(2018) 07 J&K CK 0077

In the Jammu And Kashmir High Court

Case No : Miscellaneous Appeal No.262 Of 2011

Om Parkash Nargotra @APPELLANT@Hash Musra Begum And Ors

Date of Decision : 21-07-2018

Acts Referred:
Limitation Act, 1963 — Section 5
Employees Compensation Act, 1923 — Section 4A, 21, 30, 30(1)(a), 30(1)(aa)

Citation : (2018) 07 J&K CK 0077

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

1 This appeal by the appellant-employer is directed against the award of the Commissioner,Â Employees Compensation Act (Assistant Labour

Commissioner) (for short â??Commissioner?) dated 12.03.2011 directing the appellant-employer to pay the awarded amountÂ along with interest to

respondent No.1.Â

2 Briefly stated, the facts which are relevant to the disposal of this appeal are that the son of respondent No.1 namely Gh. Hassan, who was

employed as labourer with the appellant, while unloading cement from the Truck fell down and suffered serious injuries to which he later on

succumbed in the Government Medical College Hospital Jammu on 18.12.1999. Respondent No.1, mother of the deceased, filed a claim petition under

Employees Compensation Act 1923 (for short â??Act?) before the Commissioner at Doda. It was claimed that the deceased at the time of his death

was unmarried and was being paid the wages of Rs.200/- per day. The age of the deceased was claimed to be 22/23 years. In response to the notice

issued by the Commissioner, the appellant appeared and filed written objections denying the contents ofÂ the claim petition filed by respondent No.1.

Respondent Nos. 2 and 3 despite having received summons failed to appear, therefore, set exparte. On the basis of the pleadings of the parties, the

Commissioner framed the following issues:

1 Whether the deceased Ghulam Hassan received personal injury arising out of and in the course of his employment with the non applicant No.1 on

08.12.1999 and as a result of which the deceased died on 18.12.1999 ?OPP

2 If so, what were the wages and age of the deceased at the time of accident and who are the dependents of the deceased ? OPP

3 To what compensation and from whom are the dependents entitled ?OPP

3 RespondentÂ No.1 in support of her claim, besides examining herself, examined Abdul Hamid, Mohd Iqbal, Khurshi Ahmed and Ved Raj. There

was, however, no evidence led by the appellant in rebuttal. On the basis of the evidence brought on record and in absence of any evidence in

rebuttalÂ by the appellant, the Commissioner found issue No.1 proved in favour of respondent No.1 and against the appellant. The Commissioner

found that respondent No.1 had fully established that the deceased had received personal injury culminatedÂ into his death which had arisen out of

and in the course of his employment with the appellant. The Commissioner also found that the charges which the deceased was receiving at the time

of accident were Rs.3000/- per month only. Taking the age of the deceased as 22 years, the Commissioner passed an award for a sum of

Rs.3,32,000/- under Section 4 read with Schedule IVÂ of the Act. The appellant was directed to deposit the awarded amount within a period of thirty

days from the date of announcement of the award along with interest to be calculated @ 12% per annum from the date after one month of the date of

accident till the date of deposit.Â

4 The appellant is aggrieved of the aforesaid award and has assailed the same, inter alia, on the ground that since the alleged accident had taken place

in Udhampur, therefore, the Commissioner, Doda had no jurisdiction to pass the award. In order to substantiate his contention, the appellant has relied

upon a copy of FIR registered with the concerned Police Station in Udhampur. The award has further been assailed on the ground that the

Commissioner had failed to appreciate that the evidence on record was not sufficient to conclude that the accident had actually happened as alleged in

the claim petition. The memo of appeal filed by the appellant is accompanied by requisite certificates issued by the Commissioner with regard to the

pre-deposit of awarded amount.

5 Learned counsel for the respondents has challenged the maintainability of the appeal on the ground that the appeal does not involve determination of

any substantial question of law and that the appellant has not made the pre-deposit before the Commissioner in accordance with the provisions of

Section 30 of the Act.

