
(2013) 08 AP CK 0022

In the Andhra Pradesh High Court

Case No : C.M.A.M.P. No. 990 of 2013 in C.M.A. No. 652 of 2013

M/s. Shriram General Insurance Co. Ltd.

APPELLANT

Vs

C. Chandra Shekar Goud and Another

RESPONDENT

Date of Decision : 28-08-2013

Acts Referred:

Citation : (2014) 3 ACC 103 : (2014) 1 ALD 272

Hon'ble Judges : M.S. Ramachandra Rao, J

Bench : Single Bench

Advocate : K. Maheswara Rao, for the Appellant; K. Hari Mohan Reddy, for the Respondent

Final Decision : Dismissed

Judgement

M.S. Ramachandra Rao, J.—This application is filed to vacate the interim order dt. 25-04-2013 in C.M.A.M.P. No. 857 of 2013 in C.M.A.(SR) No. 4587 of 2013. The learned counsel for the petitioner submits that the petitioner suffered injuries during the course of employment under 2nd respondent; that he filed W.C. No. 1 of 2012 before the Commissioner for Employees Compensation and Deputy Commissioner of Labour-II, Hyderabad seeking compensation; that the same was allowed by order dt. 05-12-2012; that even though the Commissioner directed the appellant to pay compensation along with interest @ 12% per annum, the appellant has filed the appeal u/s 30 of the Employees' Compensation Act, 1923 (for short, "the Act") in this Court without complying the third proviso to Section 30 of the Act i.e., without depositing the entire amount awarded by the Commissioner before him; that if the memorandum of appeal is not accompanied by a certificate by the Commissioner to the effect that the appellant has deposited with him the entire amount payable under order in appeal, the appeal itself is not maintainable, and therefore, the interim order dt. 25-04-2013 referred to above, be vacated.

2. The learned counsel for 1st respondent/appellant, however, submits that there is an ambiguity in the impugned order passed by the Commissioner; that in the

last paragraph of the award passed by the Commissioner, in the first sentence the Commissioner directed to deposit only Rs. 5,98,301/-, but in the next sentence he also directed for payment of interest @ 12% per annum; that in view of this ambiguity, the 1st respondent has deposited only Rs. 5,98,301/- and not the interest component of the award; that this was a bonafide mistake; therefore time may be granted to 1st respondent to deposit the interest component also as dismissal of the appeal on the ground of non-compliance with the third proviso to Section 30 of the Act would result in irreparable injury to the appellant. He also relied on the judgment in New India Assurance Company Limited Vs. A. Senapathi Reddy and Another, in this regard.

3. I have noted the submissions of both sides.

4. The issues for consideration are:

(i) What is the relevant date for determination of the rate of compensation?

(ii) What is the point in time from which interest would be payable on the amount of compensation as provided u/s 4-A(3) of the Act?

(iii) Whether interest payable by the insurer or employer on the compensation awarded by the Commissioner is part of "compensation" and whether the appellant is bound to deposit the interest component of the award also?

(iv) If the interest component is not deposited along with the principal amount of compensation while filing the appeal by the employer/insurance company, what is the consequence? Is it a curable defect ?

5. Before we deal with these issues, let us note the relevant provisions of the Act:

Section 4-A of the Act states:

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

(1) Compensation u/s 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 workman, as the case may be, without prejudice to the right of the workman 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.

6. Section 30 of the Act states:

30. Appeals.--(1) An appeal shall lie to the High Court from the following orders of a Commissioner, namely:-

(a) an order as awarding as compensation a lump sum whether by way of redemption of a half-monthly payment or otherwise or of disallowing a claim in full or in part for a lump sum; [(aa) an order awarding interest or penalty u/s 4A;]

(b) an order refusing to allow redemption of a half-monthly payment;

(c) an order providing for the distribution of compensation among the dependents of a deceased workman, or disallowing any claim of a person alleging himself to be such dependant;

(d) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of sub-section (2) of Section 12; or

(e) an order refusing to register a memorandum of agreement or registering the same or providing for the registration of the same subject to conditions:

...

