

(1988) 07 SHI CK 0010
In the High Court Of Himachal Pradesh

Kehar Singh

APPELLANT

Vs

State of Himachal Pradesh and Another

RESPONDENT

Date of Decision : 29-07-1988

Acts Referred:

Workmens Compensation Act, 1923 — Section 30, 4A

Citation : (1989) 1 ACC 126 : (1988) 2 ShimLC 312

Hon'ble Judges : P.D. Desai, C.J

Bench : Single Bench

Judgement

P.D. Desai, C.J.—This appeal by the original claimant-workman is instituted u/s 30 of the Workmen's Compensation Act, 1923 (hereinafter referred to as "the Act") against the award of the Commissioner, Workmen's Compensation, HP. PWD., Shimla, (hereinafter referred to as "the Commissioner") dated March 24, 1987. Initially, in the memo of appeal, the challenge to the award was directed against the quantum of compensation. Subsequently, however, the award was challenged also on the ground that the Commissioner had erred in law in not awarding interest on the compensation amount and in not imposing the penalty for default in paying the compensation within the time limited by law. At the hearing of the appeal, the challenge has been confined only to the latter ground.

2. The material facts, which are required to be set-out for the purposes of considering the challenge aforesaid, are few. The accident giving rise to the claim petition occurred on August 6, 1985. The appellant was admitted as an indoor patient in the Kotgarh Hospital and he received treatment as such for a period of one week. After discharge he was advised rest for a period of 45 days and appears to have been treated as an outdoor patient during the said period. His case was thereafter referred to the Indira Gandhi Hospital, Shimla where he was treated as an indoor patient from October 4, 1985 to November 1, 1985.

3. The report relating to the accident was submitted to the Commissioner by the Assistant Engineer. Thanedhar Sub-Division HP. PWD, on September 6, 1985.

According to the said report, the appellant had sustained personal injury while he was on duty as an employee of the Department as Beldar on Sidhpur-Thanedhar Road. The Commissioner held proceedings under the Act during the course of which the fact that the personal injury was caused to the appellant by an accident arising out of and in the course of his employment was not disputed. The material part of the award made is reproduced hereinbelow:

In view of the foregoing discussion I, N.N. Guatam, Commissioner for Workmen Compensation, therefore, hold that Shri Kehar Singh injured workman is entitled to get the compensation amount which works to Rs. 8895.60 according to Schedule 4 of the Workmen's Compensation Act, 1923. Besides this, the injured workman is also entitled to get the compensation of Diet money i.e. 136.50, medical charges i.e. 63.65 and 29 days of daily @ 10/- i.e. 290/- when he remained admitted in the Hospital. Thus total amount of compensation arrived at in this case is Rs. 9385.54. The Executive Engineer, Kumarsain, shall deposit this amount within one month from the date it fell due. The same shall be disbursed to the injured workman Shri Kehar Singh immediately.

4. After the award was made in the presence of the appellant and the Naresh Kumar, an employee in the office of the S.D.O., Thanedhar, a sum of Rs. 18,904/- was remitted by the S.D.O., Thanedhar, to the Commissioner under the cover of letter dated May 15, 1987 which was received on May 18, 1987. Be it stated that the said sum included not only the amount payable to the appellant under the aforesaid award but also the amount payable to some other claimants under different awards. The compensation amount was thereafter paid to the appellant on June 28, 1987.

5. It has been urged on behalf of the appellant that the Commissioner failed to exercise the jurisdiction vested in him by Section 4-A of the Act in omitting to consider and in not directing the respondents to pay, in addition to the amount of compensation, simple interest at the rate of 6 per cent per annum on the amount due together with a sum equivalent to 50 per cent of such amount by way of penalty, since there was a default in paying the compensation due under the Act within one month from the date it fell due.

6. The question which falls for determination against the aforesaid background is whether the failure on the part of the Commissioner to consider awarding interest and imposing penalty for making a default in paying the compensation as soon as it fell due of latest within one month from the date it fell due has vitiated the award to that extent.