6 Having heard learned counsel for the parties and perused the record, I find that the appellant in its memo of appeal has not specifically formulated

substantial questions of law for determination of this Court. It is trite that an appeal under Section 30 of the Act would lie only if a substantial question

of law is involved in it.Â

7 Learned counsel for the appellant when confronted with the aforesaid position, submits that it is true that substantial questions of law should have

been formulated in the memo of appeal, but it does not preclude the Court to formulate the same at the time of final consideration of the matter. He,

thus, contends that in the given facts and circumstances of the case, there are more than one substantial questions of law for determination of this

Court.Â Learned counsel for the appellant may be correct in his submission.Â

8 This Court can always formulate substantial questions of law for determination at the time of hearing of the appeal provided the same arise out of

the controversy involved in it. After having gone through the grounds of challenge taken byÂ the appellant in the appeal and considering the

objections to the maintainability raised by counsel for respondent No.1, I am of the considered view that the appeal involves determination of following

substantial questions of law:

1. Whether an employer is bound to deposit the interest portion of the amount payable under the impugned award as a condition pre-requisite to

maintain the appeal under Section 30 of the Act ?

2. Whether the findings of fact returned by the Commissioner suffer from perversity ?

9 Question No.1 has assumed importance in view of the specific objection taken by respondent No.1 to the maintainability of the appeal. With a view

to appreciate the rival contentions addressed on the issue, it would be necessary to first set out the provisions of Section 30 of the Act.

â??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 half- monthly payment or otherwise or disallowing a claim in

full or in part for a lump sum;

(aa)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 sub- section (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:Â

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 againstâ??

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

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

10 From a reading ofÂ Section 30 of the Act, it is clear thatÂ it provides for an appeal against certain categories of orders passed by the

Commissioner. Under Section 30(1) (a) of the Act, appeal lies against an order awarding lump sum compensation, whereas under Section 30(1)(aa) of

the Act inserted by Section 15 of the Act 8 of 1959, appeal also lies against an order awarding interest or penalty under Section 4 A of the Act. The

third proviso to sub section 1 of Section 30 of the Act stipulates that no appeal by an employer under clause (a) shall lie unless the memo of appeal is

accompanied by a certificate of the Commissioner to the effect that appellant has deposited the amount payable under the order appealed against. The

key words used in the third proviso are â??amount payable under the order appealed againstâ?. It is, thus, evident that if an appeal is preferred

against an order awarding compensation in lump sum which is referable to clause (a), the awarded amount is required to be deposited with the

Commissioner and not the interest or penalty awarded under Section 4 A. In case of a composite appeal against an order awarding compensation

under Section 4 and an order awarding interest or penalty under Section 4 A, the employer is obliged to annex with theÂ memo of appeal a certificate

by the Commissioner to the effect that he has deposited the amount payable under the order awarding compensation. The composite appeal aforesaid

is, thus, required to be split into two parts, one where the challenge is to the award of compensation under Section 4 and, second where the challenge

is only to the award of interest or penalty under Section 4 A.Â

11 As is evident from the third proviso, no pre-deposit is required to be made before the Commissioner for filing an appeal against the award of

interest or penalty under Section 4 A. A fortiori, for maintaining an appeal against the award of compensation under clause (a), the pre-deposit

required to be made is only of the compensation awarded under Section 4 of the Act which would not include any sum awarded as interest or penalty

under Section 4 A. Before I proceed further, it would be apposite to take note of Section 4 A as well which reads thus:

â??4A. Compensation to be paid when due and penalty for default.-Â (1) Compensation under section 4 shall be paid as soon as it falls due.Â

(2) In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment

based on the extent of liability which he accepts, and, such payment shall be deposited with the Commissioner or made to the [employee], as the case

may be, without prejudice to the right of the*[employee] to make any further claim.Â

(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

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; andÂ

(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:

Â 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.Â

Â Explanation.--For the purposes of this sub-section, ""scheduled bank"" means a bank for the time being included in the Second Schedule to the

Reserve Bank of India Act, 1934 (2 of 1934). Â

(3A) The interest and the penalty payable under sub-section (3) shall be paid to the [employee] or his dependant, as the case may beâ??.

12 Under Section 4, the compensation payable is to be computed by reference to Schedule 1. The Section per se does not provide for award of any

interest. The interest, however, is awarded under Section 4 A and it can be awarded only where the employer is in default in paying the compensation

due under the Act within one month from the date it fell due. The CommissionerÂ is required to determine the date when the compensation became

due and if the Commissioner finds that there is default on the part of employer to pay the compensation within one month from such date, he/she shall

direct the employer to pay simple interest on the amount of compensation @ 12% per annum or at such higher rate not exceeding the maximum of the

lending rates of any scheduled Bank.

