(2017) 02 GUJ CK 0164

In the Gujarat High Court

Case No : 3298 of 2011; 11249 of 2011

ORIENTAL INSURANCE CO. LTD. Vs DEPENDANTS OF DECD. GULABBHAI BABUBHAI BABUBHAI?RAMESHBHAI & ORS.

Date of Decision : 16-02-2017

Acts Referred:

Workmens Compensation Act, 1923, Section 4A(3) - Compensation to be paid when due and penalty for default

Citation : (2017) 02 GUJ CK 0164

Hon'ble Judges : A G Uraizee

Bench : Single Bench

Advocate : Anal S Shah, M B Parikh

Final Decision : Dismissed

Judgement

1. The question which arose for consideration, in this appeal is whether under Section 4A(3) of a Workmen''s Compensation Act, 1923 is payable if there is a default in paying the compensation within one month from the date it fell due or from the date of the amount of compensation is determined by the Commissioner?

2. The above question arises in the backdrop of the facts that deceased Gulabbhai Babubhai who was the son of respondents Nos. 1 and 2, and was working as a ''Cleaner'' on the Truck bearing registration No. GJ143356 owned by respondent No. 1 herein. The deceased died due to drowning in a canal on 28.04.2001 while coming back from Sangli to Vijpadi during the course of his employment as a ''Cleaner''. Respondents Nos. 1 and 2, therefore, filed W.C. (Fatal) Application No. 3 of 2005 before the Commissioner for Employee''s Compensation, Act, Amreli to recover an amount of Rs.2,50,000/along with interest from respondent No. 3 and the appellant - Insurance Company. The Commissioner by the impugned judgment and order dated 01.10.2010 directed the appellant - Insurance Company and respondent No. 3 to pay a sum of Rs.2,94,935/along with 12% interest from the date of the death of the deceased employee till the amount of compensation so deposited, jointly and severally.

Respondent No. 3 was also directed to deposit the amount of penalty at 2% of the amount of compensation. The appellant - Insurance Company has assailed the impugned judgment and order of the Commissioner on the limited question of liability of payment of interest from the date of the death of the deceased employee.

3. I have heard Mr. Anal S. Shah, learned advocate for the appellant - Insurance Company and Mr. M.B. Parikh, learned advocate for respondents Nos. 1 and 2. There is no representative on behalf of respondent No. 3, despite service of notice.

4. Mr. Ananl S. Shah, learned advocate for the appellant - Insurance Company relying on the decisions of the Apex Court in the case of National Insurance Co. Ltd., v. Mubasir Ahmed and Anr., reported in (2007) 2 SCC 349 and in the case of Palraj v. Divisional Controller, North East Karnataka Road Transport Corporation reported in (2010) 10 SCC 347, submits that the Commissioner has committed error in awarding the interest from the date of the death of the deceased employee. He submits that the Commissioner ought to have awarded the interest to be paid within a period of one month from the date when the compensation was determined. Therefore, he urges that the appeal may be allowed and the the impugned judgment and order may be modified and the the appellant - Insurance Company may be held liable to pay interest from the date the compensation is determined.

5. As against that Mr. M.B. Parikh, learned advocate for respondents Nos. 1 and 2 has supported the impugned judgment and award of the Commissioner and relying upon the decision of the Apex Court in the case of Oriental Insurance Company Limited v. Siby George and Ors., reported in (2012) 12 SCC 540, submits that the decisions relied upon by Mr. Shah, learned advocate for the appellant - Insurance Company are held to be per incuriam and the Commissioner has not committed any error in awarding the interest from the date of the death of the deceased employee. He, therefore, urges that the appeal may be dismissed.

6. The question raised as regards staring point for the payment of interest on the awarded compensation is now no more res integra in view of the decision of the Apex Court in the case of Siby George (Supra), more particularly , paragraphs 8 to 12, wherein it is observed as under :" 8. 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 .

9. 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.

