

(2008) 11 SHI CK 0027
In the High Court Of Himachal Pradesh

National Insurance Company Limited	Vs	APPELLANT
Smt. Saroj Kumar and Others		RESPONDENT

Date of Decision : 11-11-2008

Acts Referred:

Workmens Compensation Act, 1923 — Section 22, 4, 4A

Citation : (2006) ACJ 2512 : (2009) 121 FLR 1034 : (2009) 1 ShimLC 253

Hon'ble Judges : Sanjay Karol, J

Bench : Single Bench

Judgement

Sanjay Karol, J.—The Insurer M/s. National Insurance Company Limited has filed the present appeal assailing the award dated 10th December, 2003 passed by the Workmen's Compensation Commissioner-cum-Sub-Divisional Magistrate, Kangra, in Case No. 5/2003, titled as Smt. Saroj Kumari and Ors. v. Smt. Swarna Devi and Anr.

2. The appeal was admitted on the following substantial questions of law:

1. Whether the compensation under the Workmen's Compensation Act has to be assessed by taking into consideration the provisions of the Act as they exist at the time of the accident/death of the workman?
2. Whether the Insurance Company can be fastened with the liability to pay interest and penalty?
3. The scope of the present appeal is narrow and thus relevant facts are stated as under:

Vehicle No. HP-39-3381 owned by Smt. Swarna Devi and driven by Shri Jindu Ram, predecessor-in-interest of the claimants, met with an accident on 10.10.1997. In the said accident Shri Jindu Ram died. An FIR was registered and the post-mortem conducted. The claimants as legal heirs filed a claim petition u/s 22 of the Workmen's Compensation Act, 1923 (hereinafter referred to as the Act) seeking compensation of Rs. 10 lacs for the reason that deceased was

drawing a salary of Rs. 5,000 per month and the claimants being dependants were entitled to the said compensation.

4. Based on the pleadings of the parties, following issues were framed:

1. Whether the petitioner is entitled to get the compensation as alleged and from whom? OPP.

2. Whether the vehicle was insured with the respondent No. 2? OPP.

3. Whether the deceased was holding a valid Driving License? OPP.

4. Whether the appeal is time barred? OPR.

5. Whether this Court has no jurisdiction in the present case? OPR.

6. Relief.

5. Appreciating the material on record (documentary and oral), the Commissioner held that the deceased had died in an accident and the claimants as dependants and legal heirs were entitled to compensation as under:

(a) Amount of Compensation: $2000 \times \text{Factor corresponding to age of} = 2000 \times 184.17$ i.e. 3,68,340 = Rs. 3,68,340 (b) Amount to be paid @ 12% simple = Rs. 2,72,573 interest from the date of accident 10.10.97 to 10.12.2003 (date announcement of orders) (c) Total amount of compensation to = a+b i.e. 3,68,340 + 2,72,573 be paid by the National Insurance = Rs. 6,40,913." Company 6. It was held that the deceased was having a valid and effective driving licence and vehicle being fully insured, the Insurer was liable to indemnify the insured and pay the compensation.

7. I have heard the learned Counsel for the parties and also perused the record.

The accident took place on 10.10.1997. The claim petition was filed on 29.5.2000. As on these dates, in accordance with the provisions of Section 4 of the Act the amount of compensation, in a case of injury resulting into death, statutorily was to be the amount equivalent to 50% of the monthly wages of the deceased workman to be multiplied by the relevant factor. Explanation II of the said Section stipulated that where the monthly wages of the workman exceeded "two thousand rupees", for the purpose of Clause (a) and Clause (b), the same is to be deemed to be Rs. 2,000 only. Subsequently the said Section was amended and in Explanation II, w.e.f. 8.12.2000 by virtue of Act No. 46 of 2000, the words "two thousand rupees" were substituted with the words "four thousand rupees".

8. This Court in H.P. State Forest Corporation Ltd. v. Ganu Devi and Ors. Latest HLJ 2004 (HP) 945, after referring to and relying upon the earlier decisions of this Court in United India Insurance Co. Ltd. Vs. Smt. Nako alias Naiku Devi and Others and Smt. Malti Devi and Others, and Executive Engineer B&R HPPWD Solan and Anr. v. Kewal Ram FAO No. 621 of 2003, decided on 16.7.2004, has already held that the compensation has to be awarded on the basis of law existing as on the date of the accident and not the date on which the award was

passed.

9. Therefore, in my view, the Commissioner has erred in calculating the compensation by taking into account the income of the claimant to be rupees two thousand, which actually should have been rupees one thousand. Consequently, the amount of compensation awarded has to be reduced and is done so as under:

$1000 \times \text{Factor corresponding to age of 40} = 1000 \times 184.17 = \text{Rs. } 1,84,170-00$

10. In the present case the employer has not disputed the fact that the deceased was his employee and had died in an accident. The employer was thus under liability, as mandated under Sections 4 and 4-A of the Act to pay the compensation to the extent the claimants were entitled to as it had fallen due on the date of the accident. In this view of the matter and more particularly keeping in view the decision of this Court in *Sita Ram v. Satvinder Singh and Anr.* Latest HLJ 2008 (HP) 1110, the claimants would be entitled to the interest on the aforesaid amount to be calculated one month after the date of the accident.

11. Since interest was calculated @ 12% per annum (simple) on the amount of compensation determined by taking the statutory limit to be Rs. 2,000, the same needs to be worked out afresh. The Commissioner has erred in calculating the interest from the date of the accident, which error also needs to be corrected. As such, the claimants would be entitled to interest @ 12% per annum on the awarded amount of compensation of Rs. 1,84,170-00 with effect from 9.11.1997 (one month after the date of the accident) upto the date of the award i.e. 10.12.2003.

12. The Commissioner has further directed that if the award amount was not paid within the stipulated period then penalty @ 18% per annum simple interest shall be paid by the National Insurance Company.

13. This Court in *Paras Ram Sharma v. Rajbansh Singh* FAO (WCA) No. 218 of 2004, decided on 23rd October, 2008, has held that the amount of penalty is payable by the employer and not by the Insurance Company. Consequently, if the awarded amount had not been paid/deposited by the owner/employer in terms of the impugned award the claimants shall be entitled to recover the amount of penalty as awarded by the Commissioner from the employer.

14. Substantial questions of law are answered accordingly.

15. The present appeal is partly allowed. The impugned award is modified to the aforesaid extent. The excess amount deposited by the Insurance Company be refunded to it.

16. At this stage, it has been pointed out by learned Counsel for the claimants-respondents that respondent No. 2 Ms. Rekha Devi, has died. At the oral request of learned Counsel for the respondents, her name is deleted from the array of respondents as her legal representative is already on record. The Registry is directed to amend the cause title accordingly.