
(2004) 08 RAJ CK 0007

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 1020 of 2004

New India Assurance Company (The) Ltd.

APPELLANT

Vs

Smt. Halima and Others

RESPONDENT

Date of Decision : 12-08-2004

Acts Referred:

Workmens Compensation Act, 1923 — Section 10, 3, 30, 4(1), 4A

Citation : (2005) 1 ACC 445 : (2006) ACJ 917 : (2005) 105 FLR 1175 : (2005) 1 RLW 286 : (2004) 4 WLC 772

Hon'ble Judges : Prakash Tatia, J

Bench : Single Bench

Advocate : D.R. Lunkar, for the Appellant;

Final Decision : Dismissed

Judgement

Prakash Tatia, J.—Heard learned counsel for the appellant.

2. Learned counsel for the appellant has challenged the award dated 7th Nov., 2003 passed by the learned Workmen Compensation Commissioner, Jodhpur in claim case No. 11/2001 by raising following points; first is that the learned Workmen Compensation Commissioner, Jodhpur committed error in holding that the deceased was of the age of 50 years whereas he was of the age of 56 years and second is that the learned Workmen Compensation Commissioner, Jodhpur committed illegality in awarding interest from the date of accident whereas the interest should have been awarded from the date of filing of the claim petition.

3. Learned counsel for the appellant while addressing the second point relied upon the judgment of the Andhra Pradesh High Court delivered in the case of United India Insurance Company Ltd., Hyderabad v. Vaggu Balram and Ors. 2004 (2) T.A.C. 645 , and also relied upon the judgment of the Division Bench of this Court delivered in the case of Oriental Insurance Co. Ltd. Vs. Vilas Devi and Others,

4. I considered the submissions of learned counsel for the appellant. So far as

first point is concerned, it is a pure question of fact. The Tribunal assessed the age of the deceased on the basis of documentary evidence and the postmortem report, which discloses the age of the deceased as 50 years. Even if there are two sets of evidence and one is accepted by learned Workmen Compensation Commissioner, then it cannot be interfered while exercising the jurisdiction u/s 30 of the Workmen's Compensation Act, 1923 (hereinafter referred to as "the Act of 1923") as it is a pure question of fact and in this case nothing has been pointed out how it become a substantial question of law in the facts of this case and on the basis of material available on record.

5. Learned counsel for the appellant vehemently submitted that the Insurance Company cannot be held liable to pay the Interest from the date of filing of the claim petition by the claimants. While advancing this argument, learned counsel for the appellant submitted that as per Section 10 of the Act of 1923, no claim petition is maintainable before the Workmen Compensation Commissioner unless one month's notice is given by the claimants. Therefore, in the case where the insured did not pay the compensation amount to the claimants even then the claimants could not have submitted the claim before the Workmen Compensation Commissioner without one month's notice to the employer as per bar under Sub-section (1) of the Section 10 of the Act of 1923. According to learned counsel for the appellant, by this way, the liability accrues only after expiry of one month from the date of service of the notice u/s 10 of the Act of 1923. It is also submitted that if any default was committed, then it was committed by the owner of the vehicle and because of his default, the appellant Insurance Company cannot be penalized. Learned counsel for the appellant heavily relied upon the decision of the Division Bench of this Court delivered in the case of Vilas Devi's case (supra), as this Court held that the expression "simple interest at the rate of 6 per cent" leaves no room of doubt that maximum rate of interest that could be awarded for delayed payment of compensation is 6 per cent with effect from the expiry of one month from the date it becomes due. The same view was taken by the Andhra Pradesh High Court in the case of Vaggu Balram's case (supra), wherein the Andhra Pradesh High Court observed as under:-

"Claimants, no doubt, would be entitled to interest on the compensation due and payable to them, since as per Section 4A of the Act compensation has to be paid as soon as it falls due, and if there is default on the part of the employer in paying compensation within one month from the date it falls due and the Commissioner is empowered to direct the employer to pay simple interest on the compensation payable by him. In the decisions relied on by the learned counsel for the claimants, the Supreme Court held that the insurer is liable to pay interest. In many cases that insurer would not be put on notice of the accident by the claimants or the employer. In this case also insurer was not given notice of the accident. When the insurer is not put on notice, it would be unjust to direct it to pay interest from the date of accident. Therefore, claimants are entitled to interest at 9% per annum from the date of petition till the date of deposit. The point is answered accordingly."

