
(2013) 06 AP CK 0089

In the Andhra Pradesh High Court

Case No : Civil Miscellaneous Appeal No. 1309 of 2004

Gadagottu Pandurangarao Thirupathaiah APPELLANT

Vs

P. Bal Reddy and The Branch Manager RESPONDENT

Date of Decision : 06-06-2013

Acts Referred:

Employees Compensation Act, 1923 — Section 19, 3, 3(1), 4, 4A, 4A

Citation : (2014) 1 ACC 409 : (2013) 5 ALD 358 : (2013) 2 AnWR 779

Hon'ble Judges : P. Naveen Rao, J

Bench : Single Bench

Advocate : K.M. Mahender Reddy, for the Appellant; E. Venugopal Reddy, for the Respondent

Final Decision : Partly Allowed

Judgement

P. Naveen Rao, J.—The applicant in W.C. No. 227 of 2003 on the file of the Commissioner for Workmen Compensation, Nizamabad is the appellant herein. Facts giving rise to the appeal are as under:

2. The appellant while working as a labourer with the first respondent, while travelling on 10.11.2001 in a Tractor with Trailer bearing Nos. AP 25 F 2954 and AP 25 F 2953, owned by the first respondent, met with an accident. In the said accident, the appellant sustained fracture injury to both bones of left leg, abrasion to left knee, abrasion to left foot and multiple and grievous injuries on various parts of the body. The Tractor and Trailer owned by the first respondent was covered by insurance extended by the second respondent.

3. The appellant was admitted in a private hospital as an inpatient on 10.11.2001, he was operated on 12.11.2001 and rods were inserted into left leg bones. Subsequently, he was discharged from the hospital. On 6.2.2003, the Doctor who has treated the appellant examined him clinically and physically and issued disability certificate holding the disability for malunited fracture of both bones of left leg. He described that the injury was painful, would have restricted

movements of the left knee and post traumatic stiffness of the left foot. The appellant was aged 21 years at the time of the accident.

4. Since no compensation was paid to him, he raised a claim under the Workmen Compensation Act, 1923 by filing W.C. Case No. 227 of 2003 before the Commissioner for Workmen Compensation and Assistant Commissioner of Labour, Nizamabad claiming a compensation of Rs. 4,00,000/-. The appellant and the Doctor who has treated him and the owner of the vehicle were examined. The Doctor gave his statement narrating how he has treated the patient and stood by the certificate issued by him towards disability. The owner deposed in his counter affidavit admitting the factum of employment of the appellant; the accident occurred while on duty on 10.11.2001 and also deposed that the appellant was earning Rs. 4500/- per month as salary. The response of the Insurance Company was one of standard denial.

5. The Commissioner framed two issues for consideration. The first issue for consideration was whether the applicant is a workman and whether the accident occurred during the course of employment under opposite party No. 1. The second issue is whether the applicant is entitled to compensation and if so what relief can be granted and against which opposite party.

6. On first issue, the Commissioner held that the applicant is a workman and was working with the opposite party No. 1 and the accident occurred during the course of employment. On the second issue, the Commissioner held that the disability suffered by applicant is 40% and arrived at the compensation payable as Rs. 96,211.00. To arrive at this figure, he has fixed the wages drawn by applicant as Rs. 1800/- per month and declared the opposite party No. 1 and 2 severally and jointly liable and directed them to deposit the amount of compensation awarded.

7. Challenging the said award, to the extent of compensation awarded to him, the claimant filed this appeal. None represented first respondent. Heard the learned counsel for appellant and second respondent Insurance Company. The counsel for appellant urged three contentions in support of his prayer to enhance the compensation and interest. The first of the contentions is declaration given by the Commissioner regarding the disability suffered by him as 40% is illegal, without jurisdiction and competence. Secondly, determination of the wages as Rs. 1800/- per month for the purpose of compensation is without any basis and justification and contrary to record and contrary to the statutory mandate and law. Thirdly, not awarding interest from the date of accident, thereby denying him the entitlement to claim little more money. The counsel for second respondent opposed the prayer of the appellant and supported the award passed by the Commissioner.

8. The Doctor who has treated the appellant has certified the disability suffered by appellant as 50% and has declared the loss of earning capacity as 50% while determining the amount of compensation payable to the appellant. On detailed

consideration of evidence on record, the Commissioner has arrived at the loss of earning capacity as 40% and fixed the wages payable at Rs. 1800/-. As can be seen from the record, the accident occurred on 10.11.2001. With reference to the wages payable to employees working in Public Motor Transport, Government of A.P. issues orders from time to time in exercise of powers vested in it by the provisions of the Minimum Wages Act, 1948 (Central Act 11 of 1948). On a review of the minimum rates of wages fixed, the Government issued revised orders in G.O.Ms. No. 320 Labour, Employment, Training and Factories Department (Lab.-II) dated 27.7.2000 wherein for a Mazdoor the basic wages fixed are Rs. 1437/-. However, the Commissioner has fixed wages at Rs. 1800/- per month to arrive at just compensation. Further more, though the Medical Officer declared the loss of earning capacity as 50%, but neither in the certificate issued by him nor in the deposition before the Commissioner, the Medical Officer has stated that the employee cannot undertake the Mazdoor work in future. The appellant has not produced any evidence to show that he was drawing more than Rs. 1800/- and that he was unable to undertake the work as he was doing prior to the accident. Considering the evidence on record, it cannot be said that conclusion arrived at by the Commissioner, determining the loss of earning capacity as 40% and wages at Rs. 1800/- is grossly erroneous warranting interference by this Court. In the circumstances, I am of the opinion that the decision of the Commissioner fixing the wages at Rs. 1800/- per month and loss of earning capacity as 40% is just and equitable. Thus, the contentions one and two of the appellant are rejected.

9. Serious debate raised on the third issue of entitlement for interest payable to the appellant on the amount awarded. The appellant claimed interest from the date of incident, whereas, Insurance Company contend that interest is payable only after the claim is adjudicated by the Commissioner. Learned counsel cited several decisions in support of their submissions for and against grant of interest from the date of accident.

10. Learned counsel for appellant Mr. K.M. Mahender Reddy relied on precedents in Pratap Narain Singh Deo Vs. Srinivas Sabata and Another, , Kerala State Electricity Board and Another Vs. Valsala K and Another, The New India Assurance Co. Ltd. Vs. Satyawati and Others, The The Oriental Insurance Company Ltd. Vs. Siby George and Others,

11. On the other hand, learned counsel for respondent Mr. E. Venugopal Reddy relied on precedents in Ved Prakash Garg Vs. Premi Devi and others, and Palraj Vs. The Divisional Controller, NEKRTC,

12. The relevant provisions dealing with payment of interest are Sections 3 and 4-A of the Employees' Compensation Act, 1923. Sections 3(1) and 4-A reads as under:

Section 3(1): If personal injury is caused to an employee by accident arising out of and in the course of his employment, his employer shall be liable to pay

compensation in accordance with the provisions of this Chapter.

.....

Section 4A: 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 extent of liability which he accepts, and, such payment shall be deposited with the Commissioner or made to the employees as the case may be, without prejudice to the right of the employees 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 shall:-

(a) direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve per cent 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;

...

13. In Pratap Narain case (cited 1 supra), the respondent was working as a carpenter in a Cinema Hall owned by the appellant therein. While working as such, he fell down and suffered injuries resulting in amputation of his left arm from the elbow. The accident took place on 6.7.1968. On 11.8.1968, respondent served notice on appellant demanding payment of compensation. Appellant in his reply dated 21.8.1968 declined to pay the compensation contending that he was only a casual contractor and that accident took place because of his own negligence. Personal requests made by the respondent were not acceded to compelling him to file an application before the Commissioner for Workmen Compensation. The Commissioner, by order dated 6.5.1969 held that the respondent suffered 100% of loss of earning capacity. He has awarded compensation of Rs. 9,800/- and imposed penalty to the extent of 50% together with interest at 6% per annum. This decision of the Commissioner was challenged before the High Court of Orissa, which was dismissed on 10.10.1969. Challenging the said decision, Civil Appeal No. 1536 of 1970 was filed before the Hon"ble Supreme Court. Apart from contending that disablement cannot be said that there was 100% loss of earning capacity, it was specifically contended that the Commissioner erred in imposing the penalty inasmuch as compensation has not fallen due until it was settled by the Commissioner u/s 19 of the Act, on 6.5.1969. Therefore, the question of paying penalty and interest would not arise. Rejecting the said contentions the Hon"ble Supreme Court held as under:

The employer therefore became liable to pay the compensation as soon as the aforesaid personal injury was caused to the workman by the accident which

admittedly arose out of and in the course of the employment, it is therefore futile to contend that the compensation did not fall due until after the Commissioner's order dated May 6, 1969 u/s 19,...

...

It was the duty of the appellant, u/s 4-A(1) of the Act, to pay the compensation at the rate, provided by Section 4 as soon as the personal injury was caused to the respondent. He failed to do so. What is worse, he did not even make a provisional payment under sub-section (2) of Section 4 for, as has been stated, he went to the extent of taking the false pleas that the respondent was a casual contractor and that the accident occurred solely because of his negligence....

14. The question of date of payment of interest has fallen for consideration before the Hon'ble Supreme Court in Siby George case (cited 4 supra), relied upon by the learned counsel for appellant. In the said case, the Commissioner for Workmen Compensation by his order dated 26.11.2008 directed payment of simple interest @ 12% per annum from the date of accident i.e., 12.7.2006. The appeal preferred against the said decision of the Commissioner was dismissed by Kerala High Court on the ground of limitation. The Special Leave Petition, preferred against the said decision of the Kerala High Court was taken up only to the extent of awarding of interest. The Hon'ble Supreme Court referred to the provision of Section 4A and pleased to hold as under:

.....On a plain reading of the provisions of Sub-section (3) it becomes clear that payment of interest is a consequence of default in payment without going into the reasons for the delay and it is only in case where the delay is without justification, the employer might also be held liable to penalty after giving him a show cause. Therefore, a finding to the effect that the delay in payment of the amount due was unjustified is required to be recorded only in case of imposition of penalty and no such finding is required in case of interest which is to be levied on default per se.

Now, coming back to the question when does the payment of compensation fall due and what would be the point for the commencement of interest, it may be noted that neither the decision in Mubasir Ahmed nor the one in Mohd. Nasir can be said to provide any valid guidelines because both the decisions were rendered in ignorance of earlier larger Bench decisions of this Court by which the issue was concluded. As early as in 1975 a four Judge Bench of this Court in Pratap narain Singh Deo Vs. Shrinivas Sabata and Another directly answered the question.

15. In National Insurance Co. Ltd. Vs. Mubasir Ahmed and Another, the Hon'ble Supreme Court held that the starting point is on completion of one month from the date on which it fell due for the purpose of determination of interest as it is relatable not to the date of accident but with the date of adjudication of the claim. The decision in Mubasir Ahmed case was relied upon in support of SLP against the decision of the Commissioner of Workmen Compensation, Emakulam. Reliance is also placed on the decision of the Hon'ble Supreme Court in case of

Oriental Insurance Co. Ltd. Vs. Mohd. Nasir and Another, . In the said decision, the Hon''ble Supreme Court directed payment of interest @ 7% per annum from the date of filing of the application till the date of award and thereafter interest would be payable at the rate as directed in the order passed by the Commissioner. In Mohd. Nasir case (cited 8 supra) the Hon''ble Supreme Court held that interest as provided under sub Section 3 of Section 4A of the Act, would apply only in case the finding of fact as envisaged therein has arrived at by the Commissioner.

16. The Hon''ble Supreme Court in case of Valsala K. case (cited 2 supra), following the judgment in Pratap Narain case (cited 1 supra) pleased to hold that the payment of compensation fell due on the date of accident. On reviewing the judgments in Pratap Narain case, Valsala K. case, Mubasir Ahmed case and Mohd. Nasir case, the Hon''ble Supreme Court in Siby George case (cited 4 supra) pleased to hold as under:

11. The decisions in Pratap Narain Singh Deo was by a four Judge Bench and in Valsala by a three judge Bench of this Court. Both the decisions were, thus, fully binding on the Court in Mubasir Ahmed and Mohd. Nasir, each of which was heard by two Judges. But the earlier decisions in Pratap Narain Singh Deo and Valsala were not brought to the notice of the Court in the two later decisions in Mubasir Ahmed and Mohd. Nasir.

12. In the light of the decisions in Pratap Narain Singh Deo and Valsala, it is not open to contend that the payment of compensation would fall due only after the Commissioner''s order or with reference to the date on which the claim application is made. The decisions in Mubasir Ahmed and Mohd. Nasir insofar as they took a contrary view to the earlier decisions in Pratap Narain Singh Deo and Valsala do not express the correct view and do not make binding precedents.

17. In Ved Prakash Garg (cited 5 supra) the issue that has fallen for consideration was whether the Insurance Company can also be fastened with the liability to pay penalty. The Insurance Company contended that it is not liable to pay interest and penalty and it is only the employer who is liable to pay interest and penalty, as the liability of Insurance Company is confined to the compensation awarded by the Commissioner for the workmen. High Court of Himachal Pradesh rendered judgments in favour of the Insurance Company holding that the Insurance Company is not liable to pay interest and penalty. Aggrieved by the decisions of the High court of Himachal Pradesh, batch of cases in Civil Appeal Nos. 15698-99 of 1999 are filed before the Hon''ble Supreme Court by the employer and on consideration of the relevant provisions of the Workmen''s Compensation Act, and the Motor Vehicles Act, the Hon''ble Supreme Court is placed to hold as under:

14. On a conjoint operation of the relevant schemes of the aforesaid twin Acts, in our view, there is no escape from the conclusion that the insurance companies will be liable to make good not only the principal amounts of compensation

payable by insured employers but also interest thereon, if ordered by the Commissioner to be paid by the insured employers.....

....

19. As a result of the aforesaid discussion it must be held that the question posed for our consideration must be answered partly in the affirmative and partly in the negative. In other words the insurance company will be liable to meet the claim for compensation along with interest as imposed on the insured employer by the Workmen's Commissioner under the Compensation Act on the conjoint operation of Section 3 and Section 4-A sub-section (3)(a) of the Compensation Act. So far as additional amount of compensation by way of penalty imposed on the insured employer by the Workmen's Commissioner u/s 4-A(3)(b) is concerned, however, the insurance company would not remain liable to reimburse the said claim and it would be the liability of the insured employer alone.

18. The Hon''ble Supreme Court is pleased to hold that Insurance Company is liable to pay interest as awarded by the Commissioner, whereas employer is liable to pay the penalty on account of delay in settlement of compensation claimed by the employee. Thus, the Hon''ble Supreme Court has allowed the appeals in part, however, while granting directions in respective cases, Hon''ble Supreme Court ordered payment of interest @ 6% per annum from the date of accident, till date of payment in all the appeals. Thus, this does not support the contention of the respondent - Insurance Company; on the contrary, it supports the contentions of the appellant.

19. In case of Palraj (cited 6 supra) view taken by the Hon''ble Supreme Court upholding the decision of the High Court of Karnataka holding that payment of interest would arise only from the date of award is no more valid, in view of the decisions of the Hon''ble Supreme Court in Pratap Narain (cited 1 supra), Valsala K. (cited 2 supra) and Siby George (cited 4 supra) cases.

20. On the basis of the authoritative pronouncements of the Hon''ble Supreme Court in Pratap Narain (cited 1 supra), Valsala K (cited 2 supra) and Siby George (cited 4 supra), the employee who has suffered injuries in the course of employment is entitled to interest, if compensation is not paid immediately from the date of accident. Thus the claim of the appellant herein for grant of interest from the date of accident is valid. The Commissioner erred in not considering the issue of grant of interest.

21. In view of the judgments of the Hon''ble Supreme Court referred to above, the contention of the learned counsel for respondent - Insurance Company that the payment of interest would arise only after an award is passed by the Commissioner has no merit. The decisions relied on by the learned counsel for respondent - Insurance Company do not come to the aid of the respondent corporation.

22. I therefore hold that the appellant is entitled to interest on the amount of compensation awarded and I am of the opinion that in the facts and circumstances of the case, the interest at the rate of 9% per annum from the date of accident till the date of payment is just and reasonable. The respondents are directed to determine the interest payable to appellant and deposit the same with the Commissioner for Workmen Compensation, Nizamabad, within eight weeks from the date of receipt of copy of this judgment. The appeal is partly allowed. No costs.