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**(1981) 06 KAR CK 0003**  
**In the Karnataka High Court**  
**Case No : M.F.A. No. 1037 of 1978**

Jayamma

APPELLANT

Vs

Executive Engineer, P.W.D.

RESPONDENT

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**Date of Decision :** 25-06-1981

**Acts Referred:**

Workmens Compensation Act, 1923 — Section 12 (1), 30, 4

**Citation :** (1982) ACJ 361

**Hon'ble Judges :** P.A. Kulkarni, J;K. Jagannatha Shetty, J

**Bench :** Division Bench

**Advocate :** S.G. Bhat, for the Appellant; C.S. Kothavale, for the Respondent

**Final Decision :** Allowed

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## Judgement

K. Jagannatha Shetty, J.—This appeal u/s 30 of the Workmen's Compensation Act, 1923, (called shortly as "the Act") is preferred against the order made in W.C.C No. 6/73-74 by the Commissioner for Workmen's Compensation, Madhugiri.

2. The facts leading to the appeal are these: Krishnappa, the husband of the Appellant was a cleaner in the lorry belonging to the Public Works Department of Madhugiri Division. On September 13, 1967, he unfortunately met with a fatal accident. The department did not pay or deposit the compensation due to the Appellant u/s 4 of the Act. On September 24, 1969, the Appellant, therefore, moved the concerned authority at Bangalore claiming the compensation payable to her. On October 15, 1969, the said application was forwarded to the Assistant Commissioner, Bangalore Sub-Dn. for consideration, who on October 28, 1969, sent the same to the Deputy Commissioner, Tumkur Dist. for disposal. On November 3, 1969, the Deputy Commissioner in turn transmitted the application to the Assistant Commissioner, Madhugiri.

3. That is not the end of it. The Assistant Commissioner, Madhugiri, was of the opinion that he had no jurisdiction to deal with the matter. So, he forwarded that

application to his counter-part at Tumkur Sub-Division- The latter took it on file and issued a notice dated March 6, 1971, u/s 12(1) of the Act, calling upon the Respondent to deposit the compensation due to the Appellant. The Respondent instead of complying with the demand contended that there was no liability under the Act for him to deposit the compensation and he accordingly requested the Commissioner not to proceed with the case.

4. During the pendency of the application before the Assistant Commissioner, Tumkur Sub-Division, the Government issued a-notification dated October 8, 1971, constituting the Assistant Commissioner under the Act for Madhugiri, Pavagada, Sira and Koratagere Taluks. Consequently, the said application stood transferred back to the Asst. Commissioner, Madhugiri before whom the Respondent deposited Rs. 7,000 on October 5, 1977, as the compensation payable to the Appellant.

5. The said Commissioner upon an enquiry and after considering the material produced before him held that the amount deposited by the Respondent was adequate to meet the requirements under the Act, although the Appellant contended that she was entitled to interest at 6 per cent per annum in addition to a further sum by way of penalty u/s 4A (3) of the Act, since there was delay in depositing the compensation. The Commissioner, however, observed that there was justification for the Respondent for not depositing the amount earlier and he accordingly declined to award the interest and penalty.

6. In this appeal there is a two-fold contention urged for the Appellant. It relates to the refusal by the Commissioner to award interest and penalty provided u/s 4-A (3) of the Act. Incidentally, it was also urged that the Appellant was entitled to get the compensation at the rate prescribed and prevailing on the date of the deposit and not at the rate prevalent on the date of death of the workman.

7. We may now take up the primary question for consideration. The answer to this question depends upon the date on which the compensation falls due under the Act. Section 4-A operates when there is default in paying the amount of compensation within one month from the date it fell due. It was urged by counsel for the Appellant that the compensation falls due immediately upon the death of a workman and it shall be deposited within one month from that date. But, on the other hand, it was urged by the Government Advocate that the amount of compensation falls due only when it is determined by the Commissioner and not until then.

8. It seems to us that the contention urged for the Respondent appears to be untenable. Section 4(1) of the Act provides for compensation payable to workmen who have suffered different injuries. Section 4-A (1) provides that the compensation prescribed u/s 4 of the Act shall be paid as soon as it falls, due. The last words "as soon as it falls due" u/s 4-A (1) evidently indicate that in the case of death of a workman it falls due upon his death and not on the date on which the Commissioner determines it in case of any dispute. This becomes

further clear if we move on to Section 4-A (2) of the Act which provides:

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 workman, as the case may be, without prejudice to the right of the workman to make any further claim.

