

(1994) 07 MP CK 0029

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 53 of 1992

Divisional Forest Officer and Another

APPELLANT

Vs

Baijanti Bai and Others

RESPONDENT

Date of Decision : 29-07-1994

Acts Referred:

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

Citation : (1995) ACJ 1002 : (1994) JLI 771 : (1995) 1 LLJ 837

Hon'ble Judges : S.K. Dubey, J;A.S. Tripathy, J

Bench : Division Bench

Advocate : K.B. Chaturvedi, G.A, for the Appellant; Rajesh Gupta and Ashok Mehta, for the Respondent

Final Decision : Partly Allowed

Judgement

S.K. Dubey, J.—This is an appeal u/s 30 of the Workmen's Compensation Act, 1923, for short, the "Act", against the award dated December 19, 1991, passed in Case No. 5/91 MCA (Fatal), by the Commissioner for Workmen's Compensation, Gwalior for short, the "Commissioner".

2. It is not in dispute that the respondents/claimants are the dependents of the deceased, Veersen, aged 30 years, was employed as a Driver on daily wages of Rs. 31,10 plus Rs. 6.20, dearness allowance, in the Office of the Divisional Forest Officer, Gwalior, appellant No. 1. It is also not disputed that the deceased, as directed, went to Tilwat Ghati with the tractor (No.CPZ 5714) on January 31, 1991 to pull out the truck of the Forest Department which was jammed in mud. While pulling out the truck with the tractor, the tractor overturned, as a result of which the driver was crushed who succumbed to his injuries. The accident arose out of and during the course of employment, but in spite of this, the employer/appellant failed to pay the amount of compensation u/s 4-A(1) calculated in accordance with Section 4 of the Act. The dependents approached the appellants to pay the compensation; having failed to get the compensation, the dependents filed an application u/s 10 of the Act and claimed compensation of Rs. 93,001.85

by applying the factor of 207.98 as provided in Schedule IV u/s 4 of the Act and also penalty of 50% and interest at the rate of 12% per annum on the amount of compensation from the date of accident.

3. The appellants filed their written statement. Though accident and death was admitted in the written statement, but in para 4, it was stated that the dependents are entitled to get only due compensation. No reason was pleaded that why the amount of compensation which fell due on the date of accident could not be deposited. A special plea was taken that the accident arose because of rash and negligent driving of the tractor driver, therefore, the dependents are not entitled to any compensation. No plea of giving of notice of claim u/s 10 of the Act was raised. In evidence before the Commissioner, the widow of the deceased examined herself while the appellants did not lead any evidence. The Commissioner, on the statement of the widow of the deceased and on admissions contained in the written statement, awarded the compensation of Rs. 93,091,85 and 50% penalty of the said amount and interest at the rate of 12% per annum from the date of filing of the application till payment. It is this award which has been challenged.

4. Shri K.B. Chaturvedi, Government Advocate for the appellants and Shri Rajesh Gupta and Shri Ashok Mehta, counsel for Respondents, heard.

5. It was first contended that as no notice u/s 10 of the Act was served on the employer which is a sine qua non for entertainment of the claim in relation to compensation, the Commissioner erred in not dismissing the claim. True, Section 10(1) requires that no claim for compensation shall be entertained by a Commissioner unless notice of accidents has been given in the manner hereinafter provided as soon as practicable after the happening of the occurrence of the accident, or, in case of death, within two years from the date of death. Fourth proviso to Section 10(1) provides that for want of or any defect or irregularity in a notice shall not be a bar to the entertainment of a claim if any of the conditions in Clauses (a) or (b) of Section 10(1) is in existence. Clause (b) provides that if the employer had the knowledge of the accident from any other source at or about the time when it occurred. As the employer, as is admitted, had the knowledge of the accident, its day and time and the details, thereafter, on failure of payment of compensation, the dependents approached the employer for the said payment which was not made, hence the claim was filed. In the circumstances, when no plea of notice u/s 10 was raised before the Commissioner, this contention is not available.

6. Secondly, it was contended that the deceased was forty years of age, therefore, factor for working out lump sum equivalent of compensation, according to Schedule IV u/s 4 of the Act, ought to have been 184.17. The contention has no merit as no such plea was raised. The age of the deceased, specifically pleaded in the claim is 30 years, was not denied. The deceased was in the employment of the appellants, the appellants could have adduced evidence by placing the documentary evidence regarding his date of birth, entered in

service records. Not only this, before this Court also, no material has been produced to show that the deceased was of 40 years of age and not 30 years. Therefore, the finding arrived at by the Commissioner, holding the deceased to be of 30 years of age, being a finding of fact, cannot be interfered in appeal.

7. Lastly, placing reliance on a Single Bench decision of the High Court of Jammu and Kashmir in the case of Amarnath Baldev Raj v. Workmen's Compensation Commissioner 1981 ACJ 14, it was contended that the Commissioner has also not given any opportunity to satisfy himself that there was a justification for not depositing the amount of compensation when it fell due. Therefore, the levy of penalty of 50% of the compensation is illegal. It was also contended that under Sub-section (3) of Section 4A of the Act, the award of simple interest can be at the rate of 6% per annum on the amount due. The Commissioner fell in error in awarding interest at the rate of 12% per annum.

8. To deal with the question of award of penalty and interest, it would be appropriate to reproduce Section 4A of the Act :

"4- A. Compensation to be paid when due and penalty for default. -

(1) Compensation u/s 4 shall be paid as soon as it falls due.

