

(2021) 06 DEL CK 0101

In the Delhi High Court

Case No : First Appeal From Order No. 385 Of 2013, Civil Miscellaneous
Application No. 15735 Of 2013, 20942 Of 2016, 752, 27316, 45143
Of 2018, 25425 Of 2019

New India Assurance Co.Ltd

APPELLANT

Vs

Puran Lal & Ors

RESPONDENT

Date of Decision : 24-06-2021

Acts Referred:

Code Of Civil Procedure, 1908 — Order 21 Rule 1(4)
Code Of Criminal Procedure, 1973 — Section 173
Employee's Compensation Act, 1923 — Section 4, 4A(3), 10A(1), 20, 25A

Citation : (2021) 06 DEL CK 0101

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

Bench : Single Bench

Advocate : Nandita Rao, Rajiv Agarwal, Saurabh Prakash, Satyam Thareja, S.P. Jain

Final Decision : Disposed Of

Judgement

Special Scheme for Employees Compensation Cases

1. Employee's Compensation Act, 1923 was enacted to provide compensation to the workers who suffer injury(ies)/fatal injury(ies) during the course of their employment. Employee's Compensation Act is a social beneficial welfare legislation for the benefit of the workmen. Section 25A

of the Employee's Compensation Act provides for expeditious disposal of a compensation case within a period of three months.

2. Vide order dated 14th September, 2015, this Court called for the details of the pending cases under Employee's Compensation Act

whereupon the State filed the status report according to which 1195 cases of Employee's Compensation were pending as on 01st September,

2015 and only two officers were dealing with those cases.

3. Vide order dated 22nd September, 2015, this Court directed the Government of NCT of Delhi to expedite the hearing and disposal of 1195 cases of

Employee's Compensation by 31st December, 2015. Pursuant to the directions issued by this Court, Government of NCT of Delhi appointed 17

officers to deal with the Employee's Compensation and 1118 (94% cases out of 1195 cases) pending as on 01st September, 2015 were disposed

of by 27th May, 2016. Government of NCT of Delhi approved the proposal of the Labour Department for creation of 13 posts of Joint Labour

Commissioner (Legal) to be filled up on deputation basis in addition to the officers already working in the cadre.

4. Vide judgment dated 28th October, 2015, this Court exercised the extraordinary writ jurisdiction to streamline and regulate the procedure for

expeditious disposal of Employees Compensation cases and formulated the Employee's Compensation Agreed Procedure for time bound

settlement of employee's compensation cases within 90 days to be implemented w.e.f. 01st September, 2015. The Employee's Compensation

Agreed Procedure revolutionized the disposal of employee's compensation cases in a time bound manner as the victims get the compensation

within 90 days of the accident without the need of filing a claim application.

5. According to the Employee's Compensation Agreed Procedure, the police files the Employee Accident Report (EAR)

with the Commissioner, Employee's Compensation within 30 days of accident. The police also completes the investigation of the criminal case and

files the chargesheet (Report under Section 173 CrPC) before the Magistrate within 30 days. The copy of the EAR is furnished to the

employee/dependant of the deceased employee, employer and the insurance company (if the employer had taken an insurance policy). The

Investigating Officer produces the employee/legal representatives of the deceased employee, employer as well as the eye-witnesses before the

Commissioner, Employee's Compensation along with EAR. The Commissioner, Employee's Compensation treats EAR as an information

under Section 10A(1) of the Employee's Compensation Act. The Insurance Company appoints a designated officer within 10 days of the receipt

of EAR and process the EAR and submits the response before the Commissioner,

Employee's Compensation within 30 days. The Commissioner,

Employee's Compensation thereafter passes the award whereupon the amount is deposited within 30 days of the award.

6. Vide order dated 05th August, 2016, this Court directed the Delhi Police as well as Commissioners, Employee's Compensation to file the

status report with respect to the implementation of the Special Scheme for the six-month period from 01st December, 2015 to 31st May, 2016.

Reference is made to para 3 of the order dated 05th August, 2016 which is reproduced hereunder:

3. Para 4 of the order dated 28th October, 2015 is modified to the extent that the Delhi Police as well as Commissioner, Employees' Compensation

are directed to furnish the following data with respect to the implementation of the system for the period of six months i.e. 1st

December, 2015 to 31st May, 2016:-

By Delhi Police

(i) Number of accidents reported to the Police.