Provided further that no appeal by an employer under clause (a) shall lie unless the memorandum of appeal is accompanied by a certificate by the Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against.

Issue (i):

7. In *The Oriental Insurance Company Ltd. Vs. Siby George and Others*, the apex Court held that an employer becomes liable to pay compensation as soon as the personal injury is caused to the workman by the accident which arose out of and in the course of employment. Thus, the relevant date for determination of the rate of compensation is the date of the accident and not the date of adjudication of the claim by the Commissioner or the date when the claim application was made. It followed its earlier decision in *Pratap Narain Singh Deo Vs. Srinivas Sabata and Another*,

Issue (ii):

8. The next question is what is the point in time from which interest would be

payable on the amount of compensation as provided u/s 4-A(3) of the Act. u/s 4-A (3)(a), liability to pay interest on compensation arises where an employer is in default in paying the compensation due under the Act within one month from the date it fell due i.e., within one month from the date of accident. In case of default in payment within this period, the liability to pay interest is automatic and it is not necessary to go into the question regarding the reasons for the default. Clause-(b) of sub-Section (3) of Section 4-A provides for imposition of penalty, in addition to interest, in case, in the opinion of the Commissioner, there was no justification for the delay after giving him an opportunity to show-cause. Thus only in case where the delay is without justification, the employer might also be held liable to penalty after giving him a show cause. This is also decided by Siby George (2 supra). In that case the Apex Court approved the view expressed in Pratap Narain Singh Deo (3 supra) to the following effect:

8. It was the duty of the appellant, u/s 4-A(1) of the Act, to pay the compensation at the rate provided by Section 4 as soon as the personal injury was caused to the respondent. He failed to do so. What is worse, he did not even make a provisional payment under sub-section (2) of Section 4 for, as has been stated, he went to the extent of taking the false pleas that the respondent was a casual contractor and that the accident occurred solely because of his negligence. Then there is the further fact that he paid no heed to the respondent's personal approach for obtaining the compensation. It will be recalled that the respondent was driven to the necessity of making an application to the Commissioner for settling the claim, and even there the appellant raised a frivolous objection as to the jurisdiction of the Commissioner and prevailed on the respondent to file a memorandum of agreement settling the claim for a sum which was so grossly inadequate that it was rejected by the Commissioner. In these facts and circumstances, we have no doubt that the Commissioner was fully justified in making an order for the payment of interest and the penalty."

Issue (iii):

9. Next I will deal with the question whether interest payable by the insurer or employer on the compensation awarded by the Commissioner is part of "compensation" and whether the appellant is bound to deposit the interest component of the award also.

10. In Ved Prakash Garg Vs. Premi Devi and others, the Supreme Court observed:

14... It is a statutory elongation of the liability of the employer to make good the principal amount of compensation within permissible time-limit during which interest may not run but otherwise liability of paying interest on delayed compensation will ipso facto follow. Even though the Commissioner under these circumstances can impose a further liability on the employer under circumstances and within limits contemplated by Section 4-A(3)(a) still the liability to pay interest on the principal amount under the said provision remains a part and parcel of the statutory liability which is legally liable to be discharged by the

