(1985) 08 AP CK 0009

In the Andhra Pradesh High Court

Patalapati Venkatanarasayyamma APPELLANT

Vs

Susarla Subbalaxmi RESPONDENT

Date of Decision : 08-08-1985

Acts Referred:
Employees Compensation Act, 1923 — Section 10A, 19, 3, 4, 4A
Interest Act, 1978 — Section 4

Citation : (1987) 1 ACC 97 : (1986) ACJ 526

Hon'ble Judges : K. Ramaswamy, J

Bench : Single Bench

Judgement

K. Ramaswamy, J.—The appellant is the employer. The Commissioner for Workmen''s Compensation, under Sections 3 and 4-A of the Workmen''s Compensation Act, 1923 (Act VIII of 1923), for short ''the Act'' directed the appellant to pay to the respondent?widow of the employee Narayana Rao, Rs. 7,000/- towards compensation and Rs. 3,115/- as interest at 6% per annum thereon from 22-2-1973 till the date of order. This appeal is directed against the said order.

2. It is contended that the deceased Narayana Rao is not an employee but a casual worker on daily wages of Rs. 3/- and therefore he is not entitled to any compensation at all. Alternatively, it is pleaded that the direction to pay interest from the date of the death of the deceased is illegal. By operation of Section 10-A read with Section 4-A(3) of the Act, the liability to pay interest arises only on quantification of the compensation by the Commissioner and a month''s notice of demand is to be given and if it is not paid, interest is to be levied thereafter. Therefore till that date the liability to pay interest does not arise.

3. The question that arises for consideration is whether the deceased Narayana Rao was a workman under the appellant and whether he was earning a salary of Rs. 125/- per month as determined by the Commissioner or he is a casual worker being paid at Rs. 3/- per day. After consideration of the entire evidence placed by both parties, the Commissioner held as a fact that Narayana Rao, the

deceased-cleaner in APS 772 was a workman under the appellant and that he was drawing a salary of Rs. 125/- per month on the date of his death i.e., 22-1-1973. He died out of an accident arising out of and during the course of his employment. In terms of Schedule IV, the total compensation payable to the respondent is Rs. 7,000/-. These findings are based on consideration of material evidence. It warrants no interference. It is accordingly confirmed.

4. The more serious disputation centres round the dates on which the liability arises to pay compensation and interest for the default thereof. It is contended that on a conjoint reading of Sections 3, 4-A(3) and 10-A, it would be clear that the liability arises only after the quantification of the compensation and the failure to pay the same within one month from the date of notice given by the Commissioner and not until then. In support thereof, he relied upon K. Chandramma v. Hindustan Construction Company Ltd. 1971 Lab IC 135.

5. Section 3(1) of the Act adumbrates that if personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of Chapter II. (The other Sub-sections are unnecessary. Hence omitted).

Section 4 of the Act declares that:

(1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely-

(a) Where death results from the injury and the deceased workman-has been in receipt of monthly wages falling within limits shown in the first column of Schedule IV-the amount shown against such limits in the second column thereof....

(Other Sub-clauses are not necessary. Hence omitted).

Section 4-A of the Act specifies that:

(1) Compensation u/s 4 shall be paid as soon as it falls due;

(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 workman, as the case may be, without prejudice to the right of the workman to make any further claim;

(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 may direct that, in addition to the amount of the arrears, simple interest at the rate of six per cent per annum, on the amount due together with, if in the opinion of the Commissioner there is no justification for the delay, a further sum not exceeding fifty per cent, of such amount shall be recovered from the employer by way of penalty.

(Emphasis supplied)

6. It is thus seen that Section 3 imposes a statutory liability to pay compensation and Section 4(1)(a) specifies the amount of compensation i.e. where the death results from the injury caused by an accident to a workman arising out of and during the course of his employment and the deceased workman has been in receipt of monthly wages falling within limits shown in the first column of Schedule IV and the total amount shown against such limits prescribed in the second column thereof; Section 4-A(1) amplifies that the compensation shall bs paid as soon as it falls due. The question, therefore, is when it falls due. Tae conjoint reading of all the above provisions postulates in unmistakable terms that as soon as the death occurs as a result of the injury sustained by the deceased workman arising out of and in the course of his employment and, if the workman is a monthly wags earner, he is entitled to receive the amount specified in column 2 of Schedule IV. Thereby it is clear that the date of injury or death is the starting period. u/s 4-A(2) the employer shall voluntarily pay the same. On his committing default within one month, Section 4-A(3) comes into play and the Commissioner, on his satisfying that there is no justification for the delay, may direct him to pay simple interest at six per cent per annum. In case of disputes, the Commissioner is empowered to enquire into and determine the liability. Legislative intent would manifest that the liability is coextensive with the injury to or death of the workman arising out of and during the course of his employment.