(ii) Number of cases in which the investigation was completed within 30 days.

(iii) Number of cases in which the investigation was completed after 30 days.

(iv) Number of cases in which the EAR was filed with the Commissioner, Employees' Compensation within 30 days.

(v) Number of cases in which the EAR was not filed with the Commissioner, Employees' Compensation.

(vi) Number of cases in which the copy of EAR has been furnished to the claimants, employers and insurance companies.

(vii) Number of cases in which the IO has produced the employee/legal representatives of the deceased employee, employer and eye witnesses

before the

(i) Number of cases in which the EAR has been treated as information under Section 10(A)(1) of the Employees' Compensation Act, 1923 in

terms of Clause 10 of Scheme.

(ii) Number of cases in which the employer and/or insurance companies have submitted their offer of settlement within 30 days in terms of Clause 12

of Scheme.

(iii) Number of cases in which the consent award has been passed by the

Commissioner, Employees' Compensation in terms of Clause 13 of Scheme.

(iv) Number of cases in which the Commissioner has passed the award in terms of Clause 14 of Scheme.

(v) Number of cases in which the claimants have been examined by the Commissioner, Employees' Compensation before passing the award in terms of Clause 15 of Scheme.

(vi) Number of cases in which the award amount has been deposited with the Commissioner within 30 days of the order in terms of Clause 18 of Scheme.

(vii) Number of cases in which the Commissioner has disbursed the award amount in a phased manner in terms of Clause 19 of the Scheme.

(viii) Number of cases in which the Commissioner, Employees' Compensation has kept the case pending for compliance of the award in terms of Clause 20 of the Scheme.

(ix) Whether the Commissioner, Employees' Compensation has maintained the record of the deposit of the award amount in terms of Clause 21 of the Scheme.

7. Vide order dated 02nd February, 2017, this Court modified para 19 of the Employees' Compensation Agreed Procedure with respect to the protection of the award amount. Reference is made to para 9 of the order dated 02nd February, 2017.

8. On 24th May, 2017, this Court noted that the Commissioners, Employees' Compensation were not complying with the mandatory provision of imposition of penalty on the employer under Section 4A(3) of the Employees' Compensation Act. This Court directed the Commissioner, Employees' Compensation to initiate penalty proceedings wherever the amount had not been deposited within 30 days from the due date. Relevant portion of the order dated 24th May, 2017 is reproduced hereunder:

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:-

â??Section 4A - Compensation to be paid when due and penalty for default:-

(1)â?|â?|

(2)â?|â?|

(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 shallâ?

(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, â??scheduled bankâ? 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.

xxx xxx xxx

5. Section 25A of the Employeeâ??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 Employeeâ??s Compensation Act, 1923 is reproduced hereunder:-

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

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.â??

6. While hearing the appeals against the orders passed by the Commissioner, Employee's Compensation, this Court has noted that in many cases,

the Commissioners, Employee's

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, Employee's 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 Employee's 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.â??

9. On 09th January, 2018, this Court directed the Commissioners, Employeeâ??s Compensation to file the status report with respect to the

compliance of the above directions. The relevant portion of the order is as under:

â??3. Vide order dated 24th May, 2017, this Court noted that the Commissioners, Employeeâ??s Compensation have not initiated the proceedings

for imposition of the penalty in many cases. GNCTD is directed to submit a report giving particulars of total number of cases decided by the

Commissioners, Employeeâ??s Compensation during the last three years i.e. 01st January, 2015 to 31st December, 2017; number of cases in which

compensation applications have been allowed; and number of cases in which the penalty was imposed.

4. Vide order dated 24th May, 2017, this Court also directed the Commissioners Employeeâ??s Compensation to issue show cause with respect of

penalty in all pending cases where compensation amount has not been deposited within 30 days and in fresh cases, the show cause notice be issued to

the respondent after the filing of the written statement. The status report be placed on record giving particulars of total number of cases pending

before Commissioners, Employeesâ?? Compensation as on 24th May, 2017; number of cases in which show cause notice for imposition of penalty

have been issued along with the date of show cause notice(s).

