
(2018) 05 MP CK 0042
In the Madhya Pradesh High Court
Case No : M.A. No.900 OF 2013

Emerald Industries Limited	Vs	APPELLANT
Smt. Ganga And Ors		RESPONDENT

Date of Decision : 07-05-2018

Acts Referred:

Workmen's Compensation Act, 1923 — Section 4, 4A(3)(a)(b), 10, 22, 30, 30(1), 30(1)(aa)
Code Of Civil Procedure, 1908 — Section 152

Citation : (2018) 05 MP CK 0042

Hon'ble Judges : ANAND PATHAK, J

Bench : Single Bench

Advocate : D.K. Katare, Arun Katare, Sudesh Bhadouriya, R.V. Sharma

Final Decision : Dismissed

Judgement

Present miscellaneous appeal filed under Section 30 of the Workmen's Compensation Act, 1923 (the employees compensation Act, 1923) against the

order dated 19.09.2011 (Annexure A-1), passed by the Commissioner, Workmen's Compensation, in case MCC No.31/B/W.C.A./2011, whereby

application preferred by the appellant under Section 152 of CPC has been rejected and order dated 02.09.2004 (Annexure A-2), passed by

Commissioner, Workmen's Compensation No.1, Gwalior, whereby the claim preferred by the respondents No.1 to 6 as claimants has been allowed.

Precisely stated facts are that the husband of respondent No.1 Govind was an employee of the appellant company and on 05.03.1999 while he was

going from Gwalior to Delhi and driving the vehicle as driver met with an accident and died on account of this accident.

The legal heirs (present respondents No.1 to 6) preferred claim petition before the Commissioner Workmen Compensation under Sections 4, 10 and

22 of the Act, 1923. The Labour Court considered the case and thereafter, awarded Rs.3,11,970/- as compensation alongwith 12% interest and 10% penalty. As per award dated 02.09.2004, the compensation was to be given by the insurer/present respondent No.7, penalty and interest were to be paid by the present appellant/employer. It appears that the amount of compensation was paid by the insurance company and penalty was paid by the employer. Dispute arose in respect of payment of interest. As per the perception of appellant, the interest was to be paid by the insurer. Therefore, after seven years in 2011, an application under Section 152 of CPC was preferred by the appellant allegedly for correction of alleged arithmetical mistake. As per the submissions, the award contains an arithmetical/clerical error wherein interest was allegedly imposed over the appellant whereas ought to have been imposed over the insurer. The said application was rejected by the impugned order dated 19.09.2011 by the Commissioner Workmen Compensation on the ground of in-ordinary delay and laches. Therefore, the appellant has preferred this appeal under Section 30 of the Act, 1923.

According to the learned counsel for the appellant, instant appeal contains two orders to be challenged one is dated 02.09.2004, whereby award has been passed and another order dated 19.09.2011, whereby the application under Section 152 of CPC has been rejected. Both can be tried together as they are arising out of the same cause of action and the application under Section 152 of CPC was inconsequence to the award passed by the Commissioner, Workmen's Compensation (hereinafter referred as Commissioner). It is further submitted that no limitation is prescribed for Section 152 of CPC he challenged to get the clerical mistake corrected. He referred the case of Jayalakshmi Coelho Vs. Oswald Joseph Coelho [2001 (2) MPLJ 556], Om Prakash Marwaha Vs. Jagdish Lal Marwaha [2009 (2) MPLJ 42] pronounced by the hon'ble Apex Court and judgment referred by this Court in the case of D.D.Bansal Vs. Gwalior Nagar Tatha Gram Pradhikaran Vikas [2007 (5) MPHT 470].

Learned counsel for the appellant further submitted that the delay in filing the instant miscellaneous appeal can be condoned in light of judgment pronounced by Hon'ble Apex Court in the case of State of M.P. and another Vs. Pradeep Kumar and others [2000 (7) SCC 372], Amar Singh Vs.

Pooran and others [2007 (2) MPLJ 215] and Digambar Kumar Jain Vs. Smt. Maya Bai and others [2007(1)MPHT 69].