7. In *Ram Dulari Kalia v. H.P. State Electricity Board and Anr.* 1987 ACT 258, this Court had an occasion to consider the provisions of Section 4-A of the Act which provides for the payment of compensation when due and the penalty for default. After noticing the provisions of Sections 3, 4, 4-A, 8, 17 and 19 of the Act and the decision in *Pratap Narain Deo v. Shrinivas Sabata* 1976 ACT 141 (SC), the following observations were made in that case:

Against the background aforesaid, it is manifest that in the present case the duty to pay the compensation at the rate provided in Section 4 arose Under Sub-section (1) of Section 4-A of the Act as soon as the accident resulting in the injury to the deceased workman and in his consequential death occurred and that the respondents being in default in paying the compensation due under the act within one month from the said day, the discretion conferred on the Commissioner Under Sub-section (3) of Section 4-A to award interest on the compensation amount in accordance with law was required to be exercised reasonably and in a judicial manner after taking into consideration all the relevant factors and that if, in her considered opinion, there was no justification for the delay, the penalty was also required to be ordered to be recovered. The Commissioner has held, as earlier pointed out, that since the respondents had admitted the liability to pay the compensation "whatever is to be awarded" and that they had also deposited the amount of compensation in the court, the claim with regard to the payment of interest was not justified. The question of imposition of penalty does not appear to have been considered at all presumably on the same ground.

As regards the holding of the Commissioner in that case to the effect that the amount of compensation was deposited in the court, it was clarified that the deposit was made nearly one year and three months after it was ordered to be deposited by the Commissioner. So far as the impact of the admission of the liability to pay compensation on the award of interest and imposition of penalty is concerned, it was observed as follows:

...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 interest. Section 4-A, Sub-section (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 4-A 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 . . . For the self same reasons and considerations, which have been set out above in the context of the

failure on her part to award the interest, no conclusion other than that there was no justification for the delay in the payment of statutory compensation is possible in the present case. No person duly instructed in law could ever come to the conclusion that this was a case where there was the slightest justification for delaying the payment of compensation due under the Act. Under the circumstances, the Commissioner was not only under a statutory duty to consider the award of penalty but also to award penalty in such sum as could be held just and proper in the circumstances of the case and her failure to do so has vitiated the award by an error of law.

The Court also made the following observations in that case, which have a direct bearing in the present case also, since the State Government is the respondent herein:

The respondents are not private employers but an agency or instrumentality of the State. They are a State enterprise which in a truly welfare State is charged with the social consciousness and responsibility towards the citizens and, more particularly, towards its employees....The Act is a legislative enactment conformable to the Directive Principles of State Policy enshrined in Articles 39(a), 41, 42, 43 and 46 of the Constitution. They (respondents) are expected to be model employers. While dealing with their workman, it is their duty to implement the beneficent provisions of the Act in their true letter and spirit and to make payment of the compensation as soon as it falls due....Both, the statutory provisions and the case law on the subject, are clear and specific in regard to the precise point of time when the payment is required to be made.

8. The question posed above requires to be answered against the aforesaid legal background.

9. Now, as earlier stated, the accident in the present case occurred on August 6, 1985. The report concerning the accident was submitted to the Commissioner on September 6, 1985. At that stage also it was not in dispute that the appellant had sustained personal injury by an accident arising out of and in the course of his employment and the liability to pay compensation was not disputed. Still, however, no compensation was paid or deposited nor any provisional payment based on the extent of liability capable of being assessed at that stage was made. Be it stated, however, that the appellant was paid a sum equivalent to the wages for the period during which he remained admitted as an indoor patient in the Kotgarh Hospital and also for the subsequent period of 45 days during which he was advised rest. No payment, however, was made to the petitioner thereafter and he had to bear even the medical and diet money charges for the period during which he remained admitted in the Indira Gandhi Hospital, Shimla. A disability certificate dated September 1, 1986 was issued concerning the petitioner by the Orthopaedic Surgeon of the Indira Gandhi Hospital, Shimla, and the percentage of disability and the resultant loss of earning capacity was assessed at 35 per cent. The certificate appears to have been forwarded to the Executive Engineer, Kumarsain Division, HP. PWD., Kumarsain, since he was

