

(2010) 07 P&H CK 0225
In the Punjab And Haryana At Chandigarh
Case No : F.A.F.O. No. 1365 of 1995

New India Assurance Company Ltd.

APPELLANT

Vs

Smt. Joginder Kaur and others

RESPONDENT

Date of Decision : 07-07-2010

Acts Referred:

Workmens Compensation Act, 1923 — Section 4A(3)(a)

Citation : (2010) 07 P&H CK 0225

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : Inderjit Sharma and Pradeep Bedi, for the Appellant;

Final Decision : Allowed

Judgement

K. Kannan, J.—The insurance company is in appeal against the interest and liability ordered to be paid by the Workmen's Compensation Commissioner In proceedings initiated under Workmen's Compensation Act. The claim arose out of the death of husband of the applicant, who was reported to have died in the course of his employment while driving the truck. The contention was that the claimant had given a legal notice to the respondent before filing the petition, which was duly received on 18.5.1993 and the proof of receipt was provided by the applicant before the Commissioner by production of the acknowledgment receipts. On assessing the compensation at Rs. 78,824/- as per the schedule prescribed under the Act, the Tribunal had added 40% penalty be paid on compensation and also directed interest @ 6% for the period from 14.7.1991 to 14.3.1995, the date when the petition was presented before the Commissioner. In all, an amount of Rs. 1,27,694.88 was awarded.

The contention on behalf of the insurance company is that the liability to make the payment is assessed only under the award and there is no scope for awarding interest prior to the date of the application before the Commissioner or impose penalty for non-compliance of the notice issued. The learned Counsel appearing for the insurance, company relies on the judgment of Hon'ble

Supreme Court in *Ved Prakash Garg v. Premi Devi and others* 1997 (77) FLR 637 (SC), which dealt with the interplay of the provisions of the Workmen's Compensation Act and whether the insurer shall be liable to meet the award of the Workmen's Compensation Commissioner imposing penalty and interest against the insured in Clause (a) on the Workmen's Compensation Act. The facts of the case detailed in *Ved Prakash Garg's* case would show that the insured himself had immediately informed the insurer about the accident and though the insurance company was bound to pay to the heirs of the deceased employee, it did not carry out the obligation. It was a case where, the legal representatives pursued the remedy under the Workmen Compensation Act by filing a petition before the Workmen's Compensation Commissioner against the employer as well as the insurer. The Commissioner awarded penalty, apart from ascertaining the compensation payable under the scale provided under the Act and had also provided for payment of interest 6% from the date of the accident by reference to sections 4-A(3)(a) & (b) under the Workmen's Compensation Act. The Commissioner had found both the employer and the insurer to be jointly and severally liable. While the claimants and the employer were satisfied with the award, the insurer alone was in appeal contending that while a liability could be fastened for interest or penalty against the employer, it could not be co-terminus with the liability of the insurer, for the insurer could not be made liable for a period before the award determining the amount on the petition for interest or for penalty without following a procedure set out u/s 4-A of the Act. The Hon'ble Supreme Court held that claim of penalty cannot be made against the insurer for the delay in paying up the compensation amount within the period contemplated u/s 4-A(3) of the Workmen's Compensation Act. In the light of the judgment of the Hon'ble Supreme Court in *Ved Prakash Garg's* case, the direction for payment of penalty against the insurer at the first instance even while passing the award is not legally tenable. It must be noticed that interest on the award was not denied but only interest or penalty was denied in *Ved Prakash Garg's* case.

2. As regards the direction for payment of interest from the date of the accident till the date of the award against an insurer, the matter has come for consideration before the Hon'ble Supreme Court in *National Insurance Co. Ltd. Vs. Mubasir Ahmed and Another*, . The Hon'ble Supreme Court held that direction for payment of interest u/s 4-A(3) and (1) shall start on completion of one month from the date of which the compensation fell due. The date when compensation becomes due, the Hon'ble Supreme Court held could not be on the date of the accident but it is the date of adjudication of claim. The Hon'ble Supreme Court took note of the language u/s 4-A(1) , which employed only the expression of the date when the compensation "falls due" and not, "from the date of accident." It, therefore, held that unless there is an adjudication, the question of the amount falling due does not arise. This direction of the Hon'ble Supreme Court was in the context of when there was a claim for compensation for certain injuries and when the Commissioner had to make an adjudication

relating to the assessment of disability. Till therefore, the disability, have been assessed and an appropriate compensation fixed for such disability, and the loss of earning power, it could not have been stated that the amount had fallen due. This judgment must, therefore, be understood as applicable in cases where without an assessment by the Commissioner, the liability of the employer could not have been said to be ascertained and the liability as falling due.

3. Cases of death where the employer and the insurer have details of the age and the salary drawn by the workman are wholly a different situation and the ascertainment of compensation payable to the legal representatives is a mere mechanical exercise. There the liability arises on the date when the death takes place and the employer and the insurer have knowledge of the death as arising on account of employment. If there was a bona fide dispute as regards the employer's status or the cause of death and the dispute has been raised by the employer, the liability may arise only on the date when the Commissioner determines the death as arising out of the accident or when the employment status is ascertained. On the other hand, if there is no dispute with regard to the employment status or the cause of death as arising in the course of or out of employment, then the liability must be taken as having arisen even when the death occurs and when a notice of claim is received by the employer and the insurer. It should again be noted that in every case where a dispute, is taken up by the employer regarding the employment status or the cause of accident, it should not be assumed that the liability could arise only when it is determined by the Commissioner. It all depends again on the factual considerations. If it were not to be so, it will cast a premium on the employer taking up irresponsible defences deliberately denying the employment status and the cause of death as arising out of or in the course of employment. If there are no bona fides and the Commissioner finds so, the liability for interest would start even from the date of the death. On the other hand, if there was a bona fide dispute, then the liability would commence only from the date when an adjudication is made. Learned Counsel appearing for the Appellant relies on a Division Bench ruling of this Hon'ble Court in *United India Insurance Company, Rohtak v. Shanti-Devi and mother*, L.P.A. No. 265 of 1997. where both as regards penalty and interest, the insurer was exonerated following the decision of the Hon'ble Supreme Court in *Ved Prakash Garg's case* and *Mubasir Ahmed's case* (supra). The decision of the Hon'ble Division Bench did not advert to the situation where the employer and the insurer knew the employment status as well as the accident arising out of employment. It cannot be, therefore, taken as an authority for laying down a general proposition that in all cases, the liability for payment of interest will arise only from the date of the award even when the insurer had been informed by means of a notice, alongside a notice issued to the insured.

4. In this case, factually the cause of death and the employment status had never been denied either by the employer or by the insurer when the notice had " been sent immediately after the death prior to the filing of the petition. There had been no response by the insurer.

5. The award of the workmen's Compensation Commissioner is, therefore, set aside only in so far as it cast liability for payment of penalty against the insurer. The insurer shall stand exonerated of such liability. As regards the payment of interest @ 6% for the period from 14.7.1991 to 14.3.1995 amounting to Rs. 17,341.28, the award stands confirmed. The appeal is, therefore, partly allowed in the manner indicated above.