13.Â From the conjoint reading of Section 4 and Section 4 A, it would transpire that former provides for payment of compensation, whereas the latter

provides for payment of interest in the case of default on the part of employer to pay the compensation within one month from the date it falls due.Â

14 The view which I have taken is supported by a Division Bench judgment of High Court of KarnatakaÂ rendered in the case of Kap Steel Ltd vs

R. Sasikala,Â Â 1990 ACJ 913.Â The Division Bench in the aforesaid case while dealing with the same question in paragraph Nos. 5 and 6 held

thus:

â??5. As far as the second question is concerned, the learned Counsel for the appellant contends that the condition precedent prescribed under the

third proviso to sub-section (1) ofS. 30of the Act applies only to an appeal falling under Clause (a) ofS. 30(1)of the Act and therefore the condition

precedent of depositing the amount before preferring an appeal applies only to the amount of compensation awarded and not to an appeal falling

underS. 30(1)(aa)of the Act, which provides for an appeal against the order passed imposing interest or penalty underS. 4Aof the Act. He submitted

that in the present case, actually the appellant had deposited the amount of compensation even when the proceedings were pending before the

Workmen's Compensation Commissioner, but as the appellant was required to deposit the amount within 30 days from the date of accident and it was

deposited after about 11 months, interest and penalty had been imposed underS. 4Aof the Act and whatever that may be, as the entire amount of

compensation payable had been deposited by the appellant before the Workmen's Compensation Commissioner, there is no question of the appellant

depositing the amount of compensation before preferring this appeal.

6. The learned counsel for the appellant is right in his submission that as the appeal preferred was only against the interest and penalty imposed

underS. 4Aof the Act, the condition of depositing the amount prescribed under the third proviso toS. 30(1)of the Act was not attracted as this appeal

does not fall under Clause (a) ofS. 30(1)but falls under Clause (aa) of the said section. In the result, we answer the second question as follows :

Depositing of the amount of interest or penalty imposed underS. 4Aof the Act in addition to the compensation awarded or otherwise is not a condition

for preferring an appeal underS. 30(1)of the Actâ??.

15 To the similar effect is the judgment rendered by the OrissaÂ High Court in the case of Ramakant Rout alias Routray vs Prafulla Kumar Dass

and anr, 1993 ACJ 496. Orissa High Court in the said case while dilating on the issue in paragraph 7 held as under:

â??7. A situation may arise, as in this case, where the award is composite being one underSection 30(1)(a)andSection 30(1)(aa)of the Act. In such a

case, if the appellant confines himself to the imposition of penalty only, no certificate would be necessary. If, however, the entire award on both the

grounds would be assailed, a certificate relating to the amount which is the compensation underSection 30(1)(a)of the Act would be required and no

certificate for the amount of penalty would be necessary. Where the Commissioner, who passed the award, does not accept partial payment to grant

certificate or refuses to grant a certificate, this Court can be moved in the pending appeal in respect of the same and appropriate direction can be

issued to the Commissioner in the event the assertions are accepted.

In this case, Mr. Dash confines the appeal to the imposition of penalty only. Accordingly, no certificate is required to be furnished in order to comply

with the requirement of the third proviso toSection 30(1)of the Actâ??.

16 Similar is the view taken by the High Court of Allahabad in the case of Sasa EnterprisesÂ vsÂ Pramod kumar,Â 1983 ACJ 677. While

explaining the scope of Section 30 vis-Ã -vis pre-deposit required to be made before the Commissioner for maintaining the appeal, the Allahabad High

Court observed as under:

â??13. The only remaining objection of the opposite party, however is not well founded. The order under appeal, required payment of Rs. 9,450 as

lump sum compensation and Rs. 200 as costs. Apart from this six per cent interest has been awarded on the amount of compensation from the date of

order till the date of its payment. A perusal of proviso 3 will show that the condition precedent for payment applies only in respect of that part of the

order which comes under Clause (a) ofSection 30(1)and not to that part which may fall under sub-Clause (aa). Claim for compensation is awardable

underSection 4of the Act.Section 4-Arequires that the compensation payable underSection 4has to be paid as soon as it falls due. Sub-Clause (3)

thereof authorises the Commissioner to award interest at the rate of six per cent if compensation was not paid within one month of its becoming due.

