
(2014) 01 DEL CK 0068
In the Delhi High Court
Case No : FAO No. 229 of 2006

Centre for Development of Telematics APPELLANT
Vs
Commissioner and Another RESPONDENT

Date of Decision : 24-01-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11

Citation : (2014) 141 FLR 516 : (2014) 1 LLJ 577

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Ajay Bhatnagar, for the Appellant; Pradeep Gaur and Mr. Amit Gaur, Advocates for R-4, for the Respondent

Final Decision : Partly Allowed

Judgement

Valmiki J Mehta, J.—This first appeal is filed u/s 30 of the Employees' Compensation Act, 1923 (in short "the Act") impugning the order of the Employees Commissioner dated 21.7.2006 awarding interest and penalty against the appellant/principal. It is undisputed before this Court that the main judgment awarding compensation was passed by the Commissioner vide the earlier judgment dated 27.1.2005, and which has become final. By the original impugned judgment dated 27.1.2005, a sum of Rs. 3,30,000/- was awarded towards compensation.

2. By the impugned order dated 21.7.2006, interest and penalty u/s 4-A of the Act have been awarded.

3. Learned counsel for the appellant has argued before this Court that appellant is not liable because appellant was not the employer and the workman was the employee of an independent contractor only who is liable. Another argument raised is that since interest was the subject matter of the main compensation proceedings, and the said relief was not granted by the impugned order, at best, only penalty can be awarded (and which too has been wrongly awarded against

the appellant) but not any amount towards interest.

4. Section 4-A of the Employees Compensation Act, 1923 lays down the position that in case of any delay in payment of compensation beyond 30 days of the accident from when the compensation falls due, interest at 12% per annum and penalty of 50% of the compensation amount can be awarded. The issue with respect to liability to pay interest and penalty has been the subject matter of a recent judgment of the Supreme Court in the case of *The Oriental Insurance Company Ltd. Vs. Siby George and Others*, wherein the Supreme Court has held that so far as award of penalty is concerned, the same is only after issuing of an appropriate show-cause notice under the proviso to sub-Section 3 of Section 4-A of the Act and which has to be after first determining whether compensation is payable or not payable in the main compensation claim proceedings. The relevant para of the judgment of the Supreme Court in the case of *Siby George* (supra) is para 8 and which reads as under:-

8. It is, thus, to be seen that Sub-section (3) of Section 4A is in two parts, separately dealing with interest and penalty in Clauses (a) and (b) respectively. Clause (a) makes the levy of interest, with no option, in case of default in payment of compensation, without going into the question regarding the reasons for the default. Clause (b) provides for imposition of penalty in case, in the opinion of the Commissioner, there was no justification for the delay. Before imposing penalty, however, the Commissioner is required to give the employer a reasonable opportunity to show cause. On a plain reading of the provisions of Sub-section (3) it becomes clear that payment of interest is a consequence of default in payment without going into the reasons for the delay and it is only in case where the delay is without justification, the employer might also be held liable to penalty after giving him a show cause. Therefore, a finding to the effect that the delay in payment of the amount due was unjustified is required to be recorded only in case of imposition of penalty and no such finding is required in case of interest which is to be levied on default per se.

5. Counsel for respondent no. 4-insurance company has shown a copy of the original compensation application filed by the workman before the Commissioner and as per which in the main compensation petition, compensation alongwith interest was prayed for as also penalty. Therefore, claim of interest was very much of a subject matter of main proceedings, but the first judgment dated 27.1.2005 which awarded compensation, did not grant interest although the same was specifically prayed for. Once the claim was made in the main proceedings and it was declined, that prayer is deemed to be dismissed or at least not allowed in view of Explanation (V) to Section 11 CPC. Therefore, I agree with the counsel for the appellant that once the interest is not granted in the main award proceedings, it was upon the workman to challenge the principal award dated 27.1.2005, and which since was not challenged, no interest thereafter can be granted. This argument accepted in favour of the appellant is only for theoretical purposes, as the facts stated subsequently show that though

interest is said to be awarded, actually the amount awarded shows that it is only 50% penalty amount.

6. So far as the grant of penalty of 50% is concerned, in my opinion, the impugned order rightly awards the same because as per the ratio in the case of *Siby George (supra)* the issue of penalty only comes up subsequent to the award of main compensation and after a show-cause notice is issued under the proviso to sub-Section 3 of Section 4-A and which were the subject proceedings under which the impugned order dated 21.7.2006 has been passed. No justification has been given by the appellant for non-payment of the compensation and therefore, I do not find any valid reason to interfere with the impugned order. I do not agree with the counsel for the appellant that the justification arises because appellant is not the employer inasmuch as Section 12 of the Act, with its sub-Sections 1 and 2, are a complete answer to the contention of the appellant because as per this Section 12, the initial liability for compensation of a workman of a contractor who works in the premises of the principal such as the appellant, is of the principal, although, the workman is engaged by contractor, and the appellant/principal can, after paying compensation, claim indemnification from the contractor as per sub-Section 2 of Section 12. I also do not agree with the contention of the counsel for the appellant that said sub-Section 3 of Section 12 states that the workman can recover compensation from the contractor inasmuch as this sub-Section 3 is only an additional provision by which workman instead of suing the principal can sue the contractor with whom he was employed. Sub-Section 3 does not prevent the liability of the principal, and which is so specifically provided in sub-Section 1 of Section 12.

7. In view of the above, the appeal is partly allowed by setting aside the impugned order to the extent that the same grants interest however, the appeal is dismissed to the extent of challenge to the claim of penalty awarded by the impugned order. I note that the award of compensation as per the main judgment dated 27.1.2005 is Rs. 3,30,000/- and the impugned order dated 21.7.2006 grants interest and penalty totaling to Rs. 1,65,000/- only and therefore though interest is alleged to be awarded actually only penalty has been awarded as penalty is 50% of compensation and Rs. 1,65,000/- awarded is thus 50% of Rs. 3,30,000/- and hence in effect only as penalty. Appeal is disposed of in terms of the aforesaid observations, leaving the parties to bear their own costs.