
(2013) 08 MP CK 0368

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 457 of 2007

M.P. Madhya Kshetra Vidyut Vitran Co. Ltd.

APPELLANT

Vs

Hukum Singh (deceased) though his L.R Smt. Shanti Devi

RESPONDENT

Date of Decision : 26-08-2013

Acts Referred:

Workmens Compensation Act, 1923 — Section 3, 30(1)(aa), 4A

Citation : (2013) 08 MP CK 0368

Hon'ble Judges : M.K. Mudgal, J

Bench : Single Bench

Advocate : Vivek Jain, for the Appellant; Sanjay Kumar Mishra, for the Respondent

Final Decision : Partly Allowed

Judgement

M.K. Mudgal, J.—The appellant has filed this Misc. Appeal u/s 30(1)(aa) of the Workmen's Compensation Act, 1923 (hereinafter referred to as "the Act") being aggrieved by the award dated 5.2.2007 passed by learned Commissioner for Workmen's Compensation (Labour Court No. 1 Gwalior) in Case No. 184/BWCA/05 (Fatal), whereby, 50% penalty has been imposed to be paid as compensation u/s 4A Sub Clause (3) (b) of the Act. The admitted facts are that the deceased Hukum Singh was in the employment of the appellant company which is successor of the M.P. Electricity Board and was working on the post of line helper. On 21.4.2005, the deceased Hukum Singh met with an electric accident while working on the line, resulting in his death. After the death of deceased Hukum Singh, the proceedings were initiated to make payment of compensation to the L.Rs. of the deceased by the appellant company. The compensation amounting to Rs. 2,99,340/- was actually deposited with the Commissioner for Workmen's Compensation on 7.12.2005 as per the provisions of Section 3 of the Act. The payment was made by the appellant on it's own accord, before the successor of the deceased employee could file any application or petition for claiming compensation before the Commissioner.

2. After depositing the said amount before the Commissioner, a show cause notice was issued by the Commissioner on 6.11.2006 calling upon the appellant to show cause as to why, the penalty to the tune 50% of the compensation payable to the legal heirs of the deceased and interest @ 12% thereon should not be imposed on the appellant on account of delayed payment of compensation from the date of death of the employee. The show cause notice was replied by the appellant stating that immediately after the death of deceased employee, action was initiated for settlement of the dues of the employee including compensation under the Act. It was further submitted that the time was spent in the departmental procedure as cases of all the dues were forwarded to the supervisory offices. Thereafter, the impugned order was passed by Commissioner for Workmen's Compensation as stated earlier.

3. The appellant's counsel submits that the compensation amounting to Rs. 2,99,340/- was deposited without any inordinate delay. The time was spent in getting the sanction from the competent authority owing to which, the delay was caused only for about six and half months. There was no malafides on the part of the appellant. Learned counsel further submits that in the instant case, the amount of compensation was deposited by the appellant company without the legal heirs of the deceased having claimed compensation. Learned Commissioner has not properly considered the explanation in response to the show cause notice. Learned counsel further submits that though there is a provision u/s 4A Sub Clause (3) (b) of the Act for imposing 50% penalty, yet, it would be appropriate to make it applicable in those cases where, the liability to pay compensation is disputed by the employer and amount of compensation is also disputed, whereas, in this case, no such dispute was raised on behalf of the appellant and so, there was no reason to impose 50% penalty to be paid as compensation by the impugned award. Learned counsel placed reliance on the judgment in Executive Engineer and Another Vs. Smt. Kalawati and Others,

4. Controverting the submissions made on behalf of the appellant, learned counsel for the respondent submits that the amount of compensation was not paid within a month as per statutory provisions envisaged u/s 3 of the Act. The payment was delayed by seven and half months. No sufficient cause was shown on behalf of the appellant. Therefore, the impugned order passed by the Commissioner is totally justified, hence, no interference is required in the impugned order.

5. Heard the arguments and perused the record.

On perusal of the record, it becomes clear that after the death of Hukum Singh, amount of ex-gratia, funeral expenses and settlement allowance were paid on 23.4.2005 within two days from the date of death of Hukum Singh. Besides, leave encasement was paid on 28.5.2005 and other amounts were also paid without any delay which shows that the appellant company made efforts for the payment of most of the dues payable to the legal heirs of the deceased Hukum Singh.

6. The compensation amount of Rs. 2,99,340/- was deposited on behalf of the appellant on 7.12.2005 with the Commissioner under the Act, thereafter, the Commissioner issued notice dated 6.11.2006 which was replied by the company on 2.1.2007. As per the provisions of the Act, one month's period is prescribed for payment of the amount of compensation from the death of deceased. In this manner, if period of the delay is calculated, the period works out to be six and half months only. The explanation of delayed payment was given by the company stating therein that the time was spent in getting the amount sanctioned from the competent authority at Jabalpur and there was no malafides on the part of the appellant company. Besides, there was no inordinate delay in making payment on behalf of the appellant. In the impugned order, the explanation and reasons assigned on behalf of the appellant were not considered properly. Though u/s 4A Sub Clause (3) (b) of the Act, 50% penalty may be imposed by the authority but it should be done only in those cases where the liability of payment was disputed by the employer or the payment was made with inordinate delay. However, in the instant case, nothing of this sort has been found in making the payment. Hence, it is concluded that the 50% penalty imposed by the Commissioner in this case cannot be deemed to be justified as only six and half months delay was caused in making payment on behalf of the appellant/company. In view of the facts and circumstances of the case, it would be better to impose only 15% penalty in this case. Hence, by partly allowing the appeal, the order impugned passed by learned Commissioner for Workmen's Compensation is modified to the extent as indicated herein above.

The appeal stands partly allowed and disposed of.