

(1996) 12 GAU CK 0021
In the Gauhati High Court
Case No : Misc Appeal (First) No. 104 of 1991

Juglawati Devi Tiwari and Ors.

APPELLANT

Vs

Ramjee Tiwari and Another

RESPONDENT

Date of Decision : 04-12-1996

Acts Referred:

Civil Procedure Code, 1908 — Section 115
Civil Procedure Code, 1908 (CPC) — Section 115
Workmens Compensation Act, 1923 — Section 30, 30, 4A(3), 4A(3)

Citation : (1997) 1 GLJ 210 : (1997) 1 GLT 349

Hon'ble Judges : J.N.Sarma, J

Bench : Single Bench

Advocate : J.P.Bora, S.S.Sharma, D.Sharma, B.K.Jain, S.K.Barkataki, Advocates appearing for Parties

Judgement

1. This application has been filed by the appellant with a prayer that the appeal should be converted to revision. This matter arises out of an order passed by the Commissioner of Workmen's Compensation, Kamrup at Guwahati in WC Case No.9 of 1990. By the impugned order the learned Commissioner refused to pass any order of penalty and interest.

2. An appeal is not provided under section 30 of the Workmen's Compensation Act against the rejection of the prayer of penalty and interest. So, this application for converting the appeal to revision is filed. Mr. SK Barkataki, learned counsel appearing on behalf of respondent No.2 submits that this application cannot be converted to revision. But such an appeal can be converted to revision and revision lies to this Court. Mr. BK Jain, learned counsel for the appellant in support of his contention that a revision lies to this Court places reliance on a Division Bench decision of this Court reported in AIR 1951 Assam 88 (Abdul Rashid vs. Hanuman Oil and Rice Mill) wherein the Division Bench inter alia held as follows :

"The Commissioner acting under the Workmen's Compensation Act is a Court

and is subject to the revisional jurisdiction of the High Court."

3. That was a case where the Commissioner dismissed a petition for compensation without affording an opportunity to the petitioner to substantiate the allegations contained in the petition without applying his mind to the case and this Court held that order involves a flagrant abuse of jurisdiction and cannot be rendered as one falling under any clause of section 30 and can be interfered with in revision and as such can be rectified in exercise of the revisional jurisdiction under section 115 of CPC.

4. This being the position of law, this appeal is converted to revision.

5. Office shall register it as revision petition.

6. On the merit of the case I have heard Mr. BK Jain, learned counsel for the appellant and Mr. SK Barkataki, learned counsel for respondent No.2.

7. The brief facts are as follows: On 18.12.89 a workman died. On 19.12.89, the employer (respondent No. 1) informed the accident and death of workman to the Insurance Co (respondent No.2). Thereafter, this information was given to the Commissioner by the employer of the workman. It is further found that even the legal heir of the workman informed the Insurance Co with regard to the death of the workman and prayed that the payment of the amount may be made to them. When nothing was done, a notice was issued by the Advocate on 28.5.90 and in reply to it, the Insurance Co wrote back as follows :

"Ref: Workmen Compensation Claim made on behalf of Smti Juglawati Devi Tiwari W/o late Sudhama Tiwari, C/o Shri Bankey Tiwari, Sarabhati, Dist Kamrup (Assam) Guwahati 781016.

We are in receipt of your notice dated 28th May, 1990 making a claim for death of driver of truck No.AMK 3237 while in the course of employment. The procedure for payment of liability as per Workmen's Compensation Act governs that notice of death/injury must be made to the WC Commissioner so that as per provisions of Act we may deposit money with the Commissioner Office. In the absence of WC Commissioner, taking any part, we may not be held liable for loss which are to be governed primarily by the Act. Hence, we request that necessary claim may be made to the WC Commissioner under intimation to us."

8. From a bare perusal of this reply dated 20.5.90 by the Insurance Co it will be crystal clear that they refused to pay the amount without a case being lodged before the Commissioner. As soon as the case was lodged on 8.9.90, the amount of compensation was deposited by the Insurance Co before Workmen's Compensation Commissioner and the view which was taken by the Commissioner by order dated 14.9.90 was that as voluntarily the amount has been deposited by the Insurance Co on 6.9.90 without contesting the case, the heirs of the workman are not entitled to penalty and interest.

9. Regarding payment of penalty and interest, the Commissioner took the view

that it is within the discretion of the Commissioner and he was not inclined to exercise that discretion. It is this order which has been challenged in this revision petition.

10. Mr. BK Jain, learned counsel contends that the Commissioner failed to note one important fact that the date of death of the workman was on 18.12.89 and the payment was made only on 8.9.90 after about 8 months 20 days precisely.

