
(2019) 07 SIK CK 0007
In the Sikkim High Court
Case No : Writ Petition (C) No. 09 Of 2019

Maya Devi Darjee	Vs	APPELLANT
Executive Engineer		RESPONDENT

Date of Decision : 12-07-2019

Acts Referred:

Employees Compensation Act, 1923 — Section 3, 4, 4A, 4(a)(1), 4A(3)(a), 4(A)(3)(a), 4(A)(3)(b)
Employees Compensation Rules, 1923 — Rule 4(A)(3)(a), 4(A)(3)(b)

Citation : (2019) 07 SIK CK 0007

Hon'ble Judges : Bhaskar Raj Pradhan, J

Bench : Single Bench

Advocate : Zangpo Sherpa, Mon Maya Subba, Karma Thinlay, Manish Kumar Jain

Final Decision : Allowed

Judgement

Bhaskar Raj Pradhan, J

1. Late Pirthi Ram Sewa, a casual labourer working with the Respondent, Central Water Commission while on his way from Gangtok to Central

Water Commission, Bhopal in the Narmada Division after receipt of letter of offer of regularisation as skilled work assistance met with a fatal

accident and died on 26.04.2013. He had expressed his willingness to proceed and join duty anywhere in India pursuant to which he was called to

Bhopal.

2. Section 3 of the Employee's Compensation Act, 1923 (the said Act) provides for employers liability for compensation if personal injury is

caused to an employee by accident arising out of and in the course of his employment. The fact that late Pirthi Ram Sewa died on 26.04.2013 is not an

issue. The Respondent, it seems, did not pay compensation payable on his death.

This compelled the Petitioner-wife of late Pirthi Ram Sewa to approach the Court of the Commissioner for Workman's Compensation, Sikkim at Gangtok (the learned Commissioner). The application for compensation was contested by the Respondent. The Respondent submitted before the learned Commissioner that late Pirthi Ram Sewa having not been employed at the office of the Central Water Commission, Bhopal on the date of his death was not eligible to receive compensation. The learned Commissioner rejected this contention and held that the accident occurred in the course of his employment. The learned Commissioner determined the amount of compensation and directed the Respondent by order dated 02.06.2016 to pay an amount of Rs.7,02,160/- as compensation within a period of two months from the date of the order. When the Respondent failed to make the said payment of compensation within the prescribed period the Petitioner approached the learned Commissioner once again by filing an execution petition. The learned Commissioner after examining the law was of the opinion that the Commissioner under the said Act is not in a position to execute the award but as the amount of compensation has already been determined and ordered for payment the parties should consider approaching the Civil Court for execution of the award. The Respondent neither appealed against the order nor paid the compensation amount as directed by the learned Commissioner compelling the Petitioner to approach the Court of the learned District Judge, East Sikkim, at Gangtok for execution of the learned Commissioner's order. Before the learned District Judge the representative of the Respondent submitted that the necessary approval for the release of the compensation amount along with interest thereon @ 10% w.e.f. the date of filing of the execution petition had been accorded by the Ministry of Water Resources, River Development & Ganga Rejuvenation, Government of India. A copy of the letter dated 27.11.2017 recording the said approval was also filed. It was informed that in view of the approval necessary instructions has also been made and it was assured that payment would be made within December, 2017. On such assurance from the Respondent the learned District Judge on 06.12.2017 closed the case with the direction that the payment shall be made within December 2017. The payment however, was not paid in December but only on 19.01.2018. Thereafter, the Petitioner made an application dated 07.02.2018 to

the Respondent by which she claimed that the interest amount should have been 12% as per the said Act and the death compensation had been

wrongly calculated from 09.10.2017 to 10.12.2017 whereas it should have been counted after one month from the date of death i.e. 16.05.2013 to

10.12.2017. The Respondent replied to the said communication vide letter dated 05.06.2018 informing the Petitioner to approach the competent

authority and stating that further payment of interest could be made only after the Court order or approval of the competent authority. The Petitioner,

therefore, desired to approach the learned Commissioner. Accordingly after having had an appropriate application drafted sought to present the same

before the learned Commissioner. However, it is submitted that the said application was not accepted and returned to the complainant without any

consideration. It is in these circumstances, that the Petitioner has approached this Court for appropriate reliefs by filing the present Writ Petition.

3. The present Writ Petition seeks directions upon the Respondent to make payment of interest @ of 12% per annum from the date of the accidental

death of late Pirthi Ram Sewa till the date of final payment. Additionally the Petitioner seeks a further direction upon the Respondent to make

payment of penalty amounting to 50% of the principal amount of death compensation as per Section 4 A (3) (a) (b) of the said Act.

4. Heard, Mr. Zangpo Sherpa, learned Counsel for the Petitioner and Mr. Karma Thinlay Namgyal, learned Central Government Counsel for the

Respondent.

5. Mr. Karma Thinlay submitted that the facts are not in dispute and therefore, there is no need to file a counter affidavit. He sought to raise two oral

objections. His first contention that on the date of the accident late Pirthi Ram Sewa was not in the employment of the Central Water Commission,

Bhopal had been raised before the learned Commissioner and determined in favour of the Petitioner. The Respondent has not appealed against the

learned Commissioner's order. The Respondent is therefore precluded from raising it in the present writ proceedings.

