(2017) 04 AHC CK 0031

In the Allahabad High Court

Case No : First Appeal From order Defective No. 542 of 2017

Office Of A.G.M., Transport Corporation — APPELLANT

Vs

Smt. Reena — RESPONDENT

Date of Decision : 12-04-2017

Acts Referred:

Employees Compensation Act, 1923 — Section 30

Citation : (2017) 4 AllLJ 15

Hon'ble Judges : Dilip Gupta and Prabhat Chandra Tripathi, JJ.

Bench : Division Bench

Advocate : Mritunjay Mohan Sahai, Advocate, for the Appellant; Nigamendra Shukla, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Dilip Gupta, J.—This First Appeal From Order has been filed under Section 30 (1) (a) of the Employees'' Compensation Act 19231 against the order dated 7 December 2016 passed by the Employees Compensation Commissioner and Deputy Commissioner, Labour Meerut Region, Meerut by which, compensation of Rs.7,18,960/has been awarded with interest at the rate of Rs.12% per annum w.e.f. 13 May 2011.

2. A preliminary objection has been raised by Sri Nigamendra Shukla, learned counsel appearing for the claimants respondents that the appeal is liable to be dismissed as the certificate enclosed with the appeal clearly mentions that the appellant has not deposited the entire amount payable under the order appealed against before the Commissioner, which is a mandatory requirement contained in the third proviso to Section 30 (1) of the Act.

3. Sri M.M. Sahai, learned counsel for the appellant has 1 the Act contended that the appellant was required to deposit the principal amount of compensation of Rs.7,18,960/only and the interest that has been awarded was not required to be deposited. The contention of the learned counsel for the appellant is that the

Commissioner has no jurisdiction to award interest w.e.f. 13 May 2011 in view of the decision of the Supreme Court in National Insurance Co. Ltd. v. Mubasir Ahmed and Another (2007) 2 Supreme Court Cases 349 The submission is that when the Commissioner could not have awarded any interest while determining the compensation to be paid under Section 4 A of the Act, the appeal would be maintainable even if the appellant has not deposited this amount before filing the appeal.

4. The certificate dated 23 March 2017 that has been issued by the Commissioner mentions that though the amount of Rs. 7,18,960/has been deposited on 15 March 2017 but the interest that was awarded at the rate of Rs.12% per annum w.e.f. 13 May 2011 has not been deposited.

5. The Court specifically asked learned counsel for the appellant as to whether the appellant is ready to deposit the interest amount but learned counsel for the appellant has stated that the Court may adjudicate on the issue since the appellant is not required to deposit the interest.

6. Learned counsel appearing for claimants respondents has, however, submitted that not only was the interest validly granted in view of the decision of the Supreme Court in Oriental Insurance Co. Ltd. v. Siby George and others 2012 LawSuit (SC) 470 but even otherwise, the second proviso to section 30 of the Act requires the appellant to deposit the entire amount payable under the order appealed against and as that has not been done, the appeal is liable to be dismissed on this ground alone.

7. We have considered the submissions advanced by the learned counsel for the parties.

8. Section 4A of the Act deals with compensation to be paid when due and penalty for default. Subsection (3) of Section 4 A provides that 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 shall

(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.

9. Thus, subsection 3(a) of Section 4A provides that interest and penalty payable

under subsection (3) shall be paid to the workman or his dependant, as the case may be. The Commissioner in the impugned order has directed for payment of compensation of Rs.7,18,960/and also interest at the rate of Rs.12% per annum w.e.f. 13 May 2011.

10. Section 30 of the Act provides as follows:

"30. Appeals—(1) An appeal shall lie to the High Court from the following orders of a Commissioner namely:(a) an order awarding as compensation a lump sum whether by way of redemption of a halfmonthly payment or otherwise or disallowing a claim in full or in part for a lump sum;

(a a) an order awarding interest or penalty under section 4A;

(b) an order refusing to allow redemption of a half monthly payment;

(c) an order providing for the distribution of compensation among the dependants of a deceased workman or disallowing any claim of a person alleging himself to be such dependant;

(d) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of subsection (2) of section 12; or

(e) an order refusing to register a memorandum of agreement or registering the same or providing for the registration of the same subject to conditions :

Provided that no appeal shall lie against any order unless a substantial question of law is involved in the appeal and, in the case of an order other than an order such as is referred to in clause (b) unless the amount in dispute in the appeal is not less than three hundred rupees:

Provided further that no appeal shall lie in any case in which the parties have agreed to abide by the decision of the Commissioner, or in which the order of the Commissioner gives effect to an agreement come to by the parties:

Provided further that no appeal by an employer under clause (a) shall lie unless the memorandum of appeal is accompanied by a certificate by the Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against.

(2) The period of limitation for an appeal under this section shall be sixty days.

(3) The provision of section 5 of the Limitation Act, 1963 (36 of 1963) shall be applicable to appeals under this section."

11. It is not in dispute that only the compensation amount was deposited by the appellant before the Commissioner. The interest that has been awarded has not been deposited.

12. The issue that arises for consideration is whether an appeal under Section 30 of the Act would be maintainable if the entire amount payable under the order

appealed against has not been deposited.

13. We reiterate that the sole contention of the appellant is that the award of interest is bad in law as the Commissioner did not have the jurisdiction to award the interest. This, in our opinion, is on the merits of the order appealed against. The third proviso to section 30 of the Act is very clear. It provides that no appeal by an employer shall lie unless the memorandum of appeal is accompanied by a certificate by the Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against.