carrying on correspondence in that regard with the authorities of the Indira Gandhi Hospital, Shimla. The Executive Engineer forwarded the said certificate to the Commissioner on October 13, 1986. Assuming without deciding that it was not possible to pay the compensation or even to make a provisional payment of compensation till the said disability certificate was received, the latest point of time when the compensation should have been paid was the date of the receipt of the said certificate. It would not be unreasonable to assume that the certificate must have been received within a week of the date of its issue, that is, on or about September 7, 1986. Still, however, the compensation was not paid or deposited, although the liability therefore was not in dispute, till May 18, 1987, that is, till the expiry of a period of nearly 8-1/2 months thereafter. What is equally, if not more, relevant is that the compensation was not deposited even till the expiry of a period of about 2 months from the date of the pronouncement of the award. The net result of the foregoing discussion is that the first respondent deposited the compensation after a period of about 21 months from the date of the accident that is to say, after the expiry of a period of about 21 months from the date the liability to pay compensation arose in view of Section 4-A of the Act. It is against the aforesaid factual background that the claim of the appellant for the award of interest and the case for the imposition of penalty requires consideration.

10. The learned Assistant Advocate General urged that the claim for compensation herein is in respect of a personal injury sustained by a workman as a result of an accident arising out of and in the course of employment, unlike the claim for compensation which was advanced by the heir (s) of a deceased workman who died as a result of the injuries suffered in the course of such accident in Ram Dulari Kalia's case, and that, therefore, till and until the extent of the disablement was assessed by a competent medical officer, the compensation could not have been paid or deposited and that, as such, the liability for the payment of interest and penalty u/s 4-A of the Act was not attracted in the present case. The argument has been stated merely to be rejected. The decision in Ram Dulari Kalia's case is based on the decision in Partap Narain Singh Deo's case. In the latter case also the claim of compensation was advanced by a workman who had sustained personal injury by an accident arising out of and in the course of his employment. Section 4-A, therefore, fell for construction in that case against the said background and even in the context of such a fact situation it was held that Section 4-A was applicable and that the liability Under Sub-section (3) of the said Section arose in the case. True, the workman in Partap Narain Singh Deo's case, (supra) who was a carpenter by profession, was found to have sustained an injury which had resulted in the amputation of the left arm above the elbow and, therefore, he had evidently been rendered unfit for work and the employer in that case could have consequently assessed the compensation and paid or deposited the same within the time prescribed or he could have at least made a provisional payment. In the present case, although the accident injury was not equally grievous, a

reasonable estimate of the compensation required to be paid could have been made or, at least, a provisional payment based on the extent of liability tentatively assessed on account of the fracture injury could have been made or deposited.

11. The learned Assistant Advocate General drew the attention of the Court in this connection to the attempts made by the Executive Engineer to procure the disability certificate from the Medical Officer, Kotgarh Hospital, and from the authorities of the Indira Gandhi Hospital, Shimla, and urged that in view of the fact that the certificate was not issued till September 1, 1986, there was justification for the delay in making the payment of compensation. He drew the attention of the Court to the following communications:

(1) Letter dated September 28, 1985 addressed by the Executive Engineer to the S.D.O., Thanedhar, requesting him to collect the Medical Report from the authority concerned, with a copy endorsed to the Medical Officer, Kotgarh, for information and with a request to send the certificate to the S.D.O. at an early date.

(2) Letter dated October 31, 1985, being a reminder, addressed and endorsed as aforesaid.

(3) Letter dated January 31, 1986 addressed by the Executive Engineer to the Engineer-in-Chief, HP. PWD., Shimla, submitting a report of the accident and stating inter alia, that the Medical Officer, Kotgarh, had diagnosed the injury as fracture left upper arm on August 6, 1985 and authorities of the Indira Gandhi Hospital, Shimla, where the appellant was being treated, were being requested to send the necessary medical certificate so that the same could be submitted to the Commissioner ; a copy of the said letter was endorsed to the Medical Superintendent, Snowdon Hospital, Shimla (Indira Gandhi Hospital, Shimla) for necessary action with a request that the medical certificate be sent at an early date so that the compensation could be paid to the workman "after the Commissioner's decision". Letter dated April 5, 1986 addressed by the Executive Engineer to the Commissioner stating, inter alia, that the medical report was still awaited and that the appellant was advised to report to the Medical Superintendent, Indira Gandhi Hospital, Shimla, for medical check-up so that the medical report could be submitted for early decision of the case.

