

(1998) 11 KAR CK 0072

In the Karnataka High Court

Case No : M.F.A. No's. 4755 of 1997 and 308 of 1998

Nirmala Bai and Another

APPELLANT

Vs

Ashok and Others

RESPONDENT

Date of Decision : 23-11-1998

Acts Referred:

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

Citation : (2000) ACJ 1163

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : Manikappa Patil, for the Appellant; S.P. Shankar, for the Respondent

Judgement

Hari Nath Tilhari, J.—Both appeals arise from one common judgment and order dated 26.9.1997 delivered by the Workmen's Compensation Commissioner awarding compensation to the tune of Rs. 1,00,367 in favour of the claimants-respondents. Feeling aggrieved from that award, the insurance company as well as the employer have filed Appeal No. 4755 of 1997 u/s 30(1) of the Workmen's Compensation Act. It may also be mentioned that from this very same order, M.F.A. No. 308 of 1998 has been filed by the employer alone. It has firstly been contended with reference to both the appeals by Mr. S.P. Shankar and Mr. Manikappa Patil that the claimant-injured had been mentioned to be 14 years of age and, therefore, he could not be an employee or workman under the present appellant in Appeal No. 308 of 1998, i.e., appellant No. 1 in M.F.A. No. 4755 of 1997. It may be mentioned that the compensation officer has considered the evidence and has held that the claimant was about 16 years on the date of accident and injuries caused. The respondents in the present case have moved an application for vacation of the interim order passed by this court. Along with the affidavit, he has filed the School Leaving Certificate. In the School Leaving Certificate his date of birth has been mentioned as 1.8.1980 in column No. 11. The date of accident is 19.4.1996. From this document also it appears that on 19.4.1996 he was about to complete 16th year. This being the position, the

finding of the court below cannot be said to be erroneous and it being a finding of fact cannot be interfered with. Now as the circumstances have been explained, these contentions raised by the learned counsel for the appellant are without substance and are rejected.

2. With reference to Appeal No. 4755 of 1997 another contention has been raised by Mr. Manikappa Patil that penalty has been imposed illegally and the imposition thereof is without jurisdiction. The appellants' counsel contended that the Commissioner had to apply his mind to the question whether the delay in payment was mala fide or intentional and it was without any justification. Mr. M. Patil referred to the Division Bench decision of this court in the case of N.A.K. Pathan Vs. Julekhabhi Pathan, . The language of this Sub-section (3) of Section 4-A reads as under:

Section 4-A(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 may direct that, in addition to the amount of the arrears, simple interest at the rate of six per cent per annum on the amount due together with, if in the opinion of the Commissioner there is no justification for the delay, a further sum not exceeding fifty per cent of such amount, shall be recovered from the employer by way of penalty.

The imposition of penalty is subject to the condition that the Commissioner must form an opinion that delay in making the payment has been without any justification therefor. Thereby meaning that penalty shall ordinarily be not imposed unless the Commissioner is of the opinion that failure to deposit the money has been deliberate act of defiance of law on the part of the employer or it was an act amounting to a guilt of conduct, contumacious or dishonest, or acted in conscious disregard of its obligation which tantamount to culpable negligence. The penalty has not to be imposed on the simple ground that it was liable to be deposited, but it has not been deposited. When I so observe, I find support for my view from Division Bench's decision of this court in the case of N.A.K. Pathan Vs. Julekhabhi Pathan, , referred to above where their Lordships observe in para 5 as under:

Second part of Section 4-A(3) deals with levy of penalty, which becomes imposable if in the opinion of the Commissioner there is no justification for the delay in paying the amount. The question of justification for the delay or the absence of it depend, at least partially, on factors subjective to the employer and will have to be decided after considering his case and his explanation.

An order imposing penalty for failure to carry out a statutory obligation, it is true, is in the nature of a quasi-criminal proceeding, and penalty may not be imposed unless the party obliged has either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. It is a matter of discretion of the authority to be exercised judicially and on a

consideration of all the relevant circumstances.

Sub-section (3) imposes the liability on the employer to deposit the compensation within a month from the date it fell due.

From what date the period of limitation has to be counted is another question. The period for deposit being made, i.e., one month period has to be counted from the date on which the compensation became due. Reading this section along with Sub-sections (1) and (2) it appears as Sub-section (1) only provides that compensation u/s 4 shall be paid as soon as it falls due. We have to read Section 4 in the context of other provisions in the Act to find out what is the date when it fell due as a principle of law. Section 3 of the Workmen's Compensation Act, 1923 provides that,

Section 3. Employer's liability for compensation.-(1) If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter.

It means the liability to the compensation will only arise if accident causing injury to the workman is shown to have occurred in the course of employment and has arisen out of employment. No doubt, what will be the compensation payable again Section 3 says, compensation in accordance with the provisions of this Chapter, means to be determined by the workmen's compensation officer in case of dispute of liability and the dispute of cause of action for the injury. The Section 4 of the Act provides the method of determination of compensation and what relevant factors have to be taken into consideration for determining the compensation. So, excluding those cases where the employer admits that the cause of injury, i.e., the accident has occurred or has taken place in course of and has arisen out of employment and admits the amount of compensation claimed, in all other cases, liability has to be fastened after adjudication of the matter and fixing of quantum of compensation to be paid. It means the amount of compensation in cases where there is a dispute of liability to pay will have to be paid only on the amount being determined by the Workmen's Compensation Commissioner. When I so observe, I find that in cases where liability is in dispute and quantum is in dispute, then from the date of decision and adjudication and passing of the award the amount shall become due and payable. In cases where the claim is admitted and not disputed, no doubt, liability may be said to have arisen from the date of settlement or admission of claim. A person is required to pay within one month from that date and if in such cases a person fails to pay beyond that period, he may be required to explain his failure to deposit. So, simply or merely because the amount of compensation has not been paid or delayed cannot be the ground for imposing the penalty. The penalty is imposable where there is a culpable negligence on the part of the employer in delaying the payment as explained by the Division Bench in the case referred to above. So, the Commissioner in all such cases is always required to look to the circumstances whether amount had become due in a particular case and if it has

become due, on what date it has become due and then he has to look whether delay is there or not and it is justified or not. Then only he can impose penalty. But, he must definitely give an opportunity to the parties to explain delay and in such case issues should always be framed by the Commissioner, whether there is delay, whether delay is for unjustifiable reasons. This having not been done in this case, it appears that the Workmen's Compensation Commissioner after recording how much compensation is payable, immediately passed one line order imposing penalty. This is not proper. As no finding has been recorded as to culpable negligence, penalty could not be imposed on the appellant.

Therefore, Appeal No. 308 of 1998 has to be allowed and award is modified only to this extent that the order imposing penalty on the appellant is set aside. Rest order regarding compensation and interest is maintained.

Thus considered, Appeal No. 308 of 1998 has been partly allowed by setting aside the order to the extent to which it imposes the penalty and maintaining the rest.

As regards Appeal No. 4755 of 1997, it is dismissed. I am informed that compensation amount with interest up to date has been deposited in this court. Let that amount be remitted to the Workmen's Compensation Commissioner for being disbursed and paid to the claimant.