It is submitted by him that this payment made at the belated stage cannot absolve the Insurance Co from paying the penalty and interest. In support of this contention, Mr. Jain places reliance on 1976 TAC 348 : AIR 1976 SC 222, wherein the Supreme Court pointed out that the employer should pay the compensation as soon as the injury is caused and failure to pay the same does not suspend the liability of the employer to pay the same and in such a case the employer is liable to pay penalty as well as interest on the amount of compensation. The same principle will apply with regard to the Insurance Co as well because the Insurance Co steps into shoes of the employer by the contract. The Supreme Court in that case pointed out that the employer shall be liable to pay the penalty as well as the interest if the payment is not made soon after the accident. The Supreme Court further pointed that for the delay, satisfactory and reasonable explanation must be given and if there is no satisfactory and reasonable explanation, the employer cannot avoid the liability with regard to the payment of interest as well as penalty.

11. Two other cases relied on by Mr. Jain are : 1987 ACJ250 (Ram Dulari Kalia vs. HP State Electricity Board & another). In that case a Single Judge of Himachal Pradesh High Court pointed out that if an award is passed without granting interest and penalty for delayed payment, in appeal the Court can examine whether the employer or the Insurance Co accepted the liability in the early stages of the proceeding and whether the employer/Insurance Co came forward to make some ex gratia/provisional payment in accordance with the provisions of law. In para 11 of the judgment it has been stated as follows :

"In the third place, mere admission, if any, of the claim, without the payment of the compensation as and when it fell due, or without making the provisional payment based on the extent of the liability accepted, would not justify the refusal of the award of interest. Section 4A, subsection (3) vests the Commissioner with a judicial discretion to award such interest in the event of the employer making a default in paying the compensation due under the Act within a period of one month from the date it fell due and such discretion, like any other judicial discretion, has to be exercised with vigilance and circumspection, according to justice, common sense, and sound judgment, and having known through law what is just. The discretion could not be regarded as having been reasonable and judicially exercised in a just and equitable manner, if the award of interest is denied solely on the ground that the employer had admitted the claim, when, in spite of such admission, he makes a default in making the provisional payment or payment of the compensation due in accordance with law

within the statutory time limit. If such a view is held justified, the very purpose behind the enactment of section 4A will be frustrated. Be it appreciated also that where enabling or discretionary power is conferred, the words which are permissive in character should be construed as involving a duty to exercise the power, if some legal right or entitlement is conferred, or enjoyed, and for the purpose of effectuating such right or entitlement, the exercise of such power is essential."

The next case relied on by Mr. Jain is (1989) 1 ACC 296 (Ramlal vs. The Commissioner Workmen's Compensation Act & others) where the Bombay High Court in para 6 of the judgment pointed out as follows :

"I am conscious that imposition of penalty and interest is matter of discretion of the Commissioner. Remand to him to decide these question is possible but not desirable, considering the amount involved and the unbearable burden on the petitioner to face further litigation. It would also further delay the matter. It is under these circumstances that I have chosen to close the chapter here itself."

12. This is an authority for the proposition that the penalty and interest can be imposed by this Court in appeal instead of remanding the matter to the Commissioner as remand of the matter to the Commissioner will merely cause delay and give harassment to the poor workman.

13. On the background of this law, now let us have a look at this case in hand. As indicated above, the claim for compensation was made to the Insurance Co as a far back as on 19.12.89 and ultimately on 29.5.90 the Insurance Co flatly refused to pay the compensation without a case being lodged before the Commissioner. Thereafter when the claim petition was filed, the Insurance Co deposited the money on 6.9.90 and there was a delay of 8 months 20 days in paying the statutory compensation on the plea that the claim is to be made before the Commissioner. This an unreasonable attitude of the Insurance Co is really a matter of concern. The Insurance Co should settle the claim of a person at the earliest without resorting to technicalities. No doubt, the Insurance Co must find out whether the amount is due to a person or not, but that does not mean that it can deny the payment as was done in the instant case. If that is allowed, the very purpose of making the insurance shall fall through.

14. Accordingly this revision petition is allowed and I allow interest at the rate of interest 6% from 19.12.89 to 6.9.90 on the awarded amount of Rs.82380/and penalty at the rate of 50% by following the decision of the Apex Court reported in AIR 1976 SC 222 (supra). In that case, there was an injury and also there was delay in payment for a period of 10 months and as such the Supreme Court awarded penalty of 50% in that case. Here is a case of death and the delay in payment is 8 months and 20 days. So, I award penalty of 50%, but on the amount of penalty there will be no interest. The amount due shall be paid, within a period of 3 (three) months from today before the Commissioner for Workmen's Compensation at Guwahati and the amount shall be paid by the Workmen's

Commissioner by way of crossed cheque in the name of the mother and the whole amount shall be deposited in a fixed deposit account by the mother for her 4 (four) children and the fixed deposit receipt shall be shown to the Commissioner failing which the Commissioner may take appropriate steps against the mother.

15. With this observation and direction, this revision is allowed.