
(2010) 07 MP CK 0020

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 1622 of 2004

New India Assurance Company Ltd., Indore

APPELLANT

Vs

Randhir Harbans Singh and others

RESPONDENT

Date of Decision : 28-07-2010

Acts Referred:

Workmens Compensation Act, 1923 — Section 2(1), 30(1), 4, 4(1), 4(1)(a)

Citation : (2010) 4 MPLJ 84

Hon'ble Judges : Prakash Shrivastava, J

Bench : Single Bench

Advocate : C.P. Singh, for the Appellant;

Judgement

Prakash Shrivastava, J.

This appeal u/s 30(1) of the Workmen's Compensation Act, 1923 has been filed against the order dated 5-5-2004 passed by the Court of Commissioner for Workmen Compensation, Labour Court, Indore in Case No. 50/2000 WCF.

The brief facts are that Jasbir Singh, Son of respondent No. 1 was employed with the respondent No. 6 as driver of Truck No. MP 09 KA 3613. During the course of employment he had suffered accident on 12-10-1998 and had died, consequently the respondents No. 1 to 5 had filed the claim petition. The Commissioner passed the impugned award holding that the deceased was in the employment of the respondent No. 6 and he has died during the course of the employment. The Commissioner found that the vehicle was insured and the Insurance Company was liable to satisfy the award. The Commissioner found the age of the deceased at the time of the accident as 22 years and his wages at the time of accident was proved as Rs. 3,000/- . The Commissioner calculated the compensation by applying the factor of 221.37 in terms of Schedule-IV of the Act on 50% of the income assessed i.e. on Rs. 1,500/- .

this Court by order dated 9-7-2010 had admitted the appeal on the following substantial question of law :-

Whether the assessment of the income of the deceased as per the provisions of Workmen's Compensation Act amended in the year 2000 would be applicable, retrospectively, since the accident took place on 12-10-1998 and whether the Commissioner of Workmen's Compensation has wrongly applied the provisions retrospectively.

Learned Counsel appearing for the appellant submitted that the Commissioner wrongly applied the factor on the wages of Rs. 3,000/- whereas in terms of the unamended provisions of section 4(1)(a) the monthly wages could not be taken to be more than Rs. 2,000/- and multiplier of factor 221.37 should have been applied accordingly. He submitted that the amendment which has been made in section 4(1) of the Act in the year 2000 has no retrospective application.

The respondents are not represented, though served in the matter.

I have heard Learned Counsel for the appellant and perused the record.

Section 4 of the Workmen's Compensation Act, 1923 (for short the "Act of 1923") deals with the amount of compensation. In terms of section 4(1)(a) in case of death from the injury, the amount of compensation awarded is equal to 50% of the monthly wages of the deceased-workman multiplied by the relevant factor. Under Explanation-II of sub-section (1) monthly wages of workman is presumed to be Rs. 2,000/- in case where it exceeds Rs. 2,000/- . By way of amendment w.e.f. 8-12-2000, Rs. 2,000/- has been substituted by Rs. 4,000/- in the Explanation-II.

In the present case the date of accident and death is 12-10-1998. On the date of the accident the maximum limits for the monthly wages as fixed by Explanation-II was Rs. 2,000/- which was later increased to Rs. 4,000/- by the amendment dated 8-12-2000. Therefore, the appellant can get the benefit of the amended provisions only if the amendment has the retrospective effect.

It is the accepted principle of interpretation that the amendment in the statute is prospective in nature unless it is expressly made applicable with retrospective effect. The normal rule of construction of statute that the statute operates prospectively unless it is made retrospective either expressly or by necessary implication applies in the case. The nature of the amendment in the Explanation-II does not indicate that the amendment was retrospective in nature, therefore, the amended provision cannot be given retrospective effect to make it applicable to the case of the claimants in respect of the accident and death which had taken place prior to the amendment. The right to claim compensation was crystallized on the date of the accident and death, therefore, the unamended provisions which were existing at the relevant point of time will apply in the present case. The aforesaid position in law is supported by the Judgment of this Court in the matter of Ramji and Another Vs. Lalit Kumar Bardiya and Others, the Orissa High Court in the matter Oriental Fire and General Insurance Company vs. Bidi. 1972 ACJ 187 (Orissa), Himachal Pradesh High Court in the matter of Oriental Insurance Co. Vs. Kala Devi and Others, and United India Insurance Co. Ltd. Vs.

Sumitra Devi and Others,

In view of the aforesaid it is held that the Commissioner has committed an error in assessing the income of the deceased as Rs. 3,000/- whereas under the unamended Explanation-II of section 2(1) the Commissioner could not have assessed the monthly income of more than Rs. 2,000/- . Thus, calculating the amount on the basis of monthly income of Rs. 2,000/- and by applying the factor of 221.37 on Rs. 1,000/- (50% of the monthly wages of Rs. 2,000/-) the amount of compensation comes to Rs. 2,21,300/- which the respondents No. 1 to 5 are entitled to receive.

The appeal is allowed to the extent indicated above. No costs.