
(2015) 03 MP CK 0011
In the Madhya Pradesh High Court
Case No : M.A. No. 840/2006

Chhagan Sikarwar and Others

APPELLANT

Vs

Lokendra Singh Dhakare and Others

RESPONDENT

Date of Decision : 24-03-2015

Acts Referred:

Workmens Compensation Act, 1923 — Section 30, 4, 4(A), 4-A, 4-A(1) (3)

Citation : (2015) 146 FLR 693 : (2015) 3 MPLJ 193

Hon'ble Judges : Sujoy Paul, J.

Bench : Single Bench

Advocate : B.S. Bais, for the Appellant

Final Decision : Allowed

Judgement

Sujoy Paul, J.—This appeal is filed under Section 30 of the Workmen's Compensation Act, 1923 (the Act) against the order dated 08.04.2006 passed by the Commissioner for Workmen's Compensation in case No. 43/B/ WCA/fatal/04.

2. The Court below framed four issues. Finding was given that the workman expired during the course of and arising out of his employment and hence he is entitled to receive compensation. However, the issue No. 3 relating to grant of interest is answered in negative. The finding is given that the death of workman is not caused because of direct vehicle accident. The workman was infact murdered. For these reasons, the interest was declined. This appeal was admitted on following substantial question of law :-

"(i) Whether the Commissioner for workmen's compensation has erred in disallowing the claim of interest as per Section 4(A) of Workmen's Compensation Act?

(ii) If yes, from which date interest is payable to the claimant.

(iii) Whether the Commissioner aforesaid had any discretion in the matter of payment of grant of interest?"

3. Shri B.S. Bais, learned counsel for the appellant, stated that as per Section 4(A) of the Act it was obligatory on the part of the court below to grant interest from the date of accident. No discretion is left with the Commissioner to disallow the interest when the compensation was held to be payable. He also relied on various judgments in support of his contentions.

4. Shri Arvind Agrawal, Advocate for the respondent No. 2, took a diametrically opposite stand. He submits that in the peculiar facts and circumstances of the case, admittedly, the workman died because of murder and not because of any accident. The Court below has rightly disallowed the interest part. He submits that grant of interest is always a discretionary relief which depends on the facts and circumstances of the case. Apart from this, he submits that interest is not payable to the workman in the light of judgment of Supreme Court reported in National Insurance Co. Ltd. Vs. Mubasir Ahmed and Another, , Yadava Kumar Vs. The Divisional Manager, National Insurance Co. Ltd. and Another, . Lastly, relied on U.P.S.R.T.C. now Uttarakhand Transport Corporation Vs. Satnam Singh, In nutshell, he supported the order impugned.

5. I have bestowed my anxious consideration on the rival contentions and perused the record.

6. I deem it apposite to reproduce the relevant provision of the Act which deals with grant of interest. Relevant portion of Section 4-A(1) (3) of the Act reads as under :-

" 4-A Compensation to be paid, when due and penalty of default:- (1) Compensation under section 4 shall be paid as soon as it falls due.

(2) xxx xxx xxx

(3) 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 twelve percent per annum 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; and

(b) if, in his opinion, 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 fifty percent of such amount by way of penalty.

Provided that an order for the payment of penalty shall not be passed under clause (b) without giving reasonable opportunity to the employer to show cause why it is not passed.

The substantial questions of law involved in this matter need to be decided in the light of aforesaid statutory provision.

Questions No. 1 and 3.

7. A plain reading of Section 4-A(3) of the Act makes it clear that whenever any employer is in default in paying the compensation, the Commissioner shall direct that the employer shall, in addition to the amount of arrears of compensation, shall pay 12% interest per annum. In my view, the language employed in the said provision is mandatory in nature. It does not leave any scope of discretion with the Commissioner to disallow it when it is found that employer is in default in paying the compensation due under the Act. The judgments cited by Shri Agrawal are passed by Division bench of the Supreme Court. The judgment of Mubasir Ahmed (Supra) and Oriental Insurance Co. Ltd. Vs. Mohd. Nasir and Another, were again considered by the Division Bench of Supreme Court in 2012 (134) FLR 1064 (Oriental Insurance Co. Ltd.) Vs. Siby George and others). After taking stock of certain earlier judgments on this point, the Apex Court opined that the decision in Mubasir Ahmed and Mohd. Nasir insofar as they took a contrary view from the earlier decision in Pratap Narain Singh Deo Vs. Srinivas Sabata and Another, and Kerala State Electricity Board and Another Vs. Valsala K and Another, do not express the correct view and do not make a binding precedents.

8. In Siby George (Supra), the Apex Court in no uncertain terms made it clear that sub-section 3 of Section 4-A makes the levy of interest, with no option, in case of default in payment of compensation. It is held that on a plain reading of provision of sub-section 3 it becomes clear that payment of interest is a consequence of default in payment without going into the reasons for delay. Thus, in my view, when the default in payment of compensation is established, levy of interest is mandatory. Hence, these issues are decided in favour of the claimant by holding that the court below has erred in disallowing the claim of interest. A plain reading of para 8 of the judgment of Siby George (Supra) makes it clear that it is based on earlier judgment of three Judges Bench in Valsala K. (Supra) and four Judges Bench in Pratap Narain Singh Deo (Supra). Since in Siby George the Apex Court opined that judgment in Mubasir Ahmed is not a binding precedent. Shri Agrawal cannot get any assistance from the said judgment. Other judgments cited by Shri Agrawal are also not based on three judge or four judge Bench judgment of Supreme Court. Whereas, the judgment in Siby George (Supra) is based on judgment of greater strength. Hence, the judgment in Siby George is binding on this Court.

Question No. 2.

9. Interestingly, this question is already answered by four Judges Bench of Apex Court in Pratap Narain Singh Deo (Supra). In para 9 of judgment of Siby George, the Apex Court quoted the judgment of Pratap Narain Singh Deo (Supra) that "relevant date for determination of rate of compensation of is the date of accident and not the date of adjudication of the claim". Although in the judgment cited by Shri Agrawal a contrary view is taken by the Supreme Court, it is noticed that the said judgments are not based on any judgment of larger strength of

judges. Hence, the judgment of Siby George, based on Pratap Narain Singh Deo, needs to be followed. Apart from this, two Division Bench of this Court in 2002 (6) JLJ 203 (Jamila Begam (Smt.) and others Vs. D.R.M. Central Railway) and Sabir Ali and Another Vs. Laik Ahmed and Others, opined that grant of interest is mandatory and it needs to be paid as a statutory right i.e. 12% per annum from the date of accident. I am bound by these judgments. Resultantly, appellant is entitled to get interest at the rate of 12% from the date of accident till the payment of compensation.

10. MA is allowed. Respondent No. 2 shall make payment of interest from the date of accident within 90 days from today.