
(2011) 11 P&H CK 0156
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. No. 4554 of 2005

M/s. National Insurance Co. Ltd.

APPELLANT

Vs

Smt. Sheela Rani and Another

RESPONDENT

Date of Decision : 02-11-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 174

Penal Code, 1860 (IPC) — Section 302

Workmens Compensation Act, 1923 — Section 4, 4A, 4A(1), 4A(2), 4A(3)

Citation : (2013) 1 ACC 734 : (2013) ACJ 228 : (2012) 132 FLR 686 : (2012) 3 LLJ 352 : (2012) LLR 381

Hon'ble Judges : Mohinder Pal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mohinder Pal, J.—The National Insurance Company Limited (hereinafter referred to as "the Insurance Company") has preferred this appeal against the order/award dated 20.6.2005 passed by the Commissioner under the Workmen's Compensation Act, 1923, Jind (hereinafter referred to as "the Commissioner"). Laxman Dass (workman-deceased), aged about 65 years, who was working as a Driver on Truck bearing registration No. HR-38J-3585 belonging to respondent No. 2, while on duty on 23.1.2003 was found murdered in the truck. The Commissioner by taking the salary of the deceased as Rs. 4,000 awarded compensation to his dependents to the extent of Rs. 2,20,280 with interest at the rate of 12 per cent per annum from 23.2.2003 to 20.6.2005 and expenses at the rate of Rs. 2,000 total amounting to Rs. 2,83,740. It was further ordered by the Commissioner that in case the amount of compensation along with interest is not deposited within a month from the date of communication of the order, the amount of compensation would be recoverable with interest at the rate of 12 per cent per annum from respondent No. 2 (appellant herein).

2. The case of the claimant is that the workman-Laxman Dass on the direction of his employer was working on Truck No. HR-38-J-3885. On 18.1.2003 to

23.1.2003, the workman-Laxman Dass was driving the said truck and was coming from Calcutta to Delhi along with cleaner. He was found murdered on 23.1.2003. So he has died while in the course of employment. On the other hand, the employer's case is that there is no certainty as to how workman has died. It is not certain whether he has died while in discharge of the duties assigned to him. In absence of any concrete evidence regarding death in the manner alleged, the employer as well as the Insurance Company was not at all liable to pay the compensation.

3. I have heard learned counsel for the parties and have perused the record.

4. Learned counsel for the appellant has submitted that the workman Laxman Dass was not under the employment of respondent No. 2 at the time of accident. There was no evidence to prove the fact that the workman has died while discharging his duties and as such the appellant was not liable to pay the compensation. It is also argued that in view of the earlier judgment passed by this Court in M/s N.S. & Company through its proprietor M/s N.S. and Company Vs. Rajwant Kaur and others, , decided on 7.9.2011), the interest on the compensation amount should be reduced from 12 per cent to 9 per cent per annum. He further submitted that the Commissioner has awarded interest on higher rates and, in any case, at the most the interest could be awarded from one month after the date of adjudication i.e. the date of award and no interest is payable before that date as has been held by the Hon"ble Supreme Court in Kamla Chaturvedi Vs. National Insurance Co. and Others,).

5. The arguments regarding employment or death during the course of employment cannot be stretched any further in view of the statement made by the wife of the deceased. It is not disputed that on the relevant date the workman was working on truck No. HR-38J-3885 and the truck was on its way from Calcutta to Delhi. It is also not disputed that the dead body of the workman was found from the truck itself and he has received number of injuries on his person. Before the Commissioner, Smt. Sheela Rani wife of the deceased appeared as AW/1 and had stated that her husband was working as a driver under the employment of respondent No. 2 and has been murdered while coming back from Calcutta to Delhi on the truck. The evidence of the widow is further corroborated from the Panchnama report u/s 174 Cr.P.C. (Ex.A/2) and certified copy of post-mortem report (Ex.A/3) which shows that Laxman Dass had received five injuries on his forehead and he succumbed to his injuries and further as per document as Ex.A/2 he was found dead in the cabin of the truck, according to which Laxman Dass has been brutally murdered on the relevant date. In absence of any evidence in contrary, I have no second opinion but to hold that Laxman Dass has died while in the course of employment as he is alleged to have been murdered by Saravjeet Singh alias Shabba, who was facing trial u/s 302 IPC in the Court at Fatehpur.

6. As far as interest on payment of compensation amount is concerned, it is to be mentioned that earlier this Court is awarding interest at the rate of 9 per cent

per annum instead of 12 per cent per annum in some of the cases keeping in view the facts and circumstances of those cases but the position now becomes clear in view of the judgment of Kamla Chaturvedi v. National Insurance Company Limited and others (supra) and in this judgment reliance was also placed to the decision rendered in National Insurance Co. Ltd. Vs. Mubasir Ahmed and Another, para 8 of the said judgment reads as under:--

8. Interest is payable u/s 4A(3) if there is default in paying the compensation due under this Act within one month from the date it fell due. The question of liability u/s 4A was dealt with by this Court in Maghar Singh v. Jaswant Singh, By Amending Act 14 of 1995, Section 4A of the Act was amended, inter alia, fixing the minimum rate of interest to be simple interest @ 12%. In the instant case, the accident took place after the amendment and, therefore, the rate of 12% as fixed by the High Court cannot be faulted. But the period as fixed by it is wrong. The starting point is on completion of one month from the date on which it fell due. Obviously, it cannot be the date of accident. Since no indication is there as when it becomes due, it has to be taken to be the date of adjudication of the claim. This appears to be so because Section 4A(1) prescribes that compensation u/s 4 shall be paid as soon as it falls due. The compensation becomes due on the basis of adjudication of the claim made. The adjudication u/s 4 in some cases involves the assessment of loss of earning capacity by a qualified medical practitioner. Unless adjudication is done, question of compensation becoming due does not arise. The position becomes clearer on a reading of sub-section (2) of Section 4A. It provides that provisional payment to the extent of admitted liability has to be made when employer does not accept the liability for compensation to the extent claimed. The crucial expression is "falls due".

Significantly, legislature has not used the expression "from the date of accident". Unless there is an adjudication, the question of an amount falling due does not arise.

7. In the light of aforesaid position and relying upon the decision of Hon'ble Supreme Court in Kamla Chaturvedi's case (supra), it is held that interest awarded by the Commissioner would be payable at the rate of 12 per cent per annum on the compensation amount and that too after one month from the date of adjudication i.e. date of award and not from the date of accident. The impugned award is modified to the extent indicated above. With the above modification in the impugned award, this appeal is hereby dismissed.