It is clear from the above Sub-section that even when there is a dispute as to the amount payable, the employer shall make a provisional deposit calculated on the extent of liability which he accepts and he cannot keep quiet till the Commissioner determines the correct amount payable to the workman.

9. In the case of death resulting from the injury, this question has been made further clear from Section 8 of the Act read with Rules 6 & 7 of the Rules framed under the Act. Section 8 prohibits payment of compensation in respect of a workman whose death resulted from the injury in any manner otherwise than by deposit with the Commissioner. Rule 6 provides procedure for depositing such compensation. Rule 8 provides a remedy to the dependents where the employer has failed to deposit the compensation. It states that the dependent of the deceased workman may apply to the Commissioner for the issue of an order directing the employer to deposit the amount.

When the Act prohibits payment of compensation directly to the dependents and recognizes the only method of payment, i.e., by depositing with the Commissioner, it is incumbent upon the employer to determine the compensation payable under the Act and deposit the same immediately after the death of a workman. In our opinion, in a case like this, the death of the workman alone is the cause of action for payment of the amount of compensation under the Act.

10. With these prefatory observations, we may now revert to Section 4-A (3) of the Act. It provides:

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.

The first part of the Sub-section authorises the Commissioner to issue a direction to recover simple interest at the rate of 6 per cent per annum on the amount of arrears of compensation not deposited within one month from the date it fell due. The second part of the Sub-section also authorises the Commissioner to recover by way of penalty a further sum not exceeding 50 per cent of such arrears. Both these recoveries are subject to the condition that there is no justification for the delay in depositing the amount. In other words, if there is a

delay in depositing the amount for more than one month, it is for the employer to show sufficient cause to the satisfaction of the Commissioner explaining that delay. If the Commissioner feels that the cause shown is not sufficient then he must direct the employer to pay interest and penalty as aforesaid.

In the instant case, the Commissioner no doubt has stated in one sentence that there was justification for the delay in depositing the amount. But he has not referred to any cause shown by the Respondent. We examined the records to find out whether the Respondent had shown any cause. We are sorry to note that there is no material on record to support the observation of the Commissioner. His opinion was evidently on subjective satisfaction, and cannot therefore be sustained.

11. We can understand the difficulty of the Respondent for not depositing the amount till 1971 since the Appellant's application was tossed from place to place and no one could locate the forum. We may, therefore, say that he had sufficient cause for not depositing the compensation till March 6, 1971. It was on that day, the Assistant Commissioner, Tumkur Sub-Division, after making preliminary enquiry issued a notice calling upon the Respondent to deposit the compensation due to the Appellant. The Respondent, however, took his own time to comply with the demand. It was only on October 5, 1977, he deposited Rs. 7,000. He has thus failed in the discharge of his obligation to the Appellant. The delay from March 1971 to October 1977 remains unexplained and the Appellant is therefore entitled to payment of interest and penalty as provided u/s 4-A (3) of the Act.

12. The additional payment provided u/s 4-A (3) of the Act was perhaps intended to compensate the claimant against the difficulties or loss he has to suffer as a result of failure of the Respondent in the discharge of his obligations under the Act, that is, in not depositing the compensation amount within the stipulated time. Therefore, if the employer shows no justification by producing acceptable evidence for the delay in depositing the amount, the Commissioner should award interest at the rate of 6 per cent with a proportionate penalty not exceeding 50 per cent.

13. Having regard to the facts and circumstances of this case, we direct the Respondent to pay a lumpsum of Rs. 1,000 by way of penalty in addition to six per cent interest from March 6, 1971. The interest shall be paid upto October 5, 1977, the date on which the Respondent deposited the amount of compensation before the Commissioner.

14. This takes us to the last contention urged for the Appellant. It was urged that the compensation ought to have been determined at the rate prevailing on the date of deposit and not at the rate prevailing on the date of death of the workman. If this contention is accepted, the Appellant stands to gain since the rate of compensation has been revised to her advantage and she would be entitled to more than Rs. 7,000. But, we cannot accept the contention urged in view of the conclusion that we have already reached. We have earlier stated that

the cause of action for depositing the amount is the date of death of the workman and not the date on which the employer deposits the amount. The Commissioner, therefore, was justified in determining the compensation on the basis of the rate prevailing on the date of death of the workman.

15. The appeal is accordingly allowed in part and the order under appeal is modified to the extent indicated above. The Respondent shall deposit the additional amount, as determined, within four weeks from the date of receipt of this order.

In the circumstances of the case, we make no order as to costs.