

(2015) 01 BOM CK 0213

In the Bombay High Court

Case No : F.A. Nos. 377 of 2004 and 389 of 2007

Damodhar

APPELLANT

Vs

Executive Engineer, Maharashtra State Electricity Distribution
Company Ltd.

RESPONDENT

Date of Decision : 13-01-2015

Acts Referred:

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

Citation : (2015) 4 ABR 201 : (2015) 5 ALLMR 76 : (2016) 1 BomCR 538 :
(2015) 146 FLR 180 : (2015) 2 LLJ 640 : (2015) 3 MhLj 278

Hon'ble Judges : Z.A. Haq, J

Bench : Single Bench

Advocate : S.A. Kalbande, for the Appellant; A.D. Mohgaonkar, Advocates for
the Respondent

Judgement

Z.A. Haq, J.

1. These two appeals arise out of the order passed by the Commissioner under the Workmen's Compensation Act, 1923 (for short "Act of 1923"). In this judgment the claimant is referred to as "employee" and Maharashtra State Electricity Distribution Company Limited is referred to as "employer". The First Appeal No. 377/2004 is filed by the employee claiming enhanced compensation and interest at the rate of 6% per annum on the amount of compensation, the interest being chargeable from the date of accident till the recovery of the amount. The employee has further prayed for the amount of penalty.

The First Appeal No. 389/2007 is filed by the employer challenging the order passed by the Commissioner granting compensation to the employee.

2. The appellant was working for maintenance work of L.T. Lines and at the time of accident he had been in the employment for more than 9 years. According to the employee he was paid wages by the employer through the Contractor. On 3rd July, 1995 the employee met with the accident in which he sustained injuries.

According to the employee he suffered permanent disability of 55% and the doctor of the Government Medical College had issued the certificate to that effect. According to the employee he suffered 100% loss of earning capacity. The employee filed the claim under the Act of 1923 claiming compensation of Rs. 2,54,148/-. According to the employee, the employer had paid an amount of Rs. 58,242/- on 29th July, 1996 and therefore, the balance amount of Rs. 1,95,906/- was claimed.

3. The employer opposed the claim made by the employee. According to the employer, the employee was working under the Contractor Shri Gaidhane to whom the work of maintenance was given. The employer contended that the accident had taken place due to the negligence of the employee. The employer further stated that there was nothing on the record to substantiate the claim of the employee that he suffered 100% loss of earning capacity. The employer raised the ground that the Commissioner at Nagpur had no jurisdiction to entertain and decide the application filed by the employee inasmuch as the accident had taken place at Pawni, Distt. Bhandara.

4. The learned Commissioner, by the impugned order concluded that the employee had suffered injuries in an accident during the course and arising out of the employment and that he suffered 100% loss of earning capacity. The Commissioner concluded that the employee was entitled for compensation of Rs. 1,05,895/- and after deducting the amount of Rs. 58,242/- which was paid by the employer, the employer was directed to pay me balance amount of Rs. 47,653/-.

5. The employee being aggrieved by the rejection of his claim regarding the interest and amount of penalty has filed the First Appeal No. 377/2004. The employer has challenged the order insofar as the additional amount of Rs. 47,653/- is directed to be paid to the employee vide First Appeal No. 389/2007.

6. While admitting the First Appeal No. 389/2007, the following substantial questions of law were framed:--

"(1) Whether the Commissioner, Workmen's Compensation, had jurisdiction to determine the extent of disability on the basis of the oral evidence rendered by the claimant and hold that the claimant had suffered 100% disability, when the certificate issued by the competent medical authority certified that the disability was to the extent of 55%?

(2) Whether the Commissioner, Workmen's Compensation, Nagpur, had jurisdiction to entertain and deal with the petition filed by the claimant?"

7. In First Appeal No. 377/2004 the appellant employee has claimed the interest and the amount of penalty. Shri Kalbande, the learned advocate for the appellant employee has submitted that the employee is not pressing for the claim of Rs. 1,95,906/- but is claiming interest at the rate of 6% per annum on the amount of Rs. 1,05,895/- and the amount of penalty.

In First Appeal No. 389/2007, Shri Mohgaonkar, the learned advocate for the appellant employer has made the following submissions:--

(i) That the accident occurred at Pawni, Distt. Bhandara, and the Commissioner at Nagpur had no jurisdiction to entertain and decide the application filed by the employee.

(ii) That the employee was not in the employment of the appellant employer but was in the employment of the Contractor and, therefore, the employer is not liable to pay the amount of compensation.

(iii) That the amount of compensation calculated by the Commissioner on the basis that the employee has suffered 100% loss of earning capacity is without any basis.

(iv) That the employee was negligent while performing his duties and, therefore, he is not entitled for the amount of compensation.

8. As far as the challenge raised by the employer to the jurisdiction of the Commissioner at Nagpur to entertain and decide the application is concerned, the objection was decided by the Commissioner by the order passed on Exh. 13 on 21st April, 1999. This order is not challenged by the employer and, therefore, the submission made in this regard cannot be accepted.

9. As far as the contention of the employer that the employee was not in the employment of the employer but was working under the Contractor is also unacceptable in view of the fact that the employer had on his own volition paid an amount of Rs. 58,242/- towards compensation to the employee. If the employee was not in the employment of the employer, the employer would not have paid the amount of Rs. 58,242/- to the employee towards compensation.

