
(2015) 05 KL CK 0102

In the High Court Of Kerala

Case No : Review Petition No. 156 of 2015 in M.F.A.(WCC) No. 117 of 2012

Leela and Others

APPELLANT

Vs

Rajan and Others

RESPONDENT

Date of Decision : 20-05-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1
Workmens Compensation Act, 1923 — Section 10, 22(2), 3, 4, 4(1)

Citation : (2015) 05 KL CK 0102

Hon'ble Judges : P.N. Ravindran, J;Anil K. Narendran, J

Bench : Division Bench

Advocate : N. Sukumaran, Senior Advocate, S. Shyam and N.K. Karnis, for the Appellant; Nagaraj Narayanan, Advocates for the Respondent

Final Decision : Allowed

Judgement

Anil K. Narendran, J—The petitioners in this Review Petition are respondents 1 to 3 in M.F.A. (WCC) No. 117 of 2012. The said appeal filed by the first respondent herein arises out of the order passed by the Court of the Commissioner for Workmen's Compensation, Thiruvananthapuram, in W.C.C. No. 43 of 2001, an application filed by the petitioners herein, under section 22(2) of the Workmen's Compensation Act, 1923, read with Rule 20 of the Workmen's Compensation Rules, 1958, claiming a lumpsum payment of Rs. 2,50,000/- from respondents 1 and 2 herein, under section 4 of the said Act.

2. The Commissioner for Workmen's Compensation by order dated 14.2.2012 allowed the application holding that the petitioners are entitled to get Rs. 3,50,000/- towards workmen's compensation for the death of the said Rajesh in the accident arising out of and in the course of his employment. The first respondent herein was directed to pay the compensation amount to the petitioners with simple interest at 12% per annum from the date of death, i.e., 9.11.1999, to the date of payment, within 30 days from the date of receipt of the order.

3. Challenging the aforesaid order passed by the Commissioner for Workmen's Compensation, the first respondent herein filed M.F.A. (WCC) No. 117 of 2012 before this Court. The said appeal was allowed in part by the judgment of this Court dated 13.6.2014. This Court found that, even assuming that the deceased Rajesh was earning Rs. 3,125/- per month, the maximum monthly wages that can be taken into account for the purpose of calculating the compensation is only Rs. 2,000/-, as per Explanation 2 to section 4(1) of the Act, as it stood at the time of the accident and therefore, the Commissioner went wrong in taking the monthly wages of the deceased as Rs. 3,125/-. This Court fixed the eligible compensation payable to the petitioners as Rs. 2,24,000/- only.

4. Regarding payment of interest, this Court observed that though the accident occurred on 6.11.1999, the petitioners approached the Commissioner for Workmen's Compensation only on 15.6.2001 and the said application was disposed of by the Commissioner only on 14.2.2012 and consequently, the matter was pending consideration before the Commissioner for more than 10 years. Relying on section 25A of the Act, which was inserted by Act 45 of 2009 to the effect that the Commissioner shall dispose of the matter relating to compensation under the Act within a period of three months from the date of reference and intimate the decision in respect thereof within the said period to the employee and having regard to the fact that the matter was kept pending before the Commissioner for Workmen's Compensation for a considerably long period, this Court directed the first respondent to pay the compensation amount with simple interest at the rate of 12% per annum from 6.12.1999 (after 30 days of the accident) till 5.12.2003 and thereafter at the rate of 7.5% till the date of deposit, that is till 6.9.2012. The Commissioner was directed to release the compensation amount due to the petitioners within a period of one month from the date of receipt of a copy of the judgment. It was made clear that, if the amount in deposit is higher than the amount due, the Commissioner shall release the balance amount to the first respondent, without any delay.

5. This Review Petition is filed by the petitioners aggrieved by that part of the judgment reducing the rate of interest for the compensation amount from 12% per annum to 7.5% per annum, for the period from 6.12.2003 to 6.9.2012.

6. We heard the arguments of the learned Senior Counsel appearing for the petitioners and also the learned counsel for the first respondent. Since the liability to pay compensation is fastened upon the first respondent alone, notice to respondents 2 and 3 was dispensed with and the review petition was finally heard.

7. The learned Senior Counsel for the petitioners would contend that, the rate of interest fixed at 12% per annum being statutory in terms of section 4A of the Act, in the absence of any challenge made against the validity of section 4A, this Court erred in reducing the rate of interest for the compensation amount, for period from 6.12.2003 to 6.9.2012. Therefore, there is error apparent on the face of record, justifying invocation of the power of review under Order XLVII

Rule 1 of the Code of Civil Procedure, 1908.

