
(2013) 04 P&H CK 0200

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order Nos. 6585 and 6586 of 2010

New India Assurance Co. Ltd.

APPELLANT

Vs

Roshni Devi

RESPONDENT

Date of Decision : 03-04-2013

Acts Referred:

Citation : (2013) 2 PLR 798

Hon'ble Judges : Daya Chaudhary, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Daya Chaudhary, J.—Both these appeals arise out of the same occurrence which took place on 7.8.2006. The facts are being extracted from F.A.O. No. 6585 of 2010. On the fateful day i.e. 7.8.2006, Bunty Gill and Joga Singh @ Jora Singh, who were working as cleaner and driver, respectively, died in a motor vehicular accident. The whole case of the claimants is that the death took place arising out of and in the course of employment.

2. The claim was contested by the employer as well as by the Insurance Company. The stand took by the employer is that death of the workmen took place during the course of employment. However, the employer had shifted the burden of payment of compensation upon the Insurance Company.

3. The Insurance Company denied the liability to make the payment of compensation amount on the premise that no notice u/s 10 of the Workmen's Compensation Act, 1923 was served upon it.

4. On appreciation of evidence, the Commissioner came to the conclusion in claim petition titled Roshni Devi v. Harish Bhatia @ Harsh Bhatia and another, (F.A.O. No. 6585 of 2010) that the Insurance Company is liable to pay the compensation amount of Rs. 3,34,065/- which was ordered to be deposited with the Court within thirty days, failing which attracted simple interest at the rate of 12% per annum till its actual realisation. Notices were issued to the Insurance

Company and employer as to why interest at the rate of 12% per annum and penalty be not imposed. Vide order dated 11.6.2010, the Commissioner directed the Insurance Company to pay interest of Rs. 86,856/- and the employer to pay penalty of Rs. 33,406/-. The aforesaid interest and penalty were ordered to be paid with effect from the date of filing of the claim petition i.e. 1.12.2006 till 16.3.2009 i.e. the date of accepting the claim petition within 30 days of receipt of the order. However, no interest for the interregnum period from 16.3.2009 to 11.6.2010 and so on has been awarded.

5. In claim petition titled Baljeet Kaur and others v. Harish Bhatia @ Harsh Bhatia and another, (F.A.O. No. 6586 of 2010), the Commissioner while accepting the claim allowed compensation to the tune of Rs. 4,15,960/- to be paid by the Insurance Company. The aforesaid compensation amount was to be deposited within 30 days with the Court, failure of which, invited simple interest at the rate of 12% per annum till actual realisation. Adopting the similar method, as indicated in case titled Roshni Devi v. Harish Bhatia @ Harsh Bhatia and another, (F.A.O. No. 6585 of 2010), vide order dated 11.6.2010, the Insurance Company was directed to pay interest of Rs. 1,08,149/- and the employer to pay penalty of Rs. 41,596/- stipulating the period and manner as directed in the aforesaid claim petition.

6. Learned counsel for the Insurance Company submits that the Commissioner has not appreciated the statutory provision of Section 10 of the Workmen's Compensation Act while deciding the claim petition in favour of the claimants and, therefore, the Insurance Company is not liable to pay the compensation amount along with interest.

7. Mr. Raman Sharma, Amicus Curiae has argued for the employer as well as claimants that there is no denial on the part of the Employer that the death of the workmen had taken place during the course of employment and the workmen being insured, the Insurance Company is liable to pay the compensation amount along with interest. While demolishing the argument of learned counsel for the Insurance Company, he submits that there was inter-se communication between the employer and Insurance Company and in case there is any gap of communication, for that lapse, the claimants had no concern in the light of the fact that it has come from the mouth of the employer that the death took place during the course of employment.

8. Having given my thoughtful consideration to the rival contentions of learned counsel for the parties, I find no merit in the present appeal being no substance.

9. For proper or effective adjudication of controversy between the parties, it would be relevant to reproduce Section 10 of the Act which runs as under:

10. Notice and claim.--(1) 1[No claim for compensation shall be entertained by a Commissioner unless notice of the accident has been given in the manner hereinafter provided as soon as practicable after the happening thereof and unless the claim is preferred before him within 2[two years] of the occurrence of

the accident or, in case of death, within 2[two years] from the date of death:]

Provided that, where the accident is the contracting of a disease in respect of which the provisions of sub- section (2) of section 3 are applicable, the accident shall be deemed to have occurred on the first of the days during which the workman was continuously absent from work in consequence of the disablement caused by the disease:

3[Provided further that in case of partial disablement due to the contracting of any such disease and which does not force the workman to absent himself from work, the period of two years shall be counted from the day the workman gives notice of the disablement to his employer:

Provided further that if a workman who, having been employed in an employment for a continuous period, specified under sub- section (2) of section 3 in respect of that employment, ceases to be so employed and develops symptoms of an occupational disease peculiar to that employment within two years of the cessation of employment, the accident shall be deemed to have occurred on the day on which the symptoms were first detected:]

4[Provided further that the want of or any defect or irregularity in a notice shall not be a bar to the [entertainment of a claim]-

(a) if the claim is 6[preferred] in respect of the death of a workman resulting from an accident which occurred on the premises of the employer, or at any place where the workman at the time of the accident was working under the control of the employer or of any person employed by him, and the workman died on such premises or at such place, or on any premises belonging to the employer, or died without having left the vicinity of the premises or place where the accident occurred, or

(b) if the employer 1 [or any one of several employers or any person responsible to the employer for the management of any "branch of the trade or business in which the injured workman was employed] had knowledge of the accident from any other source at or about the time when it occurred:

Provided further, that the Commissioner may 2[entertain] and decide any claim to compensation in any case notwithstanding that the notice has not been given, or the claim has not been 3[preferred], in due time as provided in this subsection, if he is satisfied that the failure so to give the notice or 4[prefer] the claim, as the case may be, was due to sufficient cause.

(2) Every such notice shall give the name and address of the person injured and shall state in ordinary language the cause of the injury and the date on which the accident happened, and shall be served on the employer or upon 5[any one of] several employers, or upon any person 6[responsible to the employer for the management of any branch of the trade or business in which the injured workman was employed].

(3) 7[The State Government may require that any prescribed class of employers shall maintain at their premises at which workmen are employed a notice- book, in the prescribed form, which shall be readily accessible at all reasonable times to any injured workman employed on the premises and to any person acting bona fide on his behalf.

(4) A notice under this section may be served by delivering it at, or sending it by registered post addressed to, the residence or any office or place of business of the person on whom it is to be served, or, where a notice-book is maintained, by entry in the notice- book.]

Touching the aforesaid section only for this point as to whether the notice as required is necessary to be issued to the Insurance Company or not. In case the section is read in its entirety, it shows that it is directory and not mandatory in nature, inasmuch as, the Commissioner is competent to entertain the claim petition, in case he is satisfied that there is sufficient cause for not issuing notice to the employer or the claim petition has not been presented within the stipulated period. It does not show that notice is required to be issued to the Insurance Company. It is inter-se communication between the employer and Insurance Company shifting the liability to pay compensation amount. No denial on the part of the employer that the accident had not arisen out of and in the course of employment, it shows that the employer was well within its knowledge that the accident had taken place during the course of employment. That being so, how it can be said by the Insurance Company that it is not liable to pay the compensation amount along with interest. Merely by not serving the notice upon the Insurance Company by the claimants, for which Act does not say that it has to be served upon the insurance company, rather it has to be served upon the employer, the Insurance Company cannot run from its liability to pay the compensation amount along with interest.

10. Let the matter be examined from another angle for the sake of arguments of learned counsel for the appellant that no notice was served upon it. The claim petition was presented on 1.12.2006 i.e. after a period of about four months and the notice of claim petition was served upon it and the Insurance Company had put in appearance through Advocate before the Commissioner. If the act of Insurance Company was bonafide, it should have come straight forward that it was ready to pay the compensation amount. That has not been done so. In this manner, how it can be said that the Insurance Company was not having any knowledge, inasmuch as, the purpose of issuing notice is only to apprise about the accident/incident.

11. In this situation, the Insurance Company is liable to pay the compensation amount along with interest.

12. In the present case, the Commissioner while allowing the claim petitions has lost sight of the provisions of Section 4A of the Act which shows that the compensation amount is to be paid as soon as possible. The section also

stipulates that the employer is to pay the compensation amount to the extent for which he agrees, which would be provisional in nature. There is a rider that in case of failure of compensation amount within one month from the date it fell due, the Commissioner would invoke the penal clauses as stipulates in the Act itself. However, in the present case, while allowing the claim petitions, the interest was awarded with effect from 1.12.2006 instead of 7.9.2006 which is totally contrary to the provisions of the Act. Thus, the award of the Commissioner is modified to the limited extent that the claimants are entitled to the interest at the rate of 12% per annum with effect from 7.9.2006 on the compensation amount till its actual realisation. Similar position would remain in the case of penalty as the employer is required to pay interest at the rate of 12% per annum on the amount of penalty with effect from 7.9.2006 till its actual realisation. With the aforesaid modification, the present appeals are dismissed.