12. The letters referred to above would indicate that some correspondence was carried on between the, Executive Engineer and his departmental subordinates/ superiors and the Commissioner concerning the medical certificate and that copies of some of the letters were endorsed also to the medical authorities. However, they do not indicate that the matter was pursued with the requisite despatch despite the fact that the Commissioner had called for the Medical Certificate as far back as November 2, 1985 and also inquired about the compensation, if any, paid. There is no reason why the disability, or at least a provisional disability certificate, could not have been procured by deputing even

a special messenger. Besides, the medical certificate issued by the Medical Officer, Kotgarh, although it did not describe the extent of the disability, mentions that the appellant had suffered fracture of the upper left arm. There is no reason why, in order to meet with the requirements of Section 4-A of the Act, provisional compensation could not have been paid to the appellant adjustable against the final compensation to which he became entitled after the final assessment of the extent of disability was made by the competent medical officer. On the facts and in the circumstances of the case, the liability for the payment of interest and for the imposition of penalty for the, delayed payment cannot be avoided by the first respondent who has to act as a model employer and to implement the beneficent provisions of the Act in letter and spirit. The Commissioner, therefore, apparently failed to exercise the jurisdiction vested in him to consider the award of interest and the imposition of penalty as provided in Sub-section (3) of Section 4-A of the Act and he has thereby failed to perform the statutory duty and the award is to that extent vitiated by an error of law.

13. The question then is as to what interest and penalty should be ordered to be paid and recovered from the first respondent in the factual matrix of this case. In light of the principles laid down in Ram Dulari Kalia's case, there is no reason why simple interest at the rate of 6 per cent per annum on the compensation amount should not be ordered to be paid to the appellant from the date of the accident till the date of deposit. As regards the imposition and recovery of penalty, the Court is of the view that having regard to the over all circumstances of the case, the ends of justice would be met if the penalty is imposed and recovered from the first respondent in a sum equivalent to 25 per cent of the compensation amount. All the factors in favour and against have been thrown into the scales in determining the extent of penalty as aforesaid. The appellant was an employee in the public sector. The first respondent is expected to be a model employer and while dealing with the appellant it was its duty to implement the beneficent provisions of the Act in letter and spirit and to make the payment as soon as it fell due. The compensation was, however, not paid till the expiry of a period of about 21 months from the date of the accident, for a period of about 8 months even after the disability certificate was received and for a period of 2 months from the date of the award. As earlier pointed out, a provisional payment at least could have been made until the disability certificate was received and the compensation due in accordance with law could have been paid after making adjustment soonest after the receipt of the disability certificate. The extenuating circumstances are that wages for the period from the date of the accident till the expiry of the period of 45 days of rest were paid to the appellant and that efforts, although not seriously pursued, were made to procure the disability certificate and it was ultimately produced by the first respondent before the Commissioner. Striking a just and proper balance, the imposition of penalty in a sum equivalent to 25 per cent of the compensation amount would meet the ends of justice.

14. For the foregoing reasons, the appeal succeeds and it is allowed. The first respondent is directed to pay to the appellant simple interest at the rate of 6 per

cent per annum on the sum of Rs. 8895-60, which has been determined as the statutory compensation payable to him in accordance with law from the date of accident till the date of deposit. In addition, penalty in the sum of Rs. 2223-90 is liable to be imposed on the first respondent and ordered to be paid to the appellant. The first respondent will deposit in the Registry of this Court, within a period of two weeks from the date of receipt of a certified copy of this judgment, the said sum of Rs. 2223-90 which becomes payable and recoverable as the amount of penalty together with the amount of interest which becomes due and payable as a result of this decision. Upon the deposit being made accordingly, the case be listed before the Registrar for settlement of the usual draft order regarding investment of the amount and the investment will be made within a period of three weeks from the date of deposit. The appellant is entitled to the costs of this appeal which are quantified at Rs. 250/-. The costs awarded accordingly will also be deposited in the Registry of this Court alongwith the amount of interest and penalty and paid to the appellant.