It is further argued by the learned counsel that if any deficit court fee is to be paid by the appellant then the appellant is ready to pay deficit court fee

as per provisions of Court Fee Act, 1870.

Alternatively, learned counsel for the appellant concedes to the proposition that if this Court intends to reject the submissions of the appellant, wherein

the appellant has challenged two separate orders in one appeal, then he confines his arguments for consideration of impugned order dated 19.09.2011

only, wherein the application under Section 152 of CPC preferred by the appellant got rejected. He is ready to dispense with the appeal in respect of

award dated 02.09.2004, passed by the Commissioner, Workmen's Compensation.

Per contra, learned counsel for the respondents/claimants opposed the prayer made by the appellant and supported the impugned award dated

02.09.2004. He prayed for dismissal of appeal.

Learned counsel for the respondent No.7/insurance company also matched the vehemence displayed by the appellant and submits that the provisions

as contemplated in Section 30 of Act, 1923, specially Section 30 (1)(aa) contemplates that no appeal without certificate of Commissioner (for payment

of awarded sum) can be filed before this Court and cannot be maintainable. Here in the present case, the appellant has not deposited the amount of

interest as tried to be challenged in the instant appeal and therefore, appeal is not maintainable. He relied upon judgments rendered by Full Bench in

the case of New India Assurance Company Ltd. Vs. Savita Sen and others 2004 ACJ 2134 as well as judgment rendered by Bombay High Court in

the case of United Indian Insurance Company Vs. Mulla Chandpasha, [MACD 2017 (4) (Bom.)1912].

It is further argued by the learned counsel that the application under Section 152 of CPC cannot challenge the findings of the Court, whereby award

has been made. The scope of Section 152 of CPC is in respect of correction of arithmetical/clerical error and not beyond that. Present award does not

contain any arithmetical error, rather it was the findings of the Court, therefore, it cannot be challenged under the scope of Section 152 of CPC.

Appropriate remedy would have been to file review or appeal as the case may

be. It is further submitted on behalf of the respondents that the delay in filing the application under Section 152 of CPC as well as delay in filing the instant appeal were not sufficiently explained. In absence of any explanation for delay caused at both the stages renders the appeal for dismissal. Even if order dated 19.09.2011 goes even then findings of award dated 02.09.2004 would remain intact.

Learned counsel for the respondents also raised the question of maintainability of the appeal because this appeal cannot carry the challenge to both the orders simultaneously.

He referred Full Bench decision of this Court in the case of Archana Kumar and another Vs. Purendu Prakash Mukherjee 2002 (2)MPLJ 491,

judgment rendered by Division Bench, Gwalior in the case of Rasiklal Manikchand Dhariwal and Dhariwal Industries Ltd. Vs. M.S.S. Food

Products 2009(2)MPLJ 329. He prayed for dismissal of appeal.

Heard learned counsel for the parties at length and perused the documents appended thereto.

The case in hand involved challenge to two orders, one is order dated 02.09.2004 passed by the Commissioner for Workmen Compensation Act

(Labour Court) whereby the claim application preferred by the claimants/respondents No.1 to 6 has been allowed and non-applicants of the said case

were directed to pay the compensation alongwith interest and penalty.

Another order which is under challenge is dated 19.09.2011 passed by the same authority whereby the application under Section 152 of CPC

preferred by the present appellant/employer has been rejected.

After arguing for a while, learned counsel for the appellant has confined arguments to the extent of consideration of impugned order dated 19.09.2011,

wherein application under Section 152 of CPC has been rejected.

The scope of Section 152 of CPC has been dealt with by Hon'ble Apex Court in the case of Jayalakshmi Coelho Vs. Oswald Joseph Coelho [2001 (2)

MPLJ 556], the relevant discussion for adjudication of the present case can be profitably abstracted herein as under:-

14. The basis of the provision under Section 152 C.P.C. is found on the maxim 'Actus Curiae Neminem Gravabit' i.e. an act of Court shall

prejudice no man' (Jenk Cent-118) as observed in a case reported in The Assam

Tea Corporation Ltd. vs Narayan Singh, AIR 1981 Gau.41. Hence, an unintentional mistake of the Court which may prejudice cause of any party must be rectified. In another case reported in Janakirama Iyer vs P.M. Nilakanta Iyer AIR 1962 SC 633, it was found that by mistake the words "net profit" was written in the decree in place of "mesne profit".

