(2020) 09 J&K CK 0001

In the Jammu And Kashmir High Court

Case No : Miscellaneous Appeal No. 130 Of 2009

Oriental Insurance Company Ltd — APPELLANT

Vs

Kulwant Kour And Others — RESPONDENT

Date of Decision : 01-09-2020

Acts Referred:
Employees Compensation Act, 1923 — Section 4(A)(3)(a), 30

Citation : (2020) 09 J&K CK 0001

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : R.K.Jain

Final Decision : Dismissed

Judgement

Sanjeev Kumar, J

1. This is an appeal under Section 30 of Employees' Compensation Act, 1923 (hereinafter referred to as the 'Act') filed by the Oriental Insurance Company Ltd. ['insurer'] to assail the award dated 15.12.2008 passed by the Commissioner, Employees' Compensation Act (ALC), Jammu (hereinafter referred to as the 'Commissioner') in file No. 31-WC Act/2006 titled 'Kulwant Kour and others vs. Ram Singh and others, whereby respondent Nos. 1 to 3 ['claimants'] have been held entitled to a compensation of Rs.4,04,160/- alongwith interest @ 12% per annum, to be calculated w.e.f 30.03.2006 i.e date of death of the deceased till passing of the award.

2. The impugned award has been challenged primarily on the ground that the Commissioner is not competent to award interest on the awarded amount under Section 4-A (3)(a) of the Act and that the award impugned passed by the Commissioner is perverse and in violation of the settled law.

3. This appeal was admitted to hearing by this Court vide order dated 24th July, 2013 on the following substantial questions of law:

(i) Whether the Commissioner, Workmen's Compensation Act, 1923 is competent to award interest against the appellant company under Section 4-A(3)(a) of the Workmen's Compensation Act, while passing the award ?

(ii) Whether the award impugned passed by the Commissioner Workmen's Compensation Act is perverse in the eyes of law and has been passed in violation of law laid down by the Apex Court ?

4. Heard Mr. Jain, learned counsel appearing for the insurer on the aforesaid questions of law.

5. So far as question No.(i) is concerned, the issue raised with regard to the jurisdiction of the Commissioner under the Act to award interest is no longer res integra.

6. This Court has considered the issue in the case of National Insurance Company Limited v. Dheeraj Singh and another (MA No.140/2013 decided on 07.08.2020), wherein it has been authoritatively held that the minimum statutory interest that can be awarded under Section 4-A (3) (a) of the Act is 12% and the Commissioner has no discretion in the matter. For facility of reference, the observations of this Court made in paragraph Nos.18, 19 & 20 are reproduced herein:-

"18 From a plain reading of clause (a) of sub section 3 of Section 4 A, it is manifestly clear that if an employer commits a default in paying the compensation due under this act within one month from the date it fell due, the Commissioner shall direct that employer shall, in addition to the amount of arrears, pay simple interest thereon at the rate of 12% 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. It is, thus, evident that the Commissioner has been put under mandatory duty to compensate the employee by payment of interest which should not be less than 12% per annum. The rate of interest, however, could be higher than 12%, but the same should not exceed the maximum of the lending rates of any scheduled bank. This is what the expression "such higher rate" unequivocally conveys.

19. A careful reading of clause (a) of sub section 3 of Section 4-A of the Act leaves no manner of doubt that grant of interest at the rate of 12% per annum is the minimum that must be granted by the Commissioner. The Commissioner, however, may grant interest at a rate higher than 12%, but the same must not be exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government by a notification in the official Gazette.

20. It is also trite and as is held by this Court in Ghulam Mohd vs Divisional Manager, SFC Doda, (MA 576/2010), decided on 12.03.2020, the amount of compensation falls due after one month from the date of accident and in case the employer fails in paying the compensation within 30 days from the date it falls

due, he will have to pay the same along with interest. This answers question No.3 as well."

7. Regarding question No.2, learned counsel appearing for the insurer could not, by reference to any finding returned by the Commissioner, demonstrate that the award impugned suffers from any perversity.

8. Despite having been asked to point out specific perversity in the findings of fact returned by the Commissioner, Mr. Jain, learned counsel for the insurer could not indicate specifically as to where the Tribunal has gone so drastically wrong as to term its award perverse in law.

9. In view of the aforesaid, I find no merit in this appeal. The same is, accordingly, dismissed.

