

(2006) 05 AHC CK 0129

In the Allahabad High Court

Case No : First Appeal from Order No. 439 of 2005

General Manager, U.P. State Sugar Corporation Ltd. (Now U.P. State Sugar and Cane Development Corporation Ltd.) APPELLANT

Vs

Smt. Khatoon Begum through Sri Amar Nath Arun RESPONDENT

Date of Decision : 16-05-2006

Acts Referred:

Workmens Compensation Act, 1923 — Section 10, 4A, 4A(3)

Citation : (2006) 3 ACC 784 : (2007) ACJ 633 : (2006) 3 AWC 2518 : (2006) 110 FLR 318

Hon'ble Judges : Barkat Ali Zaidi, J

Bench : Single Bench

Advocate : R.K. Srivastava and Y.K. Srivastava, for the Appellant; Arvind Singh, for the Respondent

Final Decision : Dismissed

Judgement

Barkat Ali Zaidi, J.—The respondent's husband Mohd. Hanif, aged about 39 years, drawing monthly wages of Rs. 3549.50 paise, died on 25.5.1998 in the appellant's sugar mill at Rampur due to an injury caused in the course of employment to him. The appellant- employer, who was obliged to pay compensation equal to 50% of the monthly wages of the deceased workman multiplied by the relevant factor, as soon as the compensation fell due, deposited it's less than half Rs. 74,7607- with the Workmen's Compensation Commissioner, Rampur on 4.7.1998 after about one and half month of the accident.

2. Ultimately, the respondent widow of the Mohd. Hanif filed a claim against the appellant-employer before the Workmen's Compensation Commissioner, Rampur on 31.12.2001, claiming an amount of Rs. 1,86,900/- and the interest thereon. During the pendency of the claim petition, the appellant-employer deposited the residual amount of compensation Rs. 1,12,140/- on 15.4.2002, which he had not deposited even after a notice dated 7.7.1998 by the Commissioner to deposit the

same.

3. The Workmen's Compensation Commissioner allowed the claim petition, giving the claimant, the residual amount worth Rs. 1,12,140/- and also the interest on it at the rate of Rs. 12% per annum from 25.6.1998 to 15.4.2000, besides what was earlier paid to her.

4. That is how the appellant has come up in appeal before this Court.

5. Heard Sri R.K. Srivastava and Sri Y.K. Srivastava, learned Counsel for the Employer- Appellant and Sri Arvind Singh, learned Counsel for the Respondent- Claimant.

6. Counsel for the appellant has raised only two points;

(i) Section 10(i) of the Workmen's Compensation Act, 1923 provides that the claim should be filed within two years from the date of death while claim petition was filed on 31.12.2001, almost after three and half year of the death and the Workmen's Compensation Commissioner has not given any reason for condonation of delay. The following is the provision (proviso under Sub-clause (b) of the Fourth Proviso of Section 10 under the Act about the same:-

Provided further that the Commissioner may (entertain) and decide any claim to compensation in any case notwithstanding that the notice has not been given, or the claim has not been (preferred), in due time as provided in this sub-section, if he is satisfied that the failure so to give the notice or (prefer) the claim, as the case maybe, was due to sufficient cause.

7. The counsel for the appellant pointed out that it will appear from the aforesaid provision that the Commissioner must give reason for being satisfied about the existence of sufficient cause for the delay in filing the claim petition.

8. This Court has already answered this question in an earlier decision in the case of Obra Thermal Power Station U.P. State Electricity Board Obra v. Workman Compensation Commissioner, Evam Labour Commissioner U.P. and Ors., reported in 1997 Lab. I.C. 2445, where Mr. Justice C.A. Rahim, as he then was observed as follows:-

Provisions for filing a claim petition within two years should not be held to be mandatory in view of the fact that Workmen's Compensation Act is a social legislation and when the provisions 5. 4-A was not followed by the Employer in that circumstances it should be held as directory. In a case where the employer applicant has himself defaulted in making payment for about 5 years without showing any cogent reason thereof and also defaulted in informing th& Commissioner as to the accident caused to the workman cannot take up the plea which appears to be highly technical in the matter of granting compensation. When the Commissioner, not being a Civil Court, has accepted the application and proceeded with it it should be deemed to have waived the embargo of filing application within two year. In both the cases (F.A.F.O. Nos. 629 of 1981 and 633

of 1981) applications were filed within 7/8 months of the deposit. Sri K.P. Agrawal has contended that the workman was always made the impression that due and ultimate compensation would be paid by the employer but when not paid after lapse of 5 years and when they came to know the actual amount of compensation deposited they filed the application. The reason seems to be befitting with the situation and I do not consider that this technical reason, when an employer itself was a defaulter, would be bar to grant due and ultimate compensation to the respondents.

9. In this case also as in the case Supra, the appellant employer did not deposit the requisite amount immediately as required by Section 4A(i) of the Workmen's Compensation Act, 1923. The learned Judge in the case (Supra) held that since there was delay on the part of the employer in depositing the amount of compensation, it was not open to him to take refuge in the clause for delay, in filing the claim petition, particularly, in view of the fact that this is a social welfare Legislation. Such Legislation have to be construed and the approach should be to provide relief and succor to the victim without being obstructed by the technicalities,

10. The very fact that the Workmen's Compensation Commissioner took cognizance of the claim petition and granted relief, is indicative of the fact, that the Commissioner was satisfied that there was sufficient reason for condoning the delay, otherwise, the Commissioner would not itself have accepted the petition. Giving of reasons is a Rule of Prudence but not a Rule of Thumb. In appropriate cases, particularly, in dealing with the welfare legislation, assumption should be that the Court was satisfied about the existence of sufficient reasons for the delay. I am not, therefore, inclined to accept the contention of the appellant that the order is void because of non-existence of reasons for condonation of delay.

11. As regards the contention of appellant that 12% interest granted to the claimant-respondent is excessive, it is to be noticed that in Sub-section (3)(a) of Section 4A of the Workmen's Compensation Act, it has been provided that minimum 12% of the interest per annum should be awarded . The provision is as follows:-

(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 percent per annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as maybe specified by the Central Government, by notification in the Official Gazette, on the amount due; and

12. Besides there being a specific provision about the interest being granted at a rate of 12% per annum, there is also a Division Bench Decision of this Court about the same given in the case of Divisional Manager, United India Insurance Co. Ltd. Vs. Reshma Khatoon and Others, wherein it has been said that a

minimum 12% per annum simple interest should be paid on the amount of compensation.

13. The appeal, therefore, is without merit and is accordingly dismissed. The appellant to bear its own costs and that of the respondent.