8. Per contra, the learned counsel for the first respondent would contend that, in the facts and circumstances of the case, this Court was perfectly justified in reducing the rate of interest for the compensation amount to 7.5% per annum, for the period from 6.12.2003 to 6.9.2012, and that the petitioners have not made out a case for invoking the power of review under Order XLVII Rule 1 of the Code of Civil Procedure.

9. We have considered the rival submissions made at the Bar.

10. The petitioners are the mother, brother and sister respectively of one Rajesh who sustained fatal injuries in an accident that occurred on 6.11.1999, arising out of and in the course of his employment under respondents 1 and 2 as helper to the masonry work. The third respondent is the father of deceased Rajesh. Even before the death of Rajesh the third respondent was residing separately. Hence, he was never a dependent of deceased Rajesh. The said Rajesh was working as helper under the second respondent, who had been working as a mason for the construction of a building for the first respondent at Pottakkuzhy in Thiruvananthapuram, for about two years, on a monthly wage of Rs. 3,125/-, at the rate of Rs. 125/- per day. On 6.11.1999, while the said Rajesh was working in the construction site, the sunshade of the building under construction collapsed as a result of which, he fell down and sustained fatal injuries. Immediately he was taken to the Medical College Hospital, Thiruvananthapuram. On 9.1.1999, Rajesh, who was aged 20 years, succumbed to the injuries.

11. The application was filed before the Commissioner for Workmen's Compensation, on 15.6.2001, claiming a lump sum payment of Rs. 2,25,000/- from respondents 1 and 2 herein. On 10.7.2001, after preliminary examination, the application was admitted and numbered as W.C.C. No. 43 of 2001. Registered notices were issued to respondents 1 to 3 and the first and second respondents herein filed written statement on 24.7.2002 and 16.10.2002 respectively. The first petitioner herein was examined as AW1 and one Pushpakumar was examined as AW2. Exts. A1 to A9 were marked on the side of the petitioners. The first and second respondents herein were examined as DW1 and DW6 respectively and DWs. 2 to 5 were examined on their side. The Commissioner for Workmen's Compensation by order dated 14.2.2012 allowed the application holding that the petitioners are entitled to get Rs. 3,50,000/- towards workmen's compensation for the death of the said Rajesh, in the accident arising out of and in the course of his employment, and the first respondent was directed to pay the compensation amount to the petitioners with simple interest at the rate of 12% per annum from the date of death, i.e., 9.11.1999 to the date of payment, within 30 days from the date of receipt of the order.

12. The order passed by the Commissioner for Workmen's Compensation was under challenge before this Court in M.F.A. (WCC) No. 117 of 2012. By judgment

dated 13.6.2014, this Court held that the petitioners are eligible for payment of a compensation of Rs. 2,24,000/- only. Regarding payment of interest, taking note of the fact that the application before the Commissioner for Workmen's Compensation was filed more than 1 1/2 years after the accident and that the same was kept pending consideration before the Commissioner for more than 10 years, this Court directed the first respondent to pay the compensation amount with simple interest at the rate of 12% per annum from 6.12.1999 (after 30 days of the accident) till 5.12.2003 and thereafter at the rate of 7.5% till 6.9.2012, the date on which the compensation amount was deposited before the Commissioner.

13. Section 3 of the Act deals with employer's liability for compensation if personal injury is caused to a workman by an accident arising out of and in the course of his employment. Section 4 of the Act deals with the amount of compensation in the case of death, permanent total disablement, permanent partial disablement and temporary disablement, whether total or partial, resulting from the injury sustained by a workman out of and in the course of his employment. Section 4A of the Act stipulates that the compensation under section 4 shall be paid as soon as it falls due. Sub-section (3) of section 4A provides that where any employer is in default in paying the compensation due under the Act within one month from the date it fell due, the Commissioner shall direct that the said employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of 12% per annum or at such higher rate, not exceeding the maximum of the lending rates of any scheduled bank as may be stipulated by the Central Government, by notification in the official gazette, on the amount due. Further, if the Commissioner is of the opinion that, there is no justification for the delay, he may direct that the employer shall, in addition to the amount of arrears and interest thereon, pay a further sum not exceeding 50% of such amount by way of penalty.

