

(1992) 01 P&H CK 0141
In the Punjab And Haryana At Chandigarh
Case No : F.A.F.O. No. 240 of 1988

Chonto (Smt.) and Another	Vs	APPELLANT
Industrial Cables (India) Ltd. and Another		RESPONDENT

Date of Decision : 27-01-1992

Acts Referred:

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

Citation : (1999) 3 LLJ 501 : (1992) 102 PLR 6

Hon'ble Judges : J.B. Garg, J

Bench : Single Bench

Advocate : Deepali Puri, for the Appellant; A.S. Kalra, for the Respondent

Final Decision : Allowed

Judgement

J.B. Garg, J.—Karnail Gir was working as a Welder since 1984 with M/s. Industrial Cables (India) Ltd., Rajpura, District Patiala. On June 17, 1985, the aforesaid workman lost his life during the course of his employment while he was engaged in carrying asbestos sheets and the roof of the premises of aluminium plant was under construction. The widow and the mother moved an application under the Workmen's Compensation Act, 1923, and the Commissioner, Workmen's Compensation, Patiala, awarded a sum of Rs. 53,760/- with interest at the rate of 6% per annum with effect from the date of the occurrence i.e. June 16, 1985.

2. This appeal has been preferred by the widow on the plea that Karnail Gir died on June 17, 1985 and since compensation was not paid within one month, the appellant was entitled to penalty under Sub-section (3) of Section 4A of the Workmen's Compensation Act, 1923.

3. On behalf of the appellant, it has been pointed out that though the occurrence was brought to the notice of the employer and it was reported to the police as well where DDR No. 17 was also recorded yet the claim was declined by the respondents from the very beginning inasmuch as there was a denial of the fact

that the deceased was an employee and later on it was claimed that he was not a workman. All these pleas were repelled by the appellants and the delay in the proceedings as well as the award was on account of the conduct of the respondent-employer.

4. Despite service none has come forward to oppose this appeal on behalf of the employer-respondent No. 1.

5. Sub-section (3) of Section 4A of the Workmen's Compensation Act, 1923 is reproduced as under:--

"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 may direct that, in addition to the amount of the arrears, simple interest at the rate of six per cent annum on the amount due together with, if in the opinion of the Commissioner there is no justification for delay, a further sum not exceeding fifty per cent of: such amount, shall be recovered from the employer by way of penalty."

This goes to show that it is a mandatory provision inasmuch as if the compensation is not paid within one month, the claimant shall be entitled to recover the penalty as well which goes up to fifty per cent. In this regard reliance has been placed on *Kehar Singh v. State of Himachal Pradesh* 1989 ACJ 215, where the delay in payment of a period of 21 months from the date of accident was disallowed and penalty awarded. The learned counsel for the appellant has also referred to *Dalip Kaur and Others Vs. Northern Railway and Others*, where also undue delay in making the payment of the compensation was considered sufficient for imposing penalty notwithstanding that specific prayer was not made in the original application as is the position in the case now in hand. The conclusion is that the appeal succeeds and penalty at the rate of 35% shall be payable by the employer and it shall be deposited within a period of 60 days.