8. It was the duty of the appellant, under Section 4A(1) of the Act, to pay the compensation at the rate provided by Section 4 as soon as the personal injury was caused to the respondent. He failed to do so. What is worse, he did not even make a provisional payment under subsection (2) of Section 4 for, as has been stated, he went to the extent of taking the false pleas that the respondent was a casual contractor and that the accident occurred solely because of his negligence. Then there is the further fact that he paid no heed to the respondent''s personal approach for obtaining the compensation. It will be recalled that the respondent was driven to the necessity of making an application

to the Commissioner for settling the claim, and even there the appellant raised a frivolous objection as to the jurisdiction of the Commissioner and prevailed on the respondent to file a memorandum of agreement settling the claim for a sum which was so grossly inadequate that it was rejected by the Commissioner. In these facts and circumstances, we have no doubt that the Commissioner was fully justified in making an order for the payment of interest and the penalty." (emphasis supplied).

10. The matter once again came up before the Court when by amendments introduced in the Act by Act No. 30 of 1995 the amount of compensation and the rate of interest were increased with effect from 15.9.1995. The question arose whether the increased amount of compensation and the rate of interest would apply also to cases in which the accident took place before 15.9.1995. A three Judge Bench of the Court in Kerala State Electricity Board v. Valsala K., AIR 1999 SC 3502 answered the question in the negative holding, on the authority of Pratap Narain Singh Deo, that the payment of compensation fell due on the date of the accident. In paragraphs 1, 2, and 3 of the decision the Court observed as follows:

"1. The neat question involved in these special leave petitions is whether the amendment of Ss.4 and 4A of the Workmen''s Compensation Act, 1923, made by Act No.30 of 1995 with effect from 1591995, enhancing the amount of compensation and rate of interest, would be attracted to cases where the claims in respect of death or permanent disablement resulting from an accident caused during the course of employment, took place prior to 1591995?

2. Various High Courts in the country, while dealing with the claim for compensation under the Workmen''s Compensation Act have uniformly taken the view that the relevant date for determining the rights and liabilities of the parties is the date of the accident.

3. A four Judge Bench of this Court in Pratap Narain Singh Deo v. Srinivas Sabata, (1976) 1 SCC 289 : (AIR 1976 SC 222: 1976 Lab IC 222) speaking through Singhal, J. has held that an employer becomes liable to pay compensation as soon as the personal injury is caused to the workmen by the accident which arose out of and in the course of employment. Thus, the relevant date for determination of the rate of compensation is the date of the accident and not the date of adjudication of the claim".

11. The Court then referred to a Full Bench decision of the Kerala High Court in United India Insurance Co. Ltd. v. Alavi, 1998(1) Ker LT 951 (FB) and approved it insofar as it followed the decision in Pratap Narain Singh Deo.

12. The decisions in Pratap Narain Singh Deo was by a four Judge Bench and in Valsala by a three Judge Bench of this Court. Both the decisions were, thus, fully binding on the Court in Mubasir Ahmed and Mohd. Nasir, each of which was heard by two Judges. But the earlier decisions in Pratap Narain Singh Deo and Valsala were not brought to the notice of the Court in the two later decisions in

Mubasir Ahmed and Mohd. Nasir.

13. In light of the decisions in Pratap Narain Singh Deo and Valsala, it is not open to contend that the payment of compensation would fall due only after the Commissioner''s order or with reference to the date on which the claim application is made. The decisions in Mubasir Ahmed and Mohd. Nasir insofar as they took a contrary view to the earlier decisions in Pratap Narain Singh Deo and Valsala do not express the correct view and do not make binding precedents. "

7. It is, thus, clear from the above extract that the decisions of the Apex Court in the case of Mubasir Ahmed (Supra) and in the case of Palraj (Supra) are held to be not expressing the correct view. Therefore, the contention of Mr. Anal S. Shah, learned advocate for the appellant - Insurance Company that the payment of interest would fall due only after the amount of compensation is determined by the Commissioner cannot be accepted. In my opinion, therefore, in view of the decision of the Apex Court in the case of Siby George (Supra), the Commissioner has not committed any error directing the appellant - Insurance Company to pay the interest on the awarded compensation from the date of the accident.

8. For the foregoing reasons, in my opinion, the appeal lacks merit. The judgment and order of the Commissioner does not warrant interference in this appeal and it does not suffer from any illegality.

9. The appeal, therefore, fails and is hereby dismissed.

10. The parties are left to bear their own costs.

11. Records and Proceedings be transmitted to the trial Court forthwith.

12. Adinterim relief if any, stands vacated.

13. The Commissioner is directed to disburse the amount of compensation which is deposited with it in terms of the impugned judgment and order in favour of respondents Nos. 1 and 2.