insured employer. Consequently such imposition of interest on the principal amount would certainly partake the character of the legal liability of the insured employer to pay the compensation amount with due interest as imposed upon him under the Compensation Act. Thus the principal amount as well as the interest made payable thereon would remain part and parcel of the legal liability of the insured to be discharged under the Compensation Act and not de hors it. It, therefore, cannot be said by the insurance company that when it is statutorily and even contractually liable to reimburse the employer qua his statutory liability to pay compensation to the claimants in case of such motor accidents to his workmen, the interest on the principal amount which almost automatically gets foisted upon him once the compensation amount is not paid within one month from the date it fell due, would not be a part of the insured liability of the employer. No question of justification by the insured employer for the delay in such circumstances would arise for consideration. It is of course true that one month's period as contemplated u/s 4-A(3) may start running for the purpose of attracting interest under sub-clause (a) thereof in case where provisional payment has to be made by the insured employer as per Section 4-A(2) of the Compensation Act from the date such provisional payment becomes due. But when the employer does not accept his liability as a whole under circumstances enumerated by us earlier then Section 4-A(2) would not get attracted and one month's period would start running from the date on which due compensation payable by the employer is adjudicated upon by the Commissioner and in either case the Commissioner would be justified in directing payment of interest in such contingencies not only from the date of the award but also from the date of the accident concerned. Such an order passed by the Commissioner would remain perfectly justified on the scheme of Section 4-A(3)(a) of the Compensation Act. But similar consequence will not follow in case where additional amount is added to the principal amount of compensation by way of penalty to be levied on the employer under circumstances contemplated by Section 4-A(3)(b) of the Compensation Act after issuing show-cause notice to the employer concerned who will have reasonable opportunity to show cause why on account of some justification on his part for the delay in payment of the compensation amount he is not liable for this penalty. However, if ultimately, the Commissioner after giving reasonable opportunity to the employer to show cause takes the view that there is no justification for such delay on the part of the insured employer and because of his unjustified delay and due to his own personal fault he is held responsible for the delay, then the penalty would get imposed on him. That would add a further sum up to 50% on the principal amount by way of penalty to be made good by the defaulting employer. So far as this penalty amount is concerned it cannot be said that it automatically flows from the main liability incurred by the insured employer under the Workmen's Compensation Act. To that extent such penalty amount as imposed upon the insured employer would get out of the sweep of the term "liability incurred" by the insured employer as contemplated by the proviso to Section 147(1)(b) of the Motor Vehicles Act as well as by the terms of the insurance policy found in provisos (b) and (c) to sub-section (1) of

Section II thereof. On the aforesaid interpretation of these two statutory schemes, therefore, the conclusion becomes inevitable that when an employee suffers from a motor accident injury while on duty on the motor vehicle belonging to the insured employer, the claim for compensation payable under the Compensation Act along with interest thereon, if any, as imposed by the Commissioner, Sections 3 and 4-A(3)(a) of the Compensation Act will have to be made good by the insurance company jointly with the insured employer. But so far as the amount of penalty imposed on the insured employer under contingencies contemplated by Section 4-A(3)(b) is concerned as that is on account of personal fault of the insured not backed up by any justifiable cause, the insurance company cannot be made liable to reimburse that part of the penalty amount imposed on the employer. The latter because of his own fault and negligence will have to bear the entire burden of the said penalty amount with proportionate interest thereon if imposed by the Workmen's Commissioner.

(emphasis supplied)

11. The principle that interest is also part of the statutory liability to be discharged by the employer and insurer in addition to principal amount of compensation was reiterated in *L.R. Ferro Alloys Ltd. Vs. Mahavir Mahto and Another*, . In that case the Supreme Court held:

5. The only contention put forth before us is that the entire liability including penalty and interest will have to be reimbursed by the insurance company and this aspect has not been examined by the learned Single Judge in the High Court and needs examination at our hands. In *Ved Prakash Garg Vs. Premi Devi and others*, this Court after examining the entire scheme of the Act held that payment of interest and penalty are two distinct liabilities arising under the Act, while liability to pay interest is part and parcel of legal liability to pay compensation upon default of payment of that amount within one month. Therefore, claim for compensation along with interest will have to be made good jointly by the insurance company with the insured employer. But, so far as the penalty imposed on the insured employer is on account of his personal fault the insurance company cannot be made liable to reimburse penalty imposed on the employer. Hence the compensation with interest is payable by the insurance company but not penalty. Following the said decision and for the reasons stated therein, we modify the order made by the High Court to that extent. The appeal is allowed in part accordingly.

