(2015) 09 SHI CK 0128

In the High Court Of Himachal Pradesh

Case No : F.A.O. No. 563 of 2008 & First Appeal From Order No. 563 of 2008

National Insurance Company Ltd. APPELLANT

Vs

Yameen and Others RESPONDENT

Date of Decision : 16-09-2015

Acts Referred:
Workmens Compensation Act, 1923 — Section 4, 4-A, 4-A(3)(a)(i), 4-A(3)(b)

Citation : (2015) 147 FLR 1025

Hon'ble Judges : Sanjay Karol, J.

Bench : Single Bench

Advocate : Jagdish Thakur, for the Appellant; Karan Singh Kanwar, Rajnish K. Lall, Satyen Vaidya and Vivek Sharma, for the Respondent

Final Decision : Disposed Off

Judgement

Sanjay Karol, J.—Appeal stands admitted on the following substantial question of law:

Whether the learned Commissioner below has erred in interpreting section 4-A(3)(a)(i) of the Workmen''s Compensation Act?

In the present appeal, award dated 2.6.2008, passed by the Commissioner, Workmen''s Compensation Act, 1923 (hereinafter referred to as the Act), Sub Division Paonta Sahib, District Sirmaur, Himachal Pradesh, in Case No. 6/2006, titled as Yameen & another v. Dharmender Verma and others, stands assailed by the Insurer.

2. Section 4-A of the Act reads as under:

"4-A. Compensation to be paid when due and penalty for default.--(1) Compensation under section 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.

Explanation.--For the purposes of this sub-section, "scheduled bank" means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934).

[(3-A) The interest and the penalty payable under sub-section (3) shall be paid to the workman or his dependant, as the case may be.]]"

3. It stands established through the testimony of the claimants, which fact is also not disputed by the employer, that deceased Mohammed Sonu was employed as a skilled labourer with Shri Dharmender Verma (respondent No. 3 herein). On 19.1.2006, during the course of his employment, Mohammed Sonu died, on account of electrocution, he was doing work in connection with replacement of GI wires of Kafota feeder from Dugana to Jong, under HPSEB Sub Division, Shillai. Deceased was drawing a salary of Rs. 3,000/- per month, which stands determined for the purposes of computation of compensation.

4. That skilled and unskilled labourers of Shri Dharmender Verma stood insured with National Insurance Company Ltd. (appellant herein) is not in issue. Insurance Policy (Ex. PW-2/A) is on record to such effect. As per the policy, unless there is breach or exclusion, it is the insurer who is liable to pay compensation, in the event of any Godly Act. As per section 4-A(3)(b) of the Act, responsibility to pay the penalty, for delayed payment of compensation, has been fastened upon the employer, for which notice to show cause stands issued. However, insofar as the compensation is concerned, liability has to be that of the insurer, which stands computed to be Rs. 3,36,000/- plus interest of Rs. 95,994/-.

5. The Insurance Policy does not exclude payment of interest. The Hon''ble Supreme Court of India in P.J. Narayan Vs. Union of India (UOI) and Others, ,

has held that there is no statutory liability on the insurer to pay the interest. However, since Insurance is a matter of contract between the insurer and the insured, it is always open to the insurer to refuse to insure. Also, it is open for the insurer to exclude the liability clause of interest.

6. Thus, parties being governed by contractual obligations, in the given facts and circumstances, it does not lie in the mouth of the insurer to contend that liability of interest cannot be fastened upon them, for it is not the agreed term of the parties that insurer is not liable to pay interest. As such, it cannot be said that while passing the impugned award, Commissioner under the Act has erred in interpreting the statutory provisions. Substantial question of law is answered accordingly.

Appeal stands disposed of, so also the pending application(s), if any.