5. VideÂ Â orderÂ Â datedÂ Â 02ndÂ Â Â Â February,Â Â 2017,Â Â the Commissioners, Employeeâ??s Compensation were directed to

disburse the compensation amount in a phased manner by releasing the some part of the award amount according to the requirement/needs of the

claimants and keeping the balance amount in monthly fixed deposits. The status report be placed on record giving particulars of total number of cases

decided by Commissioners, Employeeâ??s Compensation after 2nd February, 2017 and whether the disbursement have been made in terms of the

order dated 2nd February, 2017.

6. Section 25A of the Employee's Compensation Act provides that the compensation application shall be disposed of within a period of three months.

GNCTD shall also submit a report to place on record as to how many cases have been instituted during the last three years and the time period taken

for their disposal.â??

10. On 19th February, 2018, this Court noted from the status reports that penalty was imposed only in 143 out of 1578 cases in the last three years.

This Court also noted the non-compliance of the other directions passed by this Court. Relevant portion of the order dated 19th February, 2018 is as

under:

â??2. As per the status report, Commissioner, Employeeâ??s Compensation have imposed penalty in 143 out of 1578 cases during the period 1st

January, 2015 to 31st December, 2017.

3. With respect to the show cause notice for imposing penalty in terms of the order dated 24th May, 2017, it is submitted that the show cause notice

has been issued in 116 cases. However, the affidavit does not disclose the total number of cases pending on 24th May, 2017. Further time is sought to

place the relevant data on record. The affidavit further states in 55 cases the disbursement has been done in a phased manner without disclosing the

total number of cases decided by the Commissioner after 2nd February, 2017. The additional affidavit with respect to the incomplete information be

also filed before this Court on the next date of hearing.

4. This Court is shocked to note that the mandatory provision in imposition of penalty has been applied by the Commissioner only in 143 out of 1578

cases meaning thereby that the poor victims of the accidents under the Employeeâ??s Compensation Act have been deprived of the penalty amount

to which they would have been entitled in law. Let the status report filed today be placed before Govt. of NCT of Delhi at the highest level and the

response thereto be placed before this Court on the next date of hearing.â??

11. On 13th July, 2018, this Court again directed the Commissioners, Employeeâ??s Compensation to file

the compliance report. Para 5 of the order dated 13th July, 2018 is reproduced hereunder:

â??5 Learned amicus curia[e] has handed over the chart giving the particulars of the non-compliance of the directions of this Court. Copy of the

chart has been handed to counsel for Govt. of NCT of Delhi. Govt. of NCT of Delhi is directed to file the affidavit in response to para 4 of the order

dated 12th March, 2018 as well as the response to the chart handed over by learned amicus curia[e] today in Court.â??

12. On 29th March, 2019, this Court issued fresh directions for filing of status

report with the following particulars:

2. The Government of NCT of Delhi is directed to file a fresh status report giving the following particulars:

(i) The list of the Commissioners, Employee's Compensation along with their qualifications;

(ii) Whether all the Commissioners, Employee's Compensation are duly qualified in terms of

(a) How many cases were filed under Employee's Compensation Act, 1923 between 01st December, 2015 till 31st March, 2019;

(b) How many cases were disposed within three months as per Section 25A of the Act;

(c) Number of cases in which penalty notice has been issued as directed in the order dated 31st July, 2017.

(iii) Number of Officers/Inspectors/Staff in the Labour Department; the duties assigned to them and the statutory functions being performed by them

under the various Acts;

(iv) The sanctioned strength, the required strength and the present strength of Officers/Inspectors/Staff to discharge the statutory

functions and duties under the various Acts;

(v) The reasons for delay in fulfilling the sanctioned strength; and

(vi) The suggested measures required to efficiently discharge the statutory functions and duties under the various Acts.

3. The status report be filed within a period of four weeks from today.

4. Mr. Ankur Chhibber, learned counsel for the GNCTD submits that the Delhi Police is not complying with the directions of this Court contained in

the judgement dated 28th October, 2015 with respect to the filing of the Employee's Accidents Report (EAR).

5. The Delhi Police is directed to file status report to be placed on record as to how many cases, the Employee's Accidents Reports (EAR) have

been filed with the Commissioner, Employee's Compensation, 1923 between 01st December, 2015 till 31st March, 2019.