7. The contention of the learned Counsel for the appellant is that unless the quantification is made and one month time is given for payment in terms of Section 10-A, there it no duty cast on the employer to pay compensation. I am afraid, I cannot accede to this contention. The statutory animation and effect has already been seen above and needs no reiteration. Section 10-A is only a machinery provision but the operation of Section 4-A is not postponed till date of determination by the Commissioner. The appellant disputed the very employment of the deceased and the wages paid to him. Therefore, the Tribunal below was constrained to determine the compensation. Since the appellant committed default in payment of wages as enjoined u/s 4-A(3) the Commissioner directed the appellant, in addition to the amount of arrears, to pay statutory simple interest at the rate of six per cent per annum on the amount due. Even in Section 4-A(3), the language used is "in addition to the amount of arrears, simple interest at the rate of six per cent per annum on the amount due." In Pratap Narain Singh Deo Vs. Srinivas Sabata and Another, , their Lordships of the Supreme Court while considering the same question, held:

The employer becomes 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 u/s 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 u/s 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.

It is true, as contended by the learned Counsel, that this case relates to an injury. The principle is the same whether it relales to the injury or death. No fine distinction can be drawn as was attempted by the learned Counsel. In fact in this case, it was held that the Commissioner was fully justified in making an order for the payment of interest and the penalty from the date of injury to the employee. I respectfully follow the same.

8. Similar question was raised before a Division Bench in Jayamma Vs. Executive Engineer, P.W.D., , in a different form. That was also a case resulting in death. It was contended, similarly here, that the liability does not arise until after the Commissioner determines the compensation and till expiry of one month from the date of notice. While replying to that contention, the Bench has laid down thus:

Section 4(1) of the Act provides for compensation payable to workmen who have suffered different injuries. Section 4-A(1) provides that the compensation prescribed u/s 4 of the Act shall be paid as soon as it falls due. The last words "as soon as it falls due" u/s 4-A(1) evidently indicated that in the case of death of a workman it falls due upon his death and not on the date on which the Commissioner determines it in case of any dispute.

9. I respectfully agree with the above ratio. The decision relied upon by the learned Counsel, no doubt, supports his contention, but in view of the law laid down by the Supreme Court to which I am bound by, I am unable to follow the ratio in K Chandramma''s case 1971 Lab IC 135. In my view, the ratio laid down there is no longer good law.

10. It is next contended that Section 110-CC of the Motor Vehicles Act, 1939, gives discretion to the Tribunal to award interest in addition to the amount of compensation payable at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf. Similarly Section 4 of the Interest Act of 1978. But the legislature under the Act gives no such discretion to the Commissioner to fix interest either from the date on which the claim was allowed or the date on which the compensation is determined but the date on which the injury was caused or death has occurred. Therefore the analogy of Section 110-CC of the Motor Vehicles Act or Section 4 of the Interest Act, 1978 is of little assistance to the appellant and cannot be extended to the claims arising under the Act.

11. It is further contended that the order of the Commissioner itself disclosed that the liability would arise only from the date of determination by the Commissioner in view of the fact that he directed to deposit the amount within one month thereof. I am afraid, I cannot accept this contention too. The order is in tune with the language of Section 4-A(3). Even the understanding by the Commissioner and the conclusion he has drawn do not control the language of the statute. We have to consider only the language employed under the various relevant provisions of the Act. The liability to pay interest becomes operative on the failure of the employer to pay compensation within one month from the date of injury or death arising out of and in the course of his employment. The default in payment gives rise to the liability to pay interest. The notice thereof by the Commissioner is only a reminder to the employer in this regard and a step in the process of enforcing the liability that the statute has fastened on the employer.

12. I have, therefore, no hesitation to hold that the liability arises as soon as it falls due, i.e., on the workman sustaining injury or death having occurred in an accident arising out of and during the course of his employment. The power of the Commissioner u/s 10-A is in the nature of machinery to determine the liability, arises only when the employer disputes the liability or the quantum. If the employer commits default in the payment thereof, the discretion given to the Commissioner springs from Section 4-A(3) on his finding that there is unjustified delay in payment of compensation to direct payment of simple interest at 6 per cent from the date of injury or death. In this case, the Commissioner has narrated various circumstances and the litigious conduct of the appellant to evade payment of compensation is writ large. The Commissioner is justified in law to award interest from the date of the death of the deceased-workman, Narayana Rao.

13. Before parting with the case, I would like to mention that since none appeared for the respondent, Mr. S.V.R.S. Somayajulu, a learned member of this Bar was requested to assist the court and he has graciously accepted and rendered his valuable assistance for which the court expresses its deep thanks.

14. Accordingly, I dismiss the appeal, but since none appeared for the respondent, there is no order as to costs.