12. In view of these authoritative pronouncements of the Supreme Court, I have no hesitation to hold that the liability to pay interest is part and parcel of legal liability of the employer (upon default of payment of compensation due within one month from the date of accident). Since an insurance company is statutorily and contractually liable to reimburse the employer qua his statutory liability to pay compensation in case of accidents to his workmen, it is not open to an insurance company to contend that that the interest on the principal amount which almost automatically gets foisted upon him once the compensation amount

is not paid within one month from the date it fell due, would not be a part of the insured liability of the employer. In this view of the matter I hold that interest payable by the insured employer/the insurance company on his behalf has to be treated as part of compensation payable by them. Consequently, it forms part of "the amount payable under the order appealed against" and is required to be deposited under the 3rd proviso to S. 30 of the Act as a precondition to filing of the appeal.

13. There is one other way of looking at this issue. Clause (a) of sub-Section (1) of Section 30 deals with appeals against orders awarding compensation and Clause (aa) of sub-Section (1) of Section 30 deals with appeals against orders awarding interest or penalty only u/s 4-A of the Act. Thus, the Legislature has treated the appeals under Clause (aa) of sub-Section (1) of Section 30 relating to interest and penalty u/s 4-A as a separate category. Section 30 did not provide for pre-deposit in the case of an appeal under Clause (aa). But in the case of an appeal under Clause (a), the statute provided that the appellant will have to deposit "the amount payable under the Order appealed against" as a condition precedent. Therefore, it follows from the statutory scheme of the Act also that "the amount payable under the order appealed against" would include interest also. The express language used in the third proviso in Section 30 leaves no room for any doubt that interest is an integral and inseparable part of compensation and "the amount payable under the order" will include interest also. The same view has been taken by the Kerala High court in *New India Assurance Co. Ltd. Vs. Biju*, Issue (iii) is answered accordingly.

Issue (iv):

14. In *A. Senapathi Reddy* (1 supra), a Division Bench of this Court held that the word "employer" used in the third proviso to Section 30 of the Act takes in Insurance Companies also as the insurer steps into the shoes of the employer when he prefers an appeal against the order of the Commissioner directing him to pay compensation. It followed the earlier Division Bench decision of this Court in *Gangireddy Venkateswara Rao Vs. Divisional Manager, New India Assurance Co., Guntur and Others*, . The Division Bench also opined that non-deposit, be it of Court Fees or amounts for availing appeal remedy like the instant one, are curable by later compliance of the provisions of the law and the cases cannot be dismissed on technical grounds for non-compliance at the threshold. The Court clarified that if any appeals filed by Insurance Companies u/s 30 of the Act were rejected on the ground that the compensation awarded was not deposited, such appeals would get restored automatically if within one month from the date of its judgment, the balance amounts were deposited with the Commissioner.

15. Similar view was expressed in *Excise Superintendent Vs. Kundena Bhagyamma, President, Tappers Co-op. Society and Commissioner for Workmen's Compensation*, by another Division Bench of this Court. After referring to the decisions in *A. Senapathy Reddy* (1 supra) and *Gangireddy Venkateswara Rao* (6 supra) the Bench observed:

5. In the decisions referred supra, the Division Bench has held that the amount has to be deposited at the time of filing of the appeal and insurance company stands in the shoes of the employer and therefore, the Insurance Company is also bound by the provisions of the Act when an appeal is preferred. In the first case, the Court has not considered as to whether such a failure disentitles completely the right of filing of an appeal and whether it is curable defect or incurable defect was not at all considered. In the later case, the earlier decision was also considered and the Court was of the opinion that though as per the provisions of the Act, the compensation has to be deposited before preferring the appeal, but still the failure to do so is a curable defect and it can be condoned. From the above provision it is quite clear that the provisions of the Limitation Act applies and therefore, the delays can be condoned in preferring the appeals. Accordingly, in the later case directions were also given if the amounts were deposited subsequently and if they are rejected earlier by virtue of the said judgment of the Court they shall be restored to file. In fact, the Court further gave a liberty to deposit the amounts in cases where the amounts have not been deposited or partly deposited as required under third proviso to Section 30(1) of the Act as in cases of filing of appeals without Court fee or with deficit Court fee. Accordingly, in the later case, in fact the power of the Court to condone the delay in filing of the appeal or to deposit the compensation is no longer a matter for dispute.

6. In this connection, it is useful to refer to a decision reported in Zila Sahakari Kendrya Bank Maryadit Vs. Shahjadi Begum and Others, . That was a case where the jeep belonging to the bank was given on requisition to the Government and the incident happened. The bank was also held liable by the Tribunal and the High Court did not entertain the appeal. The Hon"ble Supreme Court was of the view when the bank does not come within the meaning of the employer the very award passed by the Commissioner will be without jurisdiction and it will be a nullity. It was a coram non judice. In that case, when the matter has been taken to the High Court, the High Court has dismissed the appeal on the ground, apart from the other grounds, that the deposit has not made of the amount at the time of filing of the appeal u/s 30 of the Act. It has been only deposited subsequently and the Court felt that it was not satisfied that there is any sufficient cause for condoning the delay in that case. When the matter was carried in appeal to the Hon"ble Supreme Court in para No. 13 at page No. 696 the Court found that the High Court should have taken a liberal view in the matter and condoned the delay in filing the appeal as also depositing awarded amount in the Court. This clearly shows that the Court has got ample power to condone the delay in filing the appeal or in depositing the compensation amount. In that case also, the appeal was filed earlier and thereafter the deposit was made after some time.

7. Therefore, in view of the above circumstances, it cannot be doubted that the Court has got every power to condone the delay and it is a curable defect and when particularly the provisions under Limitation Act are made applicable to the appellants u/s 30 of the Act. Therefore, we do not find any conflict of judgments

and the failure to deposit the compensation amount along with the appeal is a curable defect and there is no need for any clarification on this difference and when more so the judgment of the Supreme Court is without any ambiguity and the second case supra is in conformity with the law laid down by the Supreme Court. Accordingly, the matter is directed to be posted before the learned single Judge for disposal according to law.

(emphasis supplied)

16. Therefore, even if the interest component of the compensation awarded is not deposited at the time of filing appeal u/s 30 by the appellant-insurance company, the same is a curable defect and this Court can direct the said component also to be deposited later. As the provisions of the Limitation Act, 1963 were held applicable in *Excise Superintendent* (7 supra), only where sufficient cause for non-deposit is pleaded and is made out by the appellant, the benefit of the above decisions can be granted and the deposit requirement may be allowed to be complied with after filing of the appeal also. Issue (iv) is answered accordingly.

17. In the present case, the order passed by the Commissioner appears to be ambiguous as in the first sentence in the last paragraph of the award, he directed to deposit only the sum of Rs. 5,98,301/-, but in the next sentence, he also awarded interest at the rate of 12% per annum on the amount of compensation from the date of accident till the date of payment of compensation. In view of this ambiguity in the order passed by the Commissioner, I am of the view that the appellant acted bonafide in depositing only the principal amount and not the interest part as awarded.

18. Therefore, one month time is granted from today to the appellant to deposit the interest component on the compensation awarded in W.C. No. 1 of 2012 before the Commissioner for Employees' Compensation and Deputy Commissioner for Labour-II, Hyderabad. In default of depositing the interest component as directed, the appeal shall stand dismissed.

19. This Court granted stay of disbursement of the amount deposited by the 1st respondent by way of an interim order dt. 25-04-2013. In the facts and circumstances of the case, petitioners are permitted to withdraw half of the said amount apart from 50% of the interest component thereon as and when it is deposited by the 1st respondent before the Commissioner along with costs, without furnishing any security. Subject to the above, the interim order dt. 25-04-2013 in M.A.C.M.A.M.P. No. 857 of 2013 in M.A.C.M.A. (SR) No. 4587 of 2013 is made absolute, and the petition to vacate the order is dismissed. No costs.