(2017) 05 DEL CK 0220

In the Delhi High Court

Case No : First Appeal from Order No. 385 Of 2013, Civli Miscellaneous Application No. 15735 Of 2013, 20942 Of 2016

New India Assurance Co. Ltd APPELLANT

Vs

Puran Lal & Ors RESPONDENT

Date of Decision : 24-05-2017

Acts Referred:
Employee's Compensation Act, 1923 — Section 4A, 4A(3), 4A(3)(b), 25A

Citation : (2017) 05 DEL CK 0220

Hon'ble Judges : J.R. Midha, J

Bench : Single Bench

Advocate : Shoumik Mazumdar, Ankur Chibber, Bhanu Gupta, Rajesh Mahajan, Lakshita Sethi, A.J. Bhambhani, Satyam Thareja

Judgement

1. Mr. Ankur Chhibber, learned counsel on behalf of Government of NCT of Delhi has handed over the minutes of the meeting dated 27th February, 2017 and 15th March, 2017 which are taken on record. It is further submitted that the next meeting of the Committee shall be held in the second week of July, 2017.

2. Mr. Ankur Chhibber, learned counsel on behalf of Government of NCT of Delhi submits that the Standing Counsel of ESI Corporation and representative of National Informatics Centre (NIC) be added as members of the Committee. The prayer is allowed and the Standing Counsel of ESI Corporation and a representative of National Informatics Centre are added as members of the Committee. Learned counsel for GNCTD shall communicate this order to the newly added members.

3. Section 4A(3) of the Employee's Compensation Act, 1923 empowers the Commissioner to impose penalty upto 50% of the compensation amount where the employer is in default of the compensation due under the Act within one month from the date it fell due, after affording the opportunity to show cause to the employer. Section 4A(3) is reproduced hereunder: -

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

(1) ....

(2) ....

(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).

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

4. In Rajan v. P.M. Subramonian, 1994 ACJ 25, the Division Bench of Kerala High Court examined the scope of proviso to Section 4A(3)(b) of Employee's Compensation Act. The relevant portion of the judgment is as under: -

"Since the question of imposition of penalty is thus a matter which will necessarily arise for consideration while passing an award, it will be prudent and advisable for the Commissioner to frame an issue as to whether penalty is imposable under Section 4-A(3) and, if so, the quantum thereof to enable the parties to address themselves on these aspects as well at the hearing.

16. In Mathura Prasad v. Saiyed Khursheed Ahmad, (1981) 59 FJR 168, the High Court of Allahabad held that the Commissioner should normally pass an order regarding penalty also while disposing of the case, a proposition with which we agree. In Vijay Ram v. Janak Raj (1981) ACJ 84, the High Court of Jammu and Kashmir took the view that an order imposing penalty may be passed by the Commissioner after he has awarded the compensation, depending on the facts of a given case. The learned Judge then proceeded to observe:

"But, in no case shall he impose a penalty under Section 4-A, unless he has given to the employer a prior reasonable notice of his intention to do so, and thereby provided him an opportunity of showing cause for delayed payment of the compensation. Obligation on the part of the Commissioner to hear the party to be adversely affected is implicit in Sub-section (3), for what was the reason for not making the payment without delay, can be known to that person alone who is required to make the payment, and to none else. Unless, therefore, he is called upon to show cause for the delayed payment, it is not reasonably possible for the Commissioner to come to a conclusion whether or not there was any justification for the delay. He cannot be allowed to reach his satisfaction at his whim and caprice simpliciter. In what form such a notice may be given will further depend upon the facts of each case. In one case an issue on the plea of penalty may constitute such a notice, whereas in another case such a notice may be reasonably inferred even from the pleadings of the parties coupled with their conduct during the trial,"

17. The Karnataka High Court dealt with the same question in their decision in Oriental Insurance Co. v. Jevaramma, (1988) ACT 671. The Division Bench followed an earlier decision of the same High Court in N.A.K. Pathan v. Julekabi Pathan, (1987) 70 FJR 40, in which it was held that what was necessary under Section 4-A(3) was that the employer should know the case he is required to meet and he was afforded a reasonable opportunity of meeting the case. The subsequent Bench observed that penalty cannot be imposed merely as a matter of course, and the discretion to levy penalty must be exercised judicially after due consideration of the relevant circumstances. This presupposes an opportunity to be given to explain the circumstances for the delay which entails material consequences.