14. It needs to be noted that the respondents have also placed reliance upon the decision of the Supreme Court in Oriental Insurance Co. Ltd. to contend that interest can be awarded by the Commissioner and the relevant paragraphs are as follows:

"4. Mr. Mehra, learned counsel appearing for the appellant, submitted that the learned Commissioner was wrong in directing for payment of interest from the date of the accident and any interest on the amount of compensation would be payable only from the date of the order of the Commissioner. In support of the submission, he relied upon a decision of this Court in National Insurance Co. Ltd. v. Mubasir Ahmed and Anr. (2007) 2 SCC 349, in which it was held that the compensation becomes due on the basis of the adjudication of the claim and hence, no interest can be levied prior to the date of the passing of the order determining the amount of compensation. In paragraph 9 of the decision the Court held and observed as follows:

"9.....In the instant case, the accident took place after the amendment and, therefore, the rate of 12% as fixed by the High Court cannot be faulted. But the period as fixed by it is wrong. The starting point is on completion of one month from the date on which it fell due. Obviously it cannot be the date of accident. Since no indication is there as to when it becomes due, it has to be taken to be the date of adjudication of the claim. This appears to be so because Section 4A (1) prescribes that compensation under Section 4 shall be paid as soon as it falls due. The compensation becomes due on the basis of adjudication of the claim made. The adjudication under Section 4 in some cases involves the assessment of loss of earning capacity by a qualified medical practitioner. Unless adjudication is done, question of compensation becoming due does not arise. The position becomes clearer on a reading of subsection (2) of Section 4A. It provides that provisional payment to the extent of admitted liability has to be made when employer does not accept the liability for compensation to the extent claimed. The crucial expression is "falls due". Significantly, legislature has not used the expression "from the date of accident". Unless there is an adjudication, the question of an amount falling due does not arise."

(emphasis added)

5. Learned counsel also invited our attention to another decision of the Court by which a number of appeals and special leave petitions were disposed of and

which is reported as Oriental Insurance Company Limited v. Mohd. Nasir and Anr. (2009) 6 SCC 280. In this decision the Court held that "there cannot be any doubt whatsoever that interest would be from the date of default and not from the date of award of compensation". It then went on to say that the Act does not prohibit grant of interest at a reasonable rate from the date of filing of the claim petition till an order is passed on it, adding that the higher, statutory rate of interest under subsection (3) of section 4 would be payable in a case that attracted that provision and for which "a finding of fact as envisaged therein has to be arrived at". The Court then referred to paragraph 9 of the decision in Mubasir Ahmad but declined to follow it observing that the earlier decision had not considered the aspect of the matter as was being viewed in the case of Mohd. Nasir. In Mohd. Nasir the Court finally directed for payment of interest at the rate of 7?% per annum from the date of filing the application till the date of the award, further observing that thereafter interest would be payable at the rate as directed in the order passed by the Commissioner.

7. It is, thus, to be seen that subsection (3) of section 4A is in two parts, separately dealing with interest and penalty in clauses (a) and (b) respectively. Clause (a) makes the levy of interest, with no option, in case of default in payment of compensation, without going into the question regarding the reasons for the default. Clause (b) provides for imposition of penalty in case, in the opinion of the Commissioner, there was no justification for the delay. Before imposing penalty, however, the Commissioner is required to give the employer a reasonable opportunity to show cause. On a plain reading of the provisions of subsection (3) it becomes clear that payment of interest is a consequence of default in payment without going into the reasons for the delay and it is only in case where the delay is without justification, the employer might also be held liable to penalty after giving him a show cause. Therefore, a finding to the effect that the delay in payment of the amount due was unjustified is required to be recorded only in case of imposition of penalty and no such finding is required in case of interest which is to be levied on default per se.

8. Now, coming back to the question when does the payment of compensation fall due and what would be the point for the commencement of interest, it may be noted that neither the decision in Mubasir Ahmed nor the one in Mohd. Nasir can be said to provide any valid guidelines because both the decisions were rendered in ignorance of earlier larger Bench decisions of this Court by which the issue was concluded. As early as in 1975 a four Judge Bench of this Court in Pratap Narain Singh Deo. v. Shrinivas Sabata and Anr., AIR 1976 SC 222 directly answered the question. In paragraphs 7 and 8 of the decision it was held and observed as follows:

"7. Section 3 of the Act deals with the employer''s liability for compensation. Subsection (1) of that section provides that the employer shall be liable to pay compensation if "personal injury is caused to a workman by accident arising out of and in the course of his employment." It was not the case of the employer that the right to compensation was taken away under subsection (5) of Section 3 because of the institution of a suit in a civil court for damages, in respect of the injury, against the employer or any other person. The employer therefore became liable to pay the compensation as soon as the aforesaid personal injury was caused to the workman by the accident which admittedly arose out of and in the course of the employment. It is therefore futile to contend that the compensation did not fall due until after the Commissioner''s order dated May 6, 1969 under Section 19. What the section provides is that if any question arises in any proceeding under the Act as to the liability of any person to pay compensation or as to the amount or duration of the compensation it shall, in default of agreement, be settled by the Commissioner. There is therefore nothing to justify the argument that the employer''s liability to pay compensation under Section 3, in respect of the injury, was suspended until after the settlement contemplated by Section 19. The appellant was thus liable to pay compensation as soon as the aforesaid personal injury was caused to the appellant, and there is no justification for the argument to the contrary."

15. The appellant cannot be permitted to contend that it is not required to deposit part of the amount under the impugned order merely because the appellant believes that the amount has been awarded contrary to the provisions of the Act.

16. Such being the position, when the appellant has not deposited before the Commissioner the entire amount payable under the order appealed against, the appeal would not be maintainable.

17. The First Appeal From Order is, accordingly, dismissed.

