
(1996) 08 MP CK 0053
In the Madhya Pradesh High Court
Case No : M.A. No. 443 of 1989

M.P. Electricity Board and Others

APPELLANT

Vs

Mohd. Hasan

RESPONDENT

Date of Decision : 20-08-1996

Acts Referred:

Workmens Compensation Act, 1923 — Section 19, 30, 4A, 4A(2)

Citation : (1998) 3 LLJ 1292

Hon'ble Judges : Usha Sharma, J;S.K. Dubey, J

Bench : Division Bench

Advocate : S.K. Mishra, for the Appellant; Arvind Shrivastava, for the Respondent

Final Decision : Dismissed

Judgement

1. This appeal u/s 30 of the Workmen's Compensation Act, 1923 (for short the "Act") against the order-dated September 13, 1989 passed in case No. 2/WC/N.F./1989 by the Commissioner for Workmen's Compensation at Ambikapur (for short "Commissioner").

2. C.P. Siddique since deceased a workman was in the employment of the appellant - M.P. Electricity Board (for short the "Board") as Testing Attendant at Patna Sub-Station Sarguja, who on May 30, 1985 at about 10 a.m. while attending the fuse received electric shock, as a result of which he fell down and received injuries i.e. fracture of ribs, spinal cord and vertebral column. He was taken to Primary Health Centre, from there to Ambikapur. His condition did not improve, hence, was shifted to Nagpur for expert treatment, but, his condition did not improve. He became totally disabled. After notice u/s 10 of the Act, he filed his claim before the Commissioner. The Commissioner after recording of evidence ordered the employer to pay compensation of Rs. 1,05,895 with 50% penalty, however, did not award interest, hence, this appeal. During the pendency of this appeal the workman died, his sole legal representative, the father was on record.

3. Shri S.K. Mishra counsel for the appellant contended that u/s 4A the penalty and interest can only be awarded if there is no justification for the delay in depositing the compensation as calculated u/s 4 of the Act. The workman did not submit any medical certificate in respect of percentage of disability suffered by him, therefore, the employer could not deposit the amount of compensation payable, within one month from the date it fell due. Before, the Commissioner, the Doctor examined by the workmen also could not state about the percentage of disability. There was no loss of earning capacity, therefore, for the non-scheduled injury, without furnishing the proof of disability suffered it was not possible to calculate the amount and deposit the same.

4. Shri Arvind Shrivastava counsel for the respondent submitted that the employer - Board came to know of the personal injury caused arising out of and in the course of employment on the date of accident itself, but, no help was rendered to him nor any amount of compensation was paid. The workman became crippled. A notice was served of which no reply was sent. Before the Commissioner also the stand of the appellants was of complete denial, no justifiable cause was pleaded in the written statement for not depositing the compensation before the Commissioner in accordance with Section 4, within one month from the date it fell due. The injury resulted in 100% disablement, therefore, even if there was no amputation or the injury was non-scheduled, the employer was bound to deposit the amount of compensation payable to the workman in accordance with Section 4A(2) of the Act.

5. After hearing counsel we are of the opinion that this appeal has no merit. When a workman suffers an injury arising out of and during the course of employment and employer becomes liable to pay compensation in accordance with the provisions contained in Chapter II of the Act, and has to deposit the same after calculating the same in accordance with Section 4 as soon as it falls due u/s 4A. Sub-section (2) of Section 4A lays down that in case 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 event 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. Sub-section (3) of Section 4 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 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.

6. True, discretion to penalty must be exercised judicially and after due consideration of relevant circumstances which are to be explained and established by the employer in not depositing the amount of compensation when

it fell due. From a bare reading of Section 4A it is evident that the compensation becomes payable on the date of accident and not of the date of determination of the amount. The Supreme Court in case of Pratap Narain Singh Deo Vs. Srinivas Sabata and Another, while considering the case of a workman to whom the personal injury was caused in an accident arising out of and in the course of employment, has observed that unless the right to compensation is taken away under Sub-section (5) of Section 3, the employer becomes liable to pay the compensation as soon as the aforesaid personal injury is caused to the workman. Section 19 only provides for settlement by the Commissioner of any question regarding liability of any person to pay compensation or the amount or duration of compensation, in default of any agreement, if such question arises in any proceeding under the Act. The Section does not have the effect of suspending the liability of an employer to pay compensation u/s 3 till after the settlement contemplated u/s 19. It is the duty of the employer to pay compensation u/s 4A(1) at the rate provided by Section 4 as soon as the personal injury is caused to the workman. Where the employer fails to do so and also makes no provisional payment u/s 4(2) but challenges the jurisdiction of the Commissioner, the employer is liable to pay interest and penalty.

7. A Division Bench of this Court to which one of us (S.K. Dubey, J.) was member, in case of Divisional Forest Officer, Gwalior and Anr. v. Baijnathibai, Wife of Late Shri Veer sen and Ors. (1995-I-LLJ-837) has observed that Subsection (3) of Section 4A of the Act is a beneficial provision made for the benefit of the employee, having regard to the scheme of the Act, the provisions for payment of interest and of penalty have been enacted with a view to deter the employer from taking false pleas and avoiding payment of the compensation which becomes payable. On a plain reading of the language of Subsection (3) of Section 4A, it is clear that Sub-section (3) empowers the Commissioner in case of any employer being in default in paying the compensation within one month from the date it fell due, to award in addition to the amount of the arrears, simple interest at the rate of 6% per annum. It further empowers him to impose penalty not exceeding 50% of the said amount if the Commissioner is satisfied that there is no justification for the delay where neither the deposit was made nor any justification for not depositing the compensation was pleaded and proved, accordingly the penalty of 50% of the amount of compensation could not be challenged on the ground that the Commissioner had not given any opportunity to satisfy him that there was justification for not depositing the amount of compensation when it fell due.

8. In the case in hand, the appellant not only committed default in not depositing the compensation when it fell due, but also defaulted in making the provisional payment based on the event of liability which he accepts as required by Section 4A(2) of the Act. The stand that no medical certificate was sent to the employer about the disability and loss of earning capacity and the fact that there was non-schedule injury, hence, amount of compensation could not be calculated is merely, an after thought, It is not in dispute that the appellant received injuries

arising out of and in the course of employment, the personal injury received made him completely crippled because of fracture of vertebral column and spinal cord and of ribs, therefore, he was totally unfit to do his job which he was performing prior to his accident. Therefore, in view of the law laid down by Supreme Court in Pratap Narain Singh's case (supra) and a recent decision of this Court in United India Insurance Company Ltd v. Bulmat Singh and Anr. (), the appellants were bound to deposit the compensation even if they are of the view that the loss of earning capacity was not 100%. In any case the appellants ought to have made the provisional payment in accor United India Insurance Co. Ltd. Vs. Balmat Singh and Another, dance with Sub-section (2) of, Section 4A, but, instead of making any deposit in accordance with Section 4A, the appellants contested the claim on false pleas, therefore, there was no justifiable cause for the appellants in not depositing the amount of compensation within one month from the date it fell due, hence, in our opinion, the Commissioner was right in imposing the 50% penalty.

9. The Commissioner has not awarded interest at the rate of 6% per annum on deposit of penalty, which he ought to have awarded under Sub-section (3) of Section 4A, but, as the respondent has not filed any appeal or cross-objection, we are not inclined to award interest to workman who is no more in this world.

10. In the result, the appeal has no merit and is dismissed with costs. Counsel's fee Rs. 500, if pre-certified.