The claim for interest, therefore, stands entirely on a different footing than the claim for compensation itself. The third proviso, therefore, only requires

payment of such amount only as may have been awarded by way of compensation in a lump sum. But it does not include the amount which is payable

by way of interest over it. It also does not include the amount of costs that may be awarded by the Commissioner for which a separate provision is to

be found inSection 26of the Act. For strict compliance to the third proviso toSection 30(1)only that amount need be deposited as has been awarded

within the meaning of sub-Clause (a) of the section. In my opinion, therefore the amount of Rs. 9,650 deposited by the applicant was sufficient

compliance and it cannot be urged that the amount deposited was in any way deficientâ??.

17 I am aware that there are contrary judgments by the different High Courts on the issue i.eÂ Judgement rendered by the Madras High Court in the

case ofÂ Â Â Â Â Â Â Â Â Â Â Â H. Chimanlal Jain vs E. Ranganathan and ors, 2015 ACJ 1086 and Judgment rendered by the High Court of

Kerala in the case of New India Assurance Co. Ltd vs Biju, 2012 ACJ 975 which the learned counsel for the respondents has cited before me.

However, in view of unequivocal language of Section 30 of the Act and for the reasons I have given hereinabove, I am not inclined to follow the

aforesaid judgments on the issue.Â

18 In view of the aforesaid discussion, I am in full agreement with the learned counsel for the appellant that an appeal under Section 30(1)(a) against

an order awarding compensation is maintainable only if the same is accompanied by a certificate issued by the Commissioner to the extent that the

amount due under the award passed under Section 4 of the Act has been deposited with the Commissioner and in case of an appeal against the award

which is composite being one appealable under Sections 30 (1)(a) and 30 (1)(aa) of the Act, the appellant would only be required to make pre-deposit

of the amount payable under Section 4 and referable to Section 30 (1)(a). The first substantial question of law formulated above is answered

accordingly.Â

19 The second question pertains to the perversity in appreciating the evidence on record. I have gone through the record and evidence that has come

on record. The Tribunal has correctly appreciated the evidence and has found that the deceased while being under the employment of the appellant

suffered multiple injuries to which he later on succumbed in the Government Medical College Hospital Jammu. It has amply come in the evidence that the deceased was working as a labourer with the appellant and was receiving Rs. 200/- per day as wages. There is no contrary evidence brought on

record by the appellant to prove otherwise. The statements of aforesaid four witnesses examined on behalf of respondent No.1 are categoric and in

tandem with one another. In that view of the matter, the contention of learned counsel for the appellant that the findings of fact returned by the

Commissioner are perverse is totally misconceived. As a matter of fact, the aforesaid question does not arise for adjudication at all. The

Commissioner is the final authority on facts.Â

20 Before parting with this judgment, it would be unfair on my part if the argument raised by learned counsel for the appellant with regard to the

jurisdiction of the Commissioner concerned is not dealt with.Â

21 Section 21 of the Act deals with the venue of proceedings and provides that the claim petition would lie before the Commissioner within whose

jurisdiction the accident takes place which results in the injury or the workman or in case of his death, the dependent claiming compensation ordinarily

resides or the employer has his registered office. It is, thus, obvious that in case of death of a workman, the claim on behalf of the dependent would lie

before the Commissioner having jurisdiction in the area where such dependent ordinarily resides.Â

22 In the instant case, the dependent resides in Doda and, therefore, rightly approached the Commissioner, Employees Compensation Act, Doda. The

proviso to sub section (1) of Section 21 of the Act which is pressed into service by the learned counsel for the appellant is also of no help to the

appellant for the reason that the award passed by the Commissioner other than the Commissioner having the jurisdiction over the area in which the

accident has taken place, without his giving notice to the Commissioner having the jurisdiction over the area and the State Government concerned

would not render the award passed by such Commissioner null and void or without jurisdiction. The violation of the proviso, if there be any, is only

procedural and does not affect the jurisdiction of the Commissioner to entertain the claim petition on behalf of the dependent of the deceased

workman who claims to be residing in the area of jurisdiction of such Commissioner. The proviso is enacted only to avoid duplicity of claim. It is not

the case of the appellant that respondents had filed more than one claim petition before the Commission.Â

23 For the reasons aforementioned, I find no merit in this appeal. The same is, therefore, dismissed.Â Â