10. Thus, the substantial questions of law, which are required to be considered in these two appeals, are as follows:--

(1) Whether the amount of compensation granted by the Commissioner on the basis that the employee has suffered 100% loss of earning capacity is proper?

(2) Whether the employee is entitled for interest on the amount of compensation granted by the Commissioner?

(3) Whether the employee is entitled for the amount of penalty?

These substantial questions of law are formulated after considering the submissions made by the learned advocates for the respective parties. The hearing was continued by consent of the learned advocates for the respective parties.

11. It is undisputed that the doctor of Government Medical College and Hospital has issued the certificate in favour of the employee to the effect that he has suffered 55% disability. The employee has pleaded that the nature of disability suffered by him has resulted in 100% loss of earning capacity. In the

examination-in-chief of the employee it is recorded that the employee is not able to walk properly and to stand, after the accident. It has come on the record that the employee is not able to do the work which he was doing previously. The evidence led by the employee has not been challenged by the employer in the cross-examination. The Commissioner, as the fact finding authority has appreciated the evidence and has recorded that the employee has suffered 100% loss of earning capacity. It cannot be said that the findings recorded by the Commissioner are perverse. I do not find any reason to interfere with the findings recorded by the Commissioner in this regard.

12. Section 4-A(1) of the Act of 1923 lays down that the compensation under section 4 of the Act of 1923 shall be paid as soon as it falls due. Section 4-A(3) (a) of the Act of 1923, as it stood on the date of accident, laid down that where any employer is in default in paying the compensation due under the Act within one month from the date it fell due, the Commissioner shall direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of 6% 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. In the present case there is nothing on the record to show the prevailing lending rates of the scheduled bank at the relevant time. Therefore, if it is held that the employee is liable to pay the interest, then it will be at the rate of 6% per annum.

13. The defence of the employer for not paying the amount of compensation within one month of the accident is that the liability to pay the amount of compensation was of the Contractor and not of the employer. The defence raised by the employer is found unjustified. Though Shri Mohgaonkar, the learned advocate for the employer has submitted that according to the employer the liability to pay the amount of compensation was of the Contractor and as the Contractor died, the employer has paid the amount of Rs. 58,242/- to the employee, I do not find sufficient material on the record to substantiate the submissions made on behalf of the employer. The employer is a company and it has not placed any document or correspondence on the record to show that the amount of Rs. 58,242/- was paid by the employer to the employee only because of the death of the Contractor and otherwise the employer was not accepting the liability. In view of the facts on the record, I am of the view that the employer cannot escape the statutory liability of paying the interest on the amount of compensation as it has committed default in paying the amount of compensation within one month. In view of the provisions of section 4-A(3)(a) of the Act of 1923, as it stood at the time of accident, the employer is liable to pay the simple Interest at the rate of 6% per annum on the amount of compensation of Rs. 1,05,985/-, the interest being chargeable from the date of the accident till the amount is paid to the employee. The contention of the employee is that the employer had failed to discharge its statutory liability of paying the amount of compensation within one month of the accident and there is no justification for the delay on its part in paying the compensation and in view of the provisions of

section 4-A(3)(b) of the Act of 1923, as it stood on the date of accident, the employer is liable to pay 50% of the amount of compensation by way of penalty.

Though the employer has tried to justify the delay in paying the amount of compensation, as observed above, the employer has not placed any document or correspondence on the record to substantiate its contention. The facts on the record show that the employer has paid an amount of Rs. 58,242/- towards compensation only after the employee threatened to commit suicide. As there is no justification for the delay on the part of the employer to pay the amount of compensation, in my view, the employee is entitled for 50% of the amount of compensation determined by the Commissioner, as penalty.

The employee has made the claim for 50% of the amount of compensation towards penalty before the Commissioner and also in the appeal before this Court. The employer is having notice of the claim made by the employee. The justification given by the employee for the delay in paying the compensation is found to be unacceptable. Therefore, in my view, the employee is entitled for the additional 50% of the amount of compensation by way of penalty.

Therefore, the following order.

(i) First Appeal No. 389/2007 filed by the employer is dismissed.

(ii) First Appeal No. 377/2004 filed by the employee is partly allowed.

(iii) It is directed that the employer shall pay simple interest on the amount of Rs. 58,242/- at the rate of 6% per annum to the employee, the interest being chargeable from the date of accident i.e. 3rd July, 1995 till 28th July, 1996 when the amount of Rs. 58,242/- was paid to the employee.

(iv) The employer shall pay simple interest at the rate of 6% per annum to the employee on the amount of Rs. 47,653/- from the date of accident i.e. 3rd July, 1995 till the amount of Rs. 47,653/- is deposited by the employer or paid to the employee.

(v) In addition, the employer shall pay 50% of the amount of Rs. 1,05,895/- to the employee towards the penalty for the delay in paying the amount of compensation.

(vi) The amount payable as per this judgment should be paid by the employer to the employee till 15th March, 2015, failing which the employer shall be liable to pay the interest at the rate of 9% per annum on the amount payable by the employer to the employee as per this judgment, the interest being chargeable from 16th March, 2015.

In the circumstances, the parties to bear their own costs.