13. The Employee's Compensation Agreed Procedure formulated by this Court vide judgment dated 28th October, 2015 was based on the

Scheme formulated by this Court in *Rajesh Tyagi v. Jaibir Singh*, I (2015) ACC 838 (Del.). This Court vide judgment dated 8th January, 2021, has

modified the Scheme in Rajesh Tyagi's case.

14. Mr. Rajeev Aggarwal, Mr. Satyam Thareja, Mr. Saurabh Prakash and Mr. S.P. Jain, learned amici curiae submit that the Employee's

Compensation Agreed Procedure formulated by this Court in judgment dated 28th October, 2015 be suitably modified to bring it in consonance with

the Special Scheme formulated by this Court in Rajesh Tyagi's case vide judgment dated 08th January, 2021.

15. This Court is satisfied that the Employee's Compensation Agreed Procedure formulated by this Court by judgment dated

28th October, 2015 warrants modification in view of the Special Scheme formulated in Rajesh Tyagi's case.

16. The Scheme formulated by this Court namely Employee's Compensation Agreed Procedure vide judgment dated 28th

October, 2015 is hereby modified and is substituted with this Special Scheme for Employee's Compensation Claims which shall be implemented by

the Commissioners, Delhi Police and Insurance Companies w.e.f. 02nd August, 2021. The modified Special Scheme is attached to this judgement.

17. The successful implementation of this Scheme requires strict compliance by Delhi Police, Insurance Companies as well as the Commissioners and

a Committee is constituted to supervise the implementation of this Scheme and take remedial measures. This Committee shall comprise of the

following members:

(i) Principal Secretary (Law, Justice & Legislative Affairs), GNCTD as Convenor.

(ii) Secretary-cum-Commissioner (Labour), GNCTD.

(iii) Member Secretary, DSLSA.

(iv) DCP - Legal Cell, Delhi Police.

(v) Ms. Nandita Rao, Additional Standing Counsel, GNCTD.

(vi) Mr. Akshay Chowdhary, Advocate.

18. The Government of NCT of Delhi shall bear the necessary expenditure for the functioning of the Committee.

19. The Commissioners, Employee's Compensation as well as the Delhi Police shall file quarterly reports before the Committee with respect to

the compliance of these directions of this Court. The Commissioner, Employee's Compensation shall also send the copies of all the awards passed

during the quarter to the Committee along with their report. The first Report for the quarter 02nd August, 2021 to 31st October, 2021 be filed by 30th

November, 2021 and thereafter by 30th of each quarter. The Committee shall prescribe the format of the compliance reports which shall be circulated

to the Commissioners, Employee's Compensation and the Delhi Police. The Committee shall consider the reports and take such remedial

measures as may be considered necessary for the successful implementation of this Scheme.

20. The Commissioners, Employee's Compensation shall expedite the adjudication of the claim cases and make an endeavour to decide these

cases within the timelines mentioned in the flow chart attached to the judgment herein below. In the case of non-compliance of the directions of this

Court, the Committee shall send their report to be placed in the personal file of the officer in default to be considered at the time of their promotion.

21. If any modifications are considered necessary in this Scheme, the same shall be carried out by the Committee after hearing all the stakeholders.

Any suggestion or grievance with respect to the working of this Scheme shall be considered by the Committee.

22. This appeal is disposed of in the above terms. Pending applications are disposed of.

23. This Court appreciates the valuable and effective assistance rendered by Ms. Nandita Rao, Additional Standing Counsel for GNCTD, Mr. Rajiv

Agarwal, Advocate, Mr. Saurabh Prakash, Advocate, Mr. Satyam Thareja, Advocate and Mr. S.P. Jain, Advocate as amici curiae and Mr. Akshay

Chowdhary and Ms. Anjali Agrawal, Law Researchers attached to this Court.

24. Copy of this judgment, and Special Scheme for Employee's Compensation Claims along with the EDAR be sent to Principal Secretary (Law),

GNCTD who shall circulate it to all the Commissioners, Employee's Compensation and Delhi State Legal Services Authority (DSLISA).

25. Copy of this judgment along with the Special Scheme for Employee's Compensation Claim and the EDAR be sent to Delhi

Judicial Academy to sensitize the Commissioners about this Scheme.

26. Delhi Judicial Academy shall upload this judgment along with the Special Scheme and the EDAR on their website (<http://judicialacademy.nic.in>) as

good practices of this Court.