6. I considered the submissions of the learned counsel for the appellant and perused the reasons given in the award. It may be relevant to mention here that the learned Workmen Compensation Commissioner while deciding issue No. 5 held that employer had knowledge of the accident and also notice was duly served upon them.

7. It is clear from Section 3 of the Act of 1923 that in case a person is injured in an accident arising out of and in the course of his employment, he is entitled for the compensation. In addition to the compensation, the claimants can raise claim for interest and for penalty as provided u/s 4A of the Act of 1923. I have no hesitation in holding that the cause of action accrues for claiming compensation under Sections 3 & 4 of the Act of 1923 and for claiming interest and penalty on happening of the event. Charging Sections are Sections 3 & 4 of the Act of 1923 whereas Section 10 is not a charging Section. Section 10 only provided procedure. Section 10 cannot be read as a provision deferring the liability of the employer, which arises under Sections 3 & 4 of the Act of 1923.

8. Section 10 of the Act of 1923 deals with the procedure. Sub-section (1) of Section 10 of the Act of 1923 only provides that the Workmen Compensation Commissioner shall not entertain the claim petition unless notice of the accident has been given in the manner and as provided in Sub-section (2) of Section 10 of the Act of 1923. The entitlement itself is not dependent upon the notice demanding the claim. Sub-section (1) of Section 4 of the Act of 1923 makes it clear that employer is under obligation to pay the compensation "as soon it falls due". Sub-section (3) of Section 4 only provides that where any employer is in default in paying the compensation within one month from the date it fell due, then the Commissioner may award interest and penalty as provided under Sub-clauses (a) & (b) of Sub-section (3) of Section 4A of the Act of 1923 read with proviso to Sub-section (3), Sub-section (3) also nowhere says that interest shall be awarded not from the date of accrual of cause of action and it may be from latter date. If the argument advanced by learned counsel for the appellant is accepted, then it will mean that though the statutory provision provides that the employer shall pay the compensation as soon as it fell due, still court should presume that the liability of the employer will start from the expiry of period of notice or after one month from the date of accrual of cause of action. In view of the above, I do not find any substance in the submission of learned counsel for the appellant and it is held that Tribunal can award interest from the date of accident and it will be in consonance with Sub-section (3) of Section 4A of the Act of 1923.

9. It will be worthwhile to mention here that the Division Bench of this Court in the case of Vitas Devi's case (supra) was seized with the controversy whether the Workmen Compensation Commissioner committed error in awarding interest @ 12% per annum and the other authority should have awarded interest @ 6% per annum. This was the precise question involved in the said appeal, which is clear from the facts mentioned in the Division Bench judgment of this Court. The

relevant portion of the arguments, which was advanced by learned counsel for the appellant is as under:-

"Lastly, it was contended by learned counsel for the appellant in connection with D.B. Spl. Appeal No. 10 of 1992 and D.B. Spl. Appeal No. 25 of 1993 that rate of interest awarded by the Compensation Commissioner and/or learned single Judge in the two cases is in excess of maximum that was permissible under the Compensation Act at the time the accident took place or the award of interest was made. It could not have exceeded 6 per cent per annum. This contention appears to be justified".

10. While considering this point on the quantum of interest, which could have been awarded by the learned Workmen Compensation Commissioner, even Division Bench of this Court specifically by giving emphasis on the words "simple interest @ 6 per cent", held that there is no room of doubt that maximum rate of interest that could be awarded for delayed payment of compensation is 6 per cent with effect from the expiry of one month from the date it became due. Therefore, judgment of the Division Bench of this Court is of no help to the appellant because point raised in this appeal was not point in issue as only question of rate of interest was in issue before" the Division Bench in the above referred case.

11. Sub-section (3) of Section 4A of the Act of 1923 only means that in case, it is found by the Commissioner that employer paid the compensation within one month, the Commissioner shall not award interest over the compensation and upon finding justification for delay, the Commissioner shall not impose penalty. By paying compensation within one month, the employer can save interest over compensation. The employer if does not take benefit of the provision, then he cannot avoid his liability for the interest from the date when he incurred the liability.

12. In these circumstances, the judgments cited by learned counsel for the appellant has no application to the facts of this case. Therefore, the appeal of the appellant is hereby dismissed.