6. The second objection raised by Mr. Karma Thinlay was with regard to the Petitioner's submission before the learned District Judge as

reflected in the order dated 06.12.2017. A perusal of the said order and the records reflect that in spite of the learned Commissioner's direction to

pay the compensation to the Petitioner, the Respondent failed to do so. This compelled the Petitioner to seek execution of the Commissioner's

order dated 02.06.2016. The records reveal however, that even after assurance given to the learned District Judge the same was not respected and

payment was made only on 19.01.2018. Section 4A of the said Act clearly contemplates not only the manner but also the extent of interest as well as

penalty to be paid in the circumstances described. If the requirement of the provision were satisfied it was incumbent upon the learned Commissioner

to have directed payment of interest and penalty. This Court is of the view that the prayer for closure of the execution petition before the learned

District Judge due to the assurance given by the Petitioner, wife of a casual labourer, cannot be taken as a waiver as sought to be argued. The

Respondent's assurance was not fulfilled in the first place. The prayer for closure is reflective of the frustration due to the delay in receiving the

compensation. This should not deter this Court in passing appropriate directions upon the Respondent to pay the compensation interest and penalty

which is due and payable to the Petitioner if the circumstances demands and the law permits.

7. Section 4A of the Employee's Compensation Act, 1923 deals with compensation to be paid when due and penalty for default. The said section

reads as under:

4A. Compensation to be paid when due and penalty for default.-

(1) Compensation under Section 4 shall be paid as soon as it falls due.

(2) 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 [employee], as the case

may be, without prejudice to the right of the [employee] to make any further claim.

(3) 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

shall

(a) direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve per cent per annum or at

such higher rate not exceeding the maximum of the lending rates of any

scheduled bank as may be specified by the Central Government, by notification in the Official Gazette, on the amount due; and

(b) if, in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears and interest thereon,

pay a further sum not exceeding fifty per cent of such amount by way of penalty:

Provided that an order for the payment of penalty shall not be passed under clause (b) without giving a reasonable opportunity to the employer to show

cause why it should not be passed.

Explanation.â?"For the purposes of this sub-section, â??scheduled bankâ? means a bank for the time being included in the Second Schedule to the

Reserve Bank of India Act, 1934 (2 of 1934).

(3-A) The interest and the penalty payable under sub-section (3) shall be paid to the [employee] or his dependant, as the case may be.â??

8. Compensation under Section 4 of the said Act shall be paid as soon as it falls due. In re: Pratap Narain Singh Deo v. Srinivas Sabata & Anr. (1976)

1 SCC 289 the Supreme Court held that it was the duty of the Appellant/ proprietor under Section 4(a) (1) of the said Act, to pay the compensation at

the rate provided by Section 4 as soon as the personal injury was caused to the Respondent. This judgment by a four Judge Bench was once again

followed in re: Saberabibi Yakubbhai Shaikh v. National Insurance Company (2014) 2 SCC 298 in which it was observed that in various judgments

including Pratap Narain Singh Deo (supra) it was held that compensation has to be paid from the date of the accident.

9. In view of the aforesaid, it is evident that the Respondent was required to pay compensation to the Petitioner from the date of the accident i.e.

26.04.2013 as determined by the learned Commissioner and as reflected in the death certificate. The Respondent however, did not make payment of

compensation to the Petitioner when it fell due.

10. The Petitioner has also made a further claim of penalty of 50% of the principal amount of death compensation. This claim for penalty is as per

Rule 4A (3)(b) of the said Act. Under the said provision where an employer is in default in paying the compensation due under the said Act within one

month from the date it fell due the learned Commissioner shall if, in his opinion there is no justification for the delay, direct that the employer shall in

addition to the amount of the arrears and interest thereon, pay a further sum not exceeding 50% of such amount by way of penalty.

11. The scheme under Section 4A of the said Act is clear. Compensation under Section 4 has to be paid as soon as it falls due. It falls due on the date

of the accident. This was a case in which the employer did not grant compensation to the Petitioner. The Petitioner therefore, approached the learned Commissioner for appropriate orders. The Respondent chose to contest this application instead of paying compensation. The records reveal that

compensation amount as calculated by the learned Commissioner was paid only after the Petitioner had approached the learned District Judge for

executing the direction of the learned Commissioner. That too after the period the Respondent had assured payment. The undisputed facts as

reflected above makes it evident that the Respondent was in default in paying the compensation due under the Act within one month from the date it

fell due. The facts also revealed that there is no justification for the delay in payment.

12. In such circumstances, the learned Commissioner was required to direct the employer, to pay the interest as provided in Section 4A(3) (a) of the

said Act as well as pay the penalty as envisaged by Rule 4A(3) (b) of the said Act. This was the mandate of the law. The Petitioner has stated that

an appropriate application was filed before the learned Commissioner for seeking the relief as prayed for on affidavit. The said application was

returned instead of receiving it, considering it on merits and disposing it by passing appropriate directions. The determination under Section 4A of the

said Act is required to be done by the learned Commissioner. The learned Commissioner did not do so. Sending the case back to the learned

Commissioner would further delay the determination and grant of prayers for interest and penalty. The uncontroverted facts reveal that the Petitioner,

wife of a casual labourer, has been running from pillar to post from the year 2013 chasing the legitimate compensation due to her for the death of her

husband who had been gainfully employed by the Respondent. This Court is of the view that any further delay in determination would not serve the

purpose of the said Act. The Respondent was given an opportunity to contest the Writ Petition. Opportunity therefore, was granted to the Respondent

to show cause as to why the order for penalty should not be passed. The Writ Petition had sought a specific prayer for penalty. The Respondent

chose not to file a counter-affidavit.

13. The undisputed facts which have not been contested by the Respondent leads to the inevitable conclusion that the provision of Section 4A (3) (a)

and (b) are attracted in the present case. In the circumstances, the Writ Petition is allowed.

14. The Respondent is directed to make payment as per Rule 4A (3) (a) and (b) of the said Act of both the simple interest @ 12% per annum on the

amount due from the date of the accident i.e. 26.04.2013 till date of final payment as well as penalty of 50% of the amount of compensation payable

to the Petitioner within a period of three months from the date of this judgment.

15. No order as to costs.