to why a lesser penalty would not have served the ends of justice.

5. Mr. Sudhir Jain, appearing for the claimants, submits that interest under

Section 4A(3)(a) and penalty under Section 4A(3)(b) of the Act of 1923 are automatic on the non-payment of the compensation payable within 30 days of falling due where the employer does not at least make a provisional payment thereof at least to the extent of accepting the liability. He submitted that the fundamental burden of payment of compensation under the Act of 1923 is on the employer. Merely because the employer had insured the vehicle on which the employee Rajesh Kumar Jain was employed as driver, it did not entail shifting of the prime liability of the employer for the payment of compensation for injuries/ death to an employee. It was further submitted that the fact of the matter remains that the defendant-Company had come in knowledge of the death of Rajesh Kumar Jain at least of the receipt of notice of the claim petition filed by the claimants on 01.06.2010. Yet in terms of Sub-section (2) of Section 4A of the Act of 1923 even provisional compensation was not paid to the claimants. It was for the defendant-Company to satisfy the claim of the claimants and thereafter if the vehicle was indeed insured - as it appears to have been - to recover it form the Insurance Company. It was submitted that in the event merely because the vehicle was insured and consequently the liability for compensation was that of the insurer, this Court were to hold that the owner/employer could not be held responsible for the delay in the payment of compensation, it would be contrary to the scheme of the Act of 1923 and entail grave prejudice to the claimants.

6. Having heard the counsel for the parties, I find no force in the present appeal and no substantial question of law for its admission has been made out. Section 4A of the Act of 1923 is categorical that the responsibility for the payment of compensation lies on the employer. Under the Act of 1923, no sooner any liability for compensation arises and a claim based thereon is made at least the provisional payment to the extent of the acceptance of liability by the employer is to be deposited within period of 30 days thereafter - no matter that the employer is a insured and the policy makes the Insurance Company finally liable to make the payment on the death and injury to an employee. A policy of insurance cannot jettison the primarily liability of the employer to compensate his employee in the event of death or injury. It is not in dispute that the defendant-Company came to know of the death of Rajesh Kumar Jain consequent to the accident of 19.09.2008 when Rajesh Kumar Jain was in employment at least under the notice of the claim petition filed on 01.06.2010. It is also an admitted fact that yet no provisional payment to the extent the defendant-Company accepted its liability under the Act of 1923 was made. The legal processes of the adjudication of the claim petition before the Commissioner, in my considered opinion, do not serve as a justification for the delay in the payment of the compensation claimed. Consequently, the conditions under clause (a) and (b) of Sub-section (3) of Section 4A of the Act of 1923 stood satisfied. The claimants were therefore entitled to penalty against the employer in terms of the enunciation of the Hon''ble Supreme Court that liability on account of penalty falls on the employer and not on the Insurance Company. So far as the extent of penalty is concerned, in my considered opinion, it is only a matter of

approximation based on the discretion of the Commissioner. There is nothing on record to render the discretion exercised by the Commissioner in imposing penalty of Rs. 2 lakhs as wanton or arbitrary. The apportionment of interest on the compensation found payable between the defendant-Company and the insurer has been based on a reasonable basis of bifurcating the period falling between the date of death and the filing of the claim to the defendant-Company''s account and thereafter till the date of payment to the account of the insured. No question of law what of substantial question of law arises from the exercise of discretion by the Commissioner or this Court.

7. Consequently, I find no force in the civil misc. appeal. The same is dismissed. Stay application is also dismissed.