This mistake was found to be clear by looking to the earlier part of the judgment. The mistake was held to be inadvertent. In Bhikhi Lal vs Tribeni, AIR 1965 SC 1935, it was held that a decree which was in conformity with the judgment was not liable to be corrected. In another case reported in Master Construction Co. (p) Ltd. vs State of Orissa, AIR 1966 SC 1047, it has been observed that arithmetical mistake is a mistake of calculation, a clerical mistake is a mistake in writing or typing whereas an error arising out of or occurring from accidental slip or omission is an error due to careless mistake on the part of the Court liable to be corrected. To illustrate the point, it has been indicated as an example that in a case where the order may contain something which is not mentioned in the decree would be a case of unintentional omission or mistake. Such omissions are attributable to the Court who may say something or omit to say something which it did not intend to say or omit. No new arguments or re-arguments on merits are required for such rectification of mistake. In a case reported in Dwarakadas Vs State of M.P., (1999) 3 SCC 500 this Court has held that the correction in the order or decree should be of the mistake or omission which is accidental and not intentional without going into the merits of the case. It is further observed that the provisions cannot be invoked to modify, alter or add to the terms of the original decree so as to in effect pass an effective judicial order after the Judgment in the case. The trial court had not granted the interest pendente lite though such a prayer was made in the plaint but on an application moved under Section 152 C.P.C. the interest pendente lite was awarded by correcting the judgment and the decree on the ground that non-awarding of the interest pendente lite was an accidental omission. It was held that the High Court was right in setting aside the order. Liberal use of the provisions under Section 152 C.P.C. by the Courts beyond its scope has been deprecated. While taking the above view this Court had approved the judgment of the Madras High Court in Thirugnanavalli Ammal vs P. Venugopala Pillai, AIR 1940 Madras 29 and relied on

Maharaj Puttu Lal vs Sripal Singh, reported in AIR 1937 Oudh 191= ILR 12 Lucknow 759. Similar view is found to have been taken by this Court in a

case reported in State of Bihar vs Nilmani Sahu (1996) 11 S.C.C. 528, where the Court in the guise of arithmetical mistake on re-consideration of the

matter came to a fresh conclusion as to the number of trees and the valuations thereof in the matter which had already been finally decided.

Similarly in the case of Bai Shakriben (dead) By Natwar Melsingh vs Special Land Acquisition Officer, reported in (1996) 4 SCC 533, this Court

found omission of award of additional amount under Section 23 (1-A), enhanced interest under Section 28 and solatium etc. could not be treated as

clerical or arithmetical error in the order. The application for amendment of the decree in awarding of the amount as indicated above was held to be

bad in law.

15. As a matter of fact such inherent powers would generally be available to all courts and authorities irrespective of the fact whether the provisions

contained under Section 152, C.P.C. may or may not strictly apply to any particular proceeding. In a matter where it is clear that something which the

Court intended to do but the same was accidentally slipped or any mistake creeps in due to clerical or arithmetical mistake it would only advance the

ends of justice to enable the Court to rectify such mistake. But before exercise of such power the Court must be legally satisfied and arrive at a valid

finding that the order or the decree contains or omits some thing which was intended to be otherwise, that is to say, while passing the decree the court

must have in its mind that the order or the decree should be passed in a particular manner but that intention is not translated into the decree or order

due to clerical, arithmetical error or accidental slip. The facts and circumstances may provide clue to the fact as to what was intended by the court but

unintentionally the same does not find mention in the order or the judgment or something which was not intended to be there stands added to it. The

power of rectification of clerical, arithmetical errors or accidental slip does not empower the court to have a second thought over the matter and to

find that a better order or decree could or should be passed. There should not be re-consideration of merits of the matter to come to a conclusion that

it would have been better and in the fitness of things to have passed an order as sought to be passed on rectification. On a second thought court may

find that it may have committed a mistake in passing an order in certain terms but every such mistake does not permit its rectification in exercise of

Court's inherent powers as contained under Section 152, C.P.C. It is to be confined to something initially intended but left out or added against such

intention.â??