18. Section 4-A(3) is a penal provision imposing a penalty on the employer. The satisfaction of the Commissioner contemplated therein should be based on materials. It has to be reached on a conspectus of all the facts and circumstances of the case. There may be umpteen reasons why the employer is not liable for the penalty. There can be various reasons for nonpayment of the amount of compensation on the due date, or for its delayed payment. The employer may be able to point out justifiable reasons for the delay or the non-payment. In any case, he may also be able to make out sufficient reasons why the penalty should either be waived, or be fixed at a low amount. In fact, the section vests a discretion in the Commissioner in the matter of penalty, the prescription being only of the maximum. The reasons made out by the employer may have an impact not only on the question of imposition of penalty, but also on its quantum. All this cannot be effectively decided unless the attention of the parties is focussed on the question of imposition of penalty and the exercise of the discretion, in which event the employer can place his materials in justification of the delay or at least plead in mitigation for a lesser amount of penalty. This he will not be able to do unless he is given an opportunity to be heard in the matter.

19. The hearing to be afforded need not necessarily have the trappings of a regular trial or hearing. The framing of an issue under Rule 28 will suffice, but that may not be obligatory, though desirable. The Commissioner may even in the

course of the hearing draw the attention of the parties to the question of penalty and hear them. If such an opportunity to produce their materials and to be heard, is afforded, that will be sufficient to meet the requirements of natural justice. What is essential and what is required is compliance with the rules of natural justice, so that the affected party, namely, the employer, gets an opportunity to produce his materials and to plead that there was justification for the delay or for imposition of a lesser amount than the maximum prescribed. Essentially, it is a question of complying with the rules of natural justice."

(Emphasis supplied)

5. Section 25A of the Employee's Compensation Act, 1923 imposes a time limit of three months to dispose of the entire matter relating to the compensation. Section 25A of the Employee's Compensation Act, 1923 is reproduced hereunder: -

"Section 25A - Time limit for disposal of cases relating to compensation. -

The Commissioner shall dispose of the matter relating to compensation under this Act within a period of three months from the date of reference and intimate the decision in respect thereof within the said period to the employee."

6. While hearing the appeals against the orders passed by the Commissioner, Employees' Compensation, this Court has noted that in many cases, the Commissioners, Employees' Compensation have not at all initiated the proceedings for imposition of penalty whereas in some cases, the show cause notice is issued after the passing of the final order due to which the proceedings further get delayed.

7. This Court is of the view that in cases where the employer has not deposited the amount within 30 days it fell due, the show cause notice for imposition of the penalty should be issued after the filing of the written statement and the issue with respect to the penalty be framed at the stage of framing of issues and the issue with respect to the imposition of penalty be decided together with the issue of entitlement to the compensation. Learned amicus curiae as well as learned counsel for Government of NCT of Delhi agree with the suggestion of this Court.

8. The Commissioners, Employees' Compensation are directed to issue the show cause notice to the employer in all pending cases where the compensation amount has not been deposited within 30 days it fell due and the question of penalty be decided along with the issue of entitlement to the compensation. With respect to the fresh cases to be instituted, the show cause notice be issued to the respondents after the filing of the written statement in cases where the employer has not deposited the amount within 30 days it fell due and the appropriate issue of the penalty be framed and all the issues, including the issue of compensation as well as the penalty be decided together within the time frame mentioned in Section 25A of the Employees' Compensation Act.

9. With respect to the delay in cases due to the service of the notice on the

employer and the witnesses, this Court is of the view that the service be effected through the investigating officer of the criminal case. Mr. Rajesh Mahajan, learned Additional Standing Counsel for Delhi Police submits that he shall communicate this order for compliance to Delhi Police.

10. Mr. Ankur Chhibber, learned counsel for Government of NCT of Delhi submits that the cases relating to permanent disability cannot be expedited till the treatment of the injured is over and the permanent disability is determined by the Medical Board. This Court agrees with the submission and the cases relating to permanent disability have to be decided after the permanent disability is determined by the Medical Board.

11. List for further hearing on 31st July, 2017 at 02:30 p.m.

12. Learned counsel for Government of NCT of Delhi shall communicate this order to the Commissioners, Employees' Compensation.

13. Copy of this order be given dasti to counsels for the parties under signatures of the Court Master.