

(1996) 10 P&H CK 0088
In the Punjab And Haryana At Chandigarh
Case No : F.A.F.O. No. 6 of 1979

Haryana State Electricity Board and Another	APPELLANT
Vs	
Kasturi Devi (Smt.) and Others	RESPONDENT

Date of Decision : 15-10-1996

Acts Referred:

General Clauses Act, 1897 — Section 6
Workmens Compensation Act, 1923 — Section 4

Citation : (1997) ACJ 1131 : (1998) 3 LLJ 994 : (1997) 115 PLR 169

Hon'ble Judges : Sarojnei Saksena, J

Bench : Single Bench

Advocate : Ramesh Malik, for the Appellant; C.B. Goel, for the Respondent

Final Decision : Allowed

Judgement

Sarojnei Saksena, J.—Appellants have filed this appeal against the judgment of the Commissioner under Workmen's Compensation Act, whereby under the amended Schedule IV to Section 4 of the Workmen's Compensation Act, 1923 (in short the "Act"), Rs. 16,000/- is awarded as compensation to the claimants for the vehicular death of Anant Ram.

2. These claimant-respondents filed claim petition before the Commissioner under the Workmen's Compensation Act, Panipat pleading that Anant Ram was working as A.L.M. in the Haryana State Electricity Board and on August 14, 1973 he was posted in Ladwa Sub Division. On August 14, 1973 he was aged 24/25 years, was drawing Rs. 200/- per month as wages. During the course of his employment, he died as a result of electrocution. Claimants are wife, minor son and mother of the deceased.

3. Respondents in their written statement deemed their liability on the count that Anant Ram was not electrocuted during the course of employment. After recording the evidence, issues 1, 2 and 3 were decided in favour of the claimants. These findings are not assailed in this appeal. Only findings recorded

about issues 4 and 5 are: challenged.

4. Admittedly, Section 4 Schedule IV was amended by Amending Act No.65 of 1976, but Schedule IV was enforced w.e.f. October 1, 1975. The learned Commissioner awarded damages of Rs. 16,000/- to the claimants in accordance with amended Schedule IV of the Section 4 of the Act.

5. Appellants' learned counsel contended that in this case as the accident took place on August 14, 1973, the appellants incurred the liability to pay compensation to the claimants on August 14, 1973. On this date, this amended Schedule IV to Section 4 of the Act was not enforceable. On August 14, 1973 as per their statutory liability, the appellants were liable to pay only Rs. 8000/- to the claimants. The learned Commissioner wrongly held that the amended Schedule IV to Section 4 of the Act is applicable in this case because the said amendment came into force w.e.f. October 1, 1975 the date on which this claim petition was pending decision. This claim was decided on September 27, 1978. The appellants' learned counsel relying on General Manager, Western Railway, Churchgate, Bombay v. Lala Nanda, 1984 Labour Industrial Cases 245 and Kochu Vein v. Purakkattu Joseph and Ors. 1985(1)ACC 107, valiantly argued that the learned Commissioner fell into an error in awarding compensation in accordance with amended Schedule IV to Section 4 of the Act.

6. Respondents' learned counsel submitted that since on the date of "decision, this amended schedule came into force, therefore, the learned Commissioner rightly awarded Rs. 16,000/- to the claimants as per the amended Schedule. He also argued that the learned Commissioner has not awarded penalty to the claimants, which they were entitled to. According to the learned respondents' counsel without filing the cross-objection under Order 41 Rule 33, Civil Procedure Code, respondents are entitled to submit that the learned Commissioner has fallen into an error in not awarding penalty to the claimants though immediately after the accident on August 14, 1973, respondents came to know of the accident and within a month of the accident, the failed to pay compensation to the claimants.

7. So far as the application of the amended or unamended Schedule is concerned, it is settled law that u/s 6(c) of General Clauses Act repeal of the old Schedule and incorporation of the new Schedule w.e.f. October 1, 1975 will not affect any right, privilege, obligation or liability acquired, accrued or incurred under old Schedule so repealed.

8. In my considered view, the appellants' learned counsel's reliance on Lala Nanda's case (supra) and Kochu Vein's case (supra) is apposite. Admittedly, the accident took place on August 14, 1973. On this date, the appellants incurred the liability to pay compensation to the claimants and on this date, the claimants acquired a right to claim compensation from the appellants. Later on when Schedule IV to Section 4 was amended and made enforceable from October 1, 1975, it enhanced the amount of compensation payable to such claimants in

such like cases of accidental death. Reference can also be gainfully made to the Apex Court's judgment in *Bansidhar and Ors. v. State of Rajasthan and Ors* A.I.R 1989 SC 614.

9. This Schedule IV of Section 4 of the Act was amended and rates of compensation were enhanced by Amending Act No. 65 of 1976. This Act had retrospective application but only upto October 1, 1975. If the legislature intended that this Act should be given retrospective operation altogether, there was no need for them to put a cut out date as October 1, 1975. Considering this specific provision in the Amending Act, 65 of 1976, the Commissioner fell into an error in making its application, retrospective even in the year 1973. Hence, in my considered view, the learned Commissioner should not have awarded compensation under the amended Schedule IV to Section 4 of the Act, but should have awarded compensation under unamended Schedule to Section 4 under which the claimants were entitled to get compensation of Rs. 8000/- only. To this extent, the appeal is allowed.

10. So far as respondents' learned counsel's above contention is concerned, evidently the learned Commissioner has not awarded penalty to the claimants. Even on the date of accident the appellants came to know of the accident, they did not pay any compensation to the claimants rather they denied their liability to pay compensation to the claimants averring that the deceased did not die in the course of their employment, (though this plea is not pressed in this appeal). Under Article 227 of the Constitution, I am inclined to interfere in the impugned award as the learned Commissioner failed to exercise his jurisdiction u/s 4A of the Act.

11. Accordingly, the appeal is allowed. It is ordered that the claimants are entitled to get only Rs. 8000/- as compensation, but they are also entitled to recover 50 per cent as penalty on this awarded amount of Rs. 8000/-. Thus, the claimants are entitled to recover Rs. 12,000/- as compensation and penalty from the appellant with interest at the rate of 6 per cent per annum as awarded by the learned Commissioner. No order as to costs.