Now the case in hand is to be seen at the touch stone of legal guidance enumerated above.

In the present case, award dated 02.09.2004 was passed by the Commissioner, wherein amount of Rs.3,11,970/- was ascertained as compensation for

which the claimants were entitled to receive from the non-applicants joint and severally. In respect of interest and penalty, Commissioner imposed

penalty of 10% over the awarded sum alongwith interest @ 12% over present appellant under Section 4-A(3)(a)(b) of the Workmen's Compensation

Act, 1923 (Now rechristened as Employees' Compensation Act) contemplates the amount of penalty and interest. Therefore, this aspect has been

dealt with by the Hon'ble Apex Court in the case of P.J. Narayan Vs. Union of India and others [2004 ACJ 452], in which it has been held that the

liability to pay interest is on the employer under the Act, therefore, the liability to pay interest as well as penalty was over the employer. Even if any

legal question in respect of payment of interest or penalty as the case may be was existing in the lis then it would have been appropriate on the part of

employer to get the said order/award challenged under Section 30 of the Act by way of appeal, but the same was not challenged till this appeal has

been preferred after almost 9 years. Therefore, appeal suffered from inordinate delay and laches.

It appears that the appellant preferred an application under Section 152 of CPC for rectification of alleged mistakes as according to the appellant, the

appellant as employer was not entitled to pay the interest over the said award from the guidance given above by the Honâ??ble Apex Court, it is

apparent that the accidental mistakes can only be rectified and not the intentional mistakes. Here the appellant wanted to change effect of award

passed by the Commissioner Workmen Compensation to the extent whether liability was to be shifted from one shoulder to another. The same was

not permissible, therefore, application under Section 152 of CPC preferred by the appellant was rightly rejected by the Commissioner. Although the

Commissioner has dismissed the application on the ground of inordinate delay and laches also which appears to be just and proper because the said

application was preferred in 2011 whereas award was passed in the year 2004, therefore, preferred at most belated stage.

Even if the appeal preferred by the appellant under Section 30 of the Act is taken into consideration then also on the basis of the above discussion

appears to be devoid of any substantial question of law, that to at such belated stage. Section 4-A(3)(a)(b) of the Act gives responsibility over the

employer for payment of interest and penalty. Same findings did not deserve to be interfered with.

Even otherwise, the appeal has been preferred at such belated stage, therefore, deserves to be dismissed on the ground of inordinate delay and laches

also without any proper explanation in the application for condonation of delay (I.A. No.3940/2013), therefore, application also deserves to be rejected

resulting into dismissal of appeal.

Besides that the appellant has not deposited the awarded sum in the light of Section 30(1), III Proviso, whereas, the appellant had to deposit the

amount payable under order appealed against. Despite office objection in this regard, the same was not deposited as per spirit of Section 30 of the Act

as referred above, therefore, in view of the full Bench decision in the case of New India Assurance Company Ltd. Vs. Savita Sen and others [2004

ACJ 2134] appeal without such compliance is not maintainable. Bombay High Court in similar fact situation in the case of United India Insurance

Company Vs. Mulla Chandpasha [MACD 2017 (4) (Bom.)1912] has gone to the extent that it is the job of the office to see and confirm that the

amount is already deposited and if appeal is not preceded with the certificate of the Commissioner as required by III Proviso to Section 30(1) of the

Act, appeal shall be referred as dismissed for non-compliance of the condition.

In view of the said fact situation and legal position neither the appeal under Section 30 of the Act nor application under Section 152 of CPC deserve to

be entertained. Both the orders are rightly passed by the Commissioner, Workmens' Compensation. Since the matter is of claimants who are legal

representatives of deceased employee/appellant, it is expected that the compliance of award dated 02.09.2004 shall be ensured by the employer at the

earliest.

Office is directed to send the copy of this order directly to the Commissioner Workmen Compensation/Labour Court No.1, Gwalior for further action/compliance of the award dated 02.09.2004.

The appeal is hereby dismissed.