
(2017) 01 AHC CK 0111

In the Allahabad High Court

Case No : First Appeal From Order No. 1613 of 2005

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Smt. Praveen

RESPONDENT

Date of Decision : 31-01-2017

Acts Referred:

Workmens Compensation Act, 1923 — Section 23, Section 3, Section 4

Citation : (2017) 4 ADJ 156

Hon'ble Judges : Dr. Kaushal Jayendra Thaker, J.

Bench : Single Bench

Advocate : Nagendra Kr. Srivastava, Advocate, for the Appellant; N. Shukla, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Dr. Kaushal Jayendra Thaker, J.—By way of this appeal, though, this appeal is listed on the board for orders, no purpose will be served in rotating the matter. Therefore, with the consent of the learned counsels for parties namely appellant Sri Nigamendra Kumar Srivastava and Sri Siddhartha Shukla for the respondents, the matter is taken for final hearing.

2. The main plank of challenge by the Insurance Company is the question whether T.D.S. can be deducted from the payment or not may be decided at the time of hearing of appeal. However, this is the only issue, which can be urged though in the memo of appeal. Several grounds, namely, age of diseased, quantum of income are already taken but when it was pointed out to the learned counsel that the same is now covered by the decision of Smt. Sarla Verma and others v. Delhi Transport Corporation and another, JT 2009(6) SC 459. He has said the other submission cannot be counted as the income has been proved and therefore, the said submission is rejected.

3. The claimants' petition was dismissed in default. Later on during the interrogating period interest could not have been awarded and the Insurance

Company could not have been saddled with the liability to pay interest. As per the provisions of Section 4(a) of the Workmen Compensation Act as interest would accrue only once the Tribunal quantifies the amount. However, the matter came to be admitted. Hence, the decision of the Apex Court in the case of Re. P.J. Narainan v. Union of India and others, 2004 ACJ 452 was invoked and the rate of interest has also been granted exorbitantly, which could not have been granted. All these three issues are no longer res-integra. As the later decision of the Apex Court in the case of Oriental Insurance Company Limited v. SIBY George & Others 2012 Law Suit (SC) 470, which is a later decision than the decision on which reliance is placed by the counsel for the appellant. However, the Apex Court has not considered the decision in paragraph 12 of the decision, which reads as follows:-

(12)"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."

4. Hence, there is no merit in the appeal and is dismissed. The question whether TDS can be deducted from the payment or not is also no longer res-integra and covered by the decision of the Apex Court that TDS cannot be deducted by the employer.

5. Hence, this appeal is failed and is dismissed.