(2) In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the event of liability which he accepts, and, such payment shall be deposited with the Commissioner or made to the workman, as the case may be without prejudice to the right of the workman to make any further claim.

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

9. On a plain reading of the language of Sub-section (3) of Section 4A, it is clear that Sub-section (3) empowers the Commissioner in case of any employer being in default in paying the compensation within one month from the date it fell due, to award in addition to the amount of the arrears, simple interest at the rate of 6% per annum. It farther empowers him to impose penalty not exceeding 50% of the said amount, if the Commissioner is satisfied that there is no justification for the delay in making the payment of the amount of compensation awarded. The Supreme Court in the case of Pratap Narain Singh Deo Vs. Srinivas Sabata and Another, has considered this aspect in a personal injury case and has held that liability arises as soon as personal injury is caused to the workman and the employer has to pay the compensation in accordance with Section 4 of the Act, the failure to pay compensation entails liability to pay interest and penalty u/s 4A

of the Act. As it is apparent that Sub-section (3) of Section 4A is a beneficial provision made for the benefit of the employee, having regard to the scheme of the Act, the provision for payment of interest and of penalty have been enacted with a view to deter the employer from taking false pleas and avoiding payment of the compensation which becomes payable.

10. However, if it is shown that there was justification for the delay in making the payment, the Commissioner may not impose any penalty, though he may still award simple interest not exceeding 6% per annum as it is clear from the expression "if in the opinion of the Commissioner there is no justification for the delay, a further sum not exceeding fifty per cent of such amount, shall be recovered from the employer by way of penalty". If the employer makes delay in depositing, then certainly before awarding further amount of penalty, the Commissioner has to issue a notice so that the employer may satisfy as to the ground for delay in deposit and then the Commissioner may record reasons for coming to the conclusion that there was no justification for the delay in making the payment of compensation due. However, when no deposit is made and the dependent or the injured has to file an application for award of compensation wherein the dependents or the injured, as the case may be, claim compensation and interest and penalty and of that notice is issued and the written statement is filed and the application is contested, no fresh notice of showing cause is necessary as there, the employer gets an opportunity to plead and prove the justification for not depositing the compensation. Here, neither the deposit was made nor any justification for not depositing the compensation was pleaded and proved, therefore, the Commissioner was right in awarding the penalty of 50% of the amount of compensation. As such, in the facts of the case, reliance on Amarnath Baldev Raj's case (*supra*) is inappropriate.

11. Coming to the award of interest at the rate of 12% per annum, in the opinion of this Court, the interest can be awarded only in terms of Sub-section (3) of Section 4A, which is 6% per annum, and not more than that. The respondents have placed reliance on a decision of the Rajasthan High Court in the case of Kanaram v. Rajasthan State Electricity Board 1989 ACJ 1018 in which the Court has awarded interest at the rate of 12% per annum from the date of making the application till realisation. While interpreting the provisions of Section 4A, the Court held that the legislation being a welfare legislation to do social justice, liberal interpretation should be given and, therefore, as the employer was statutorily bound to deposit the compensation, having failed, the employer is liable to pay interest at the rate of 12% per annum from the date of the application till realisation. We are respectfully unable to agree with the view taken, because, on a plain reading of Sub-section (3) of Section 4A of the Act, the Commissioner has no power to allow simple interest exceeding 6% per annum on the amount of compensation due provided the same remains unpaid for a period exceeding one month after it has fallen due. That is the view taken by one of us (S.K. Dubey, J.) in case of Shankarlat v. General Manager, Central Railway 1991 JLJ 56 and in the case of MPSRTC v. Smt. Badshah Bai 1991 II MPWN 38 the same is the view as

that in the case of Amarnath Baldev Raj (*supra*).

12. True, rate of interest has gone high and, therefore, there is necessity to award rate of interest of nationalised banks, but, that in view of the fact that maximum rate of interest is statutorily fixed u/s 4-A(3), the interest cannot be awarded on a higher rate, even the provision is made for the benefit of the employee, the rule of beneficial construction that beneficent legislation should be interpreted in favour of the person for whose benefit the enactment has been framed cannot be applied, which can only be invoked in cases of doubt. See, *State of Punjab Vs. Kailash Nath*, It is also a well-settled rule of interpretation that by process of interpretation, it is not the duty of the Court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. The Court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the Courts. The Court cannot add words to a statute or read words into it which are not there. The Court shall decide what the law is and not what it should be. See, *Union of India v. Deoki Nandan Aggarwal* AIR 1992 SC 96.

13. Moreover, if it had been the intention to award simple interest more than 6% per annum, the legislature could have amended the provision suitable as the Act was lastly amended by Act No. 22 of 1984 and by Section 3 of the said Act with effect from July 1, 1984; Section 4 relating to amount of compensation and the method of determination of compensation for working out lump sum equivalent of compensation was substituted in case of permanent disablement and death, however, no amendment or substitution was made in Section 4-A(3) either relating to rate of interest or imposition of penalty, therefore, unless the provision is suitably amended, till then, the Commissioner has no option but to award interest in terms of Sub-section (3) of Section 4A. Therefore, in our view, the Commissioner erred in awarding the interest at the rate of 12% per annum on the amount of compensation from the date of the application till payment.

14. As a result of the above discussion, the appeal is allowed in part by modifying the award in so far as it relates to grant of interest, which is reduced from 12% per annum to 6% per annum from the date on which it fell due till the date of deposit. The excess amount of interest shall be refunded to the appellants. In the circumstances of the case, parties are left to bear their own costs.