
(1992) 04 P&H CK 0050
In the Punjab And Haryana At Chandigarh

Raj Rani and Others

APPELLANT

Vs

Om Prakash and United India Ins. Co.

RESPONDENT

Date of Decision : 23-04-1992

Acts Referred:

Employees Compensation Act, 1923 — Section 10A, 4, 4A

Citation : (1993) 1 ACC 123

Hon'ble Judges : A.S. Nehra, J

Bench : Single Bench

Judgement

A.S. Nehra, J.—This appeal is directed against the order dated 27.9.1990 passed by the Commissioner, Workmen's Compensation, Ambala, by which respondent No. 2 (United Indian Insurance Company Limited) has been directed to deposit a sum of Rs. 81,540/- as death compensation as per Schedule. IV of the Workmen's Compensation Act, 1923 (here in after called "the Act").

2. The material facts giving rise to the present appeal, may be stated at the outset so as to appreciate the merits and challenge against them:

The accident, in question, occurred on 12.8.1989. Kul Bhushan, husband of appellant No. 1 and father of appellants No. 2 and 3, was employed as a driver with respondent No. 1 on a monthly salary of Rs. 1500/- per month. Kul Bhushan was driving truck No. HNX-9788 on 12.8.1989 and, when the truck reached BhawanaNala (District Shimla), it met with an accident, as a result of which Kul Bhushan, driver of the vehicle, died at the spot. The accident took place during the course of employment of Kul Bhushan Driver with respondent No. 1 and the former died in consequence of the accident. Respondent No. 1 is the owner of the truck and respondent No. 2 is the Insurance Company with whom the said vehicle is insured. In the Claim petition the appellants claimed an amount of Rs. 1,22,400/ as compensation amount as per Schedule IV of the Act, along with penalty" of fifty per cent and interest at the rate of 12 per cent per annum.

3. Notice of the Claim petition was issued the respondents. Om Prakash,

respondent No. 1, in his written statement, stated that paragraph 1 of the application is correct to the extent that Kul Bhushan deceased was employed with him as a driver of his truck and he was drawing a salary of Rs. 1450/- per month. In paragraph 7 of the written statement, respondent No. 1 stated that the payment of compensation, if any, is to be made by the United India Insurance Company (respondent No. 2) with whom the truck, in question, was insured on the date of the accident. It was further submitted in paragraph 8 of his written statement that he is not liable to pay any compensation or penalty or interest. Respondent No. 2 filed written statement, stating that the appellants have never demanded compensation from the Insurance Company. In paragraph 8 of its written statement, respondent No. 2 stated that the Insurance Company is ready and willing to pay the compensation.

4. On the pleadings of the parties, the following issues were framed by the Commissioner under the Act:

1. Whether this Court has no jurisdiction to hear and decide the present claim-application?

2. Whether the applicants are entitled to the claimed amount? If so, to what effect?

5. Issues Nos. 1 and 2 were decided in favour of the appellants and the claim application filed by the appellants was allowed, as indicated above.

6. The learned Counsel for the appellants, while not disputing the correctness of the amount of compensation (Rs. 81,540/-), as calculated by the Commissioner, contended that, in view of the provisions of Section 4A of the Act, the appellants are not only entitled to interest at the rate of 6 per cent per annum from the date of the accident but the respondents are also liable to pay penalty to the extent of fifty per cent of the amount of compensation.

7. Section 4A of the Act reads as under:

4A Compensation to be paid when due and penalty for default.-(1) Compensation u/s 4 shall be paid as soon as it falls due.

(2) In case 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 event 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.

In support of this contention of her, Mrs. Kiran Bala Jain, counsel for the appellants, has placed reliance on *Municipal Commissioner, Baroda v. Patel Engineering Co. Ltd. and Ors.* 1976 ACJ 104; *Bