
(2011) 07 RAJ CK 0041

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 1308 of 2011

National Insurance Co. Ltd

APPELLANT

Vs

Smt. Udi Bai and Others

RESPONDENT

Date of Decision : 11-07-2011

Acts Referred:

Workmens Compensation Act, 1923 — Section 2, 3, 4(1), 4(A3), 4A

Citation : (2011) 4 RLW 2950 : (2012) 2 TAC 196

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Advocate : Jagdish Vyas, for the Appellant; Deelip Kawadia and Shri Anuj Sahlot, for the Respondent

Final Decision : Dismissed

Judgement

Vineet Kothari, J.—The present appeal has been filed by the appellant-Insurance Company being aggrieved by the judgment and award dated 26th May, 2006 rendered by learned Workmens' Compensation Commissioner, Udaipur in W.C. Case No. 17/2004. The deceased-driver, namely, late Mohan Lal Dangi S/o Chokha Dangi while working as driver of the insured vehicle number RJ-27-G-7198 met with an accident during the course of employment of respondent No. 5 Lal Singh S/o Bheru Singh Rajpat. The accident took place on 15th November, 2003 in which the deceased-driver Mohan Lal Dangi died. Since, the deceased-driver Mohan Lal Dangi died in accident during the course of employment of respondent No. 5, therefore, the claimants-respondent Nos. 1 to 4 herein, filed claim petition immediately thereafter and same was registered as W.C. Case No. 17/2004; and F.I.R. No. 173/2003 was registered with Police Station-Dungla, District Udaipur. While determining the income of the deceased-driver besides the monthly salary/wages of Rs. 3,000/- per month, the daily allowance of Rs. 50/- paid to the said driver, was also includes within the monthly wages of Rs. 4,500/- and thus same was reduced to Rs. 4,000/- per month as per Explanation II to Section 4 (1) (b) of the Workmen's Compensation Act, 1923 (for short,

hereinafter referred to as "Act of 1923"); and accordingly the compensation was determined at Rs. 4,15,960/-, which was directed to be paid with simple interest @ 12% per annum from 15th November, 2003, i.e. the date of accident. The determination order was passed by the learned Commissioner on 26th May, 2006 after about two and half years of the accident.

2. The two contentions raised by the learned Counsel for the appellant-Insurance Company, Mr. Jagdish Vyas are : (i) that the daily allowance of Rs. 50/- paid by the employer was in the nature of travelling allowance, which was paid to said driver do not fall within the ambit and scope of term "wages" as defined in Section 2 (m) of the Act of 1923; and (ii) that the interest on amount of compensation could not be directed to be paid from the date of accident itself but it was payable only after the date of adjudication order, namely, 26th May, 2006 and it is only the date of adjudication order that the amount of compensation can be said to be have fallen due in support of his contentions, he placed reliance on judgments delivered by 2 Judges Bench of Hon''ble Apex Court in the case of National Insurance Co. Ltd. v. Mubasir Ahmed & Anr., reported in M.A.C.D. 2007 (1) (S.C.) 402 : 2007 (2) T.A.C. 3 and in the case of Kamla Chaturvedi v. National Insurance Co. & Ors., reported in M.A.C.D. 2009 (S.C.) 4 : 2009 (1) T.A.C. 1 (S.C.).

3. On the other hand, learned Counsel appearing for the respondents-claimants vehemently opposed the said contentions and argued that (i) the daily allowance of Rs. 50/- paid to the deceased-driver (workman) was not in the nature of travelling allowance but was dearness allowance, also known as "Bhatta" and, therefore, same has been rightly held to be forming part of wages as same was not paid to meet incidental commuting charges or travelling charges and, therefore, same could not be described as travelling allowance; (ii) that the interest would be payable from the date of cause of action arising i.e. the accident only and, therefore, the Workmen's Compensation Commissioner has rightly directed it to be so paid from the date of accident. They further submitted that the aforesaid later decisions of the Hon''ble Supreme Court in the case of Mubasir Ahmed and Kamla Chaturvedi (supra) do not take into account the earlier judgment by the 5 Judges Constitution Bench of the Hon''ble Supreme Court of India in the case of Pratap Narain Singh Deo Vs. Srinivas Sabata and Another, and in the case of Padma Srinivasan Vs. Premier Insurance Company Limited, ; therefore, the 2 Judges later decisions relied by the Insurance Company are per-incurium and do not advance the arguments of the learned Counsel for the appellant-Insurance Company. They also relied upon Section 4 (A) of the Act of 1923 in support of their contentions that the word "fell due" in Section 4 (A) (3) of the Act refers to the date of accident when the cause for claiming such compensation for death or bodily injury arises and it is the date of accident itself and mere adjudicatory or litigatory process by which such compensation is determined by the Workmen Compensation Commissioner, does not shift or postpone the date when such compensation can be said to have fallen due, which Counsels argued, falls due on the date of accident itself, unless

otherwise specifically defined and so excluded.

4. I have heard learned Counsel for the parties at length and perused the judgments cited at bar and relevant provisions of law.

5. On a thoughtful consideration of the relevant case laws, this Court is of the opinion that there is no force in the present appeal of the appellant-Insurance Company and same deserves to be dismissed on both grounds. The reasons are as follows.

6. As far as the contention that the daily allowance of Rs. 60/- paid to the deceased-driver besides fixed monthly salary of Rs. 3,000/- which according to learned Counsel for the appellant was in the nature of travelling allowance is concerned, the same is not sustainable. The said allowance of Rs. 50/- paid to the driver on daily basis was neither described to be travelling allowance, nor established to have been paid as a travelling allowance. The definition of the wages as given in Section 2 (m) of the Act reads as under:

2 (m) "wages", includes any privilege or benefit which is capable of being estimated in money, other than a travelling allowance or the value of any travelling concession or a contribution paid by the employer of a workman towards any pension or provident fund or a sum paid to a workman to cover any special expenses entailed on him by the nature of his employment.

7. The wages, therefore, includes any privilege or benefit, which is capable of being estimated in terms of money, other than travelling allowance, or value of the travelling concession, or contribution towards pension, or provident fund, or any sum paid to cover and special expenses entailed by nature of his employment. The daily "Bhatta" or daily allowance of Rs. 50/- paid to the driver/s is usually paid to him to meet their food expenses. The travelling allowance could only be paid for meeting incidental commuting expenses, which was not even the case set-up by the employer in the present case therefore, the daily "Bhatta" or daily allowance is in nature of daily allowance paid otherwise than by way of travelling allowance, and has been rightly treated as part of "wages" by the learned Commissioner. This certainly was a privilege of benefit given to the deceased workman during the course of his employment, which is only capable of being quantified in terms of money but was so quantified at Rs. 50/- per day. The monthly wages thus arrived at Rs. 4,500/- has rightly been kept at Rs. 4,000/- per month in terms of explanation (II) to Section 4 (1) (b) of the Act of the said Act, which reads as under :

Explanation II. Where the monthly wages of a workman exceed [four thousand rupees], his monthly wages for the purposes of Clause (a) and Clause (b) shall be deemed to be [four thousand rupees] only.

Thus, there is no error found in the order of the learned Workmen Compensation Commissioner when he has included the daily allowance of Rs. 50/- while computing the monthly wages of the workman to determine the total

compensation amount.

8. As far as the question of interest is concerned, this Court finds that later two decisions relied upon by the learned Counsel for the appellant-Insurance Company did not refer to take into account the binding precedents in the form of Constitution Bench judgment in the case of Pratap Narain Singh Deo and later 3 Judges Bench judgment in the case of Padma Srinivasan (*supra*).