14. A reading of the various provisions in Chapter II of the Act, namely sections 3, 4, 4A, etc. would show that the liability of an employer for payment of workmen's compensation computed in terms of section 4 of the Act, together with payment of interest or penalty for default in terms of section 4A of the Act is statutory in nature. The statutory liability of an employer to pay compensation would run from the date of accident. If there is any default on the part of the employer to discharge his statutory obligation to pay compensation, he will be fastened with the liability to pay interest at the rate of 12% per annum on the compensation in arrears and if there is no justification for the delay, the employer is also liable to pay penalty in addition to the amount of arrears and interest thereon.

15. The Apex Court has in *Saberabibi Yakubbbhai Shaikh and Others Vs. National Insurance Co. Ltd. and Others*, (2014) 1 ACC 82 : (2014) ACJ 467 : AIR 2014 SC 1393 : (2014) AIRSCW 1584 : (2014) 1 JT 550 : (2014) 1 SCALE 153 : (2014) 2 SCC 298 reiterated that, the compensation under the Act has to be paid on the

date of the accident. Paragraph 8 of the judgment reads thus:

"8. We have perused the aforesaid judgment. We are of the considered opinion that the aforesaid judgment relied upon by the learned counsel for the appellants is fully applicable to the facts and circumstances of this case. This Court considered the earlier judgment relied on by the High Court and observed that the judgments in National Insurance Co. Ltd. Vs. Mubasir Ahmed and Another, (2007) 2 ACC 374 : (2007) ACJ 845 : AIR 2007 SC 1208 : (2007) 112 FLR 1033 : (2007) 3 JT 176 : (2007) 1 LLJ 1035 : (2007) 2 SCALE 455 : (2007) 2 SCC 349 : (2007) 1 SCC(L&S) 643 : (2007) 2 SCR 117 : (2007) 3 SLJ 62 : (2007) 1 UJ 240 and Oriental Insurance Co. Ltd. Vs. Mohd. Nasir and Another, (2006) ACJ 2742 : (2009) 121 FLR 1103 : (2009) 8 JT 26 : (2009) 3 LLJ 559 : (2009) 156 PLR 778 : (2009) 8 SCALE 161 : (2009) 6 SCC 280 : (2010) AIRSCW 866 : (2009) AIRSCW 3717 : (2009) 4 Supreme 589 were per incuriam having been rendered without considering the earlier decision in Pratap Narain Singh Deo Vs. Srinivas Sabata and Another, (1976) ACJ 141 : AIR 1976 SC 222 : (1976) LabIC 222 : (1976) 1 LLJ 235 : (1976) 1 SCC 289 : (1976) 2 SCR 872 : (1976) 8 UJ 139 . In the aforesaid judgment, upon consideration of the entire matter, a four-Judge Bench of this Court had held that the compensation has to be paid from the date of the accident."

16. Going by sub-section (1) of section 10 of the Act, no claim for compensation shall be entertained by the Commissioner for Workmen's Compensation unless notice of the accident has been given in the manner provided therein as soon as practicable after the happening thereof and unless the claim is preferred before the Commissioner within two years of the occurrence of the accident or in the case of death within two years from the date of death. In the case on hand, the accident occurred on 6.11.1999 and the workman died on 9.11.1999. The petitioners caused Ext. A7 lawyer notice demanding compensation to be issued and thereafter filed an application before the Commissioner for Workmen's Compensation on 15.6.2001. Since the application filed before the Commissioner for Workmen's Compensation was well within the statutory period prescribed in sub-section (1) of section 10 of the Act, the petitioners cannot be denied the benefit of statutory interest at the rate of 12% per annum from the date of the accident. The mere fact that the application filed by the petitioners before the Commissioner for Workmen's Compensation in the year 2001 was finally disposed of only in the year 2012 would not disentitle them from claiming the benefit of the statutory interest under section 4A of the Act, on the compensation in arrears, till the same is deposited before the Commissioner for Workmen's Compensation.

17. In the result, the judgment dated 13.6.2014 in M.F.A (WCC)No.117 of 2012 to the extent of reducing the rate of interest for the compensation amount from 12% per annum to 7.5% per annum for the period from 6.12.2003 to 6.9.2012 is reviewed and the petitioners are allowed to realise interest on the compensation amount awarded by this Court for the aforesaid period as well at

the rate of 12% per annum.

The Review Petition is allowed accordingly. No costs.