9. The basic premise taken by 2 Judges Bench in the aforesaid two later decisions in the cases of Mubasir Ahmed and Kamla Chaturvedi (*supra*) is, with great respect, ignored the statutory language and binding precedents as aforesaid. The relevant paras in the later decision, in the case of Kamla Chaturvedi is quoted below for ready reference :

8. In National Insurance Co. Ltd. Vs. Mubasir Ahmed and Another, . 3 it was, inter-alia, held as follows:

Interest is payable under Sec. 4-A (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 under Sec. 4-A was dealt with by this Court in Maghar Singh Vs. Jashwant Singh, . By amending Act 30 of 1995, Section 4-A 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 to when it becomes due, (Sic!) it has to be taken to be the date of adjudication of the claim. This appears to be so because Section 4-A (1) prescribed the 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 4-A. 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.

9. In view of what has been stated in Mubasir Ahmed's case (*supra*) the liability for interest would be in terms of what has been stated in paragraph 9 of the judgment."

10. On the other hand, the 5 Judges Bench of Hon"ble the Supreme Court in the case of Pratap Narain Singh Deo (*supra*) has held as under :

7. Section 3 of the Act deals with the employer's liability for compensation. Sub-

section (1) of that section provides that the employer shall be liable to pay compensation if personal injury is caused to a workman by accident arising out of and in the course of his employment". It was not the case of the employer that the right to compensation was taken away under sub-section (5) of Section 3 because of the institution of a suit in a Civil Court for damages, in respect of the injury against the employer or any other person. The employer, therefore, become liable to pay the compensation as soon as the aforesaid personal injury was caused to the workman by the accident which admittedly arose out of and in the course of employment. It is therefore futile to contend that the compensation did not fall due until after the Commissioner's order dated 5th May, 1969 u/s 19. What the section provides is that if any question arises in any proceeding under the Act as to the liability of any person to pay compensation or as to the amount or duration of the compensation it shall in default of agreement, be settled by the Commissioner. There is therefore nothing to justify the argument that the employer's liability to pay compensation u/s 3, in respect of the injury, was suspended until after the settlement contemplated by Section 19. The appellant was thus liable to pay compensation as soon as the aforesaid personal injury was caused to the appellant, and there is no justification for the argument to the contrary.

8. It was the duty of the appellant, u/s 4-A (i) 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 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 payment of interest and the penalty.

11. The another three Judges Bench of Apex Court in the case of Padma Srinivasan (supra) while dealing with the compensation case under Motor Vehicles Act, has held that the law which applies for determining the quantum of damages is the one which is in force on the date on which the breach of contract is committed, that being the date on which the cause of action arises, and not the law which was in force on the date on which the contract was made. Upholding the Full Bench view of Karnataka High Court in the case of S. Sanjiva Shetty Vs. Anantha and Others, , the Apex Court held that material date for ascertaining the accident of liability of insurer the date of accrual of cause of

action for a claim arising out of an accident, which in general would be the date of accident and, therefore, insurer's liability arising out of accident, which happens after 2nd March, 1979 has to be determined on the basis of amended provision of Section 95 (2) (a) of the Act even though the policy of insurance may have been issued prior to the date of amendment i.e. prior to 2nd March, 1979.

12. Thus obviously, it is the date of accident which is the relevant date giving rise to cause of action on which date the compensation falls due and date of adjudication is a fortuitous circumstance depending upon litigatory process and same cannot deprive the claim of the interest, which is the part of the compensation, which falls due on the date of accident itself. The later decision in the cases of Mubasir Ahmed and Kamla Chaturvedi (supra) rendered by the two Judges Bench of Apex Court obviously ignored the relevant part of statutory provision and the binding precedents including one by the Constitution Bench and therefore, have to be held per-incurium to that extent, and they cannot lend any assistance to the arguments of the learned Counsel for the appellant-Insurance Company. Learned Workmen's Compensation Commissioner was justified in directing the payment of compensation from the date of accident itself. There is no force in the present appeal of Insurance Company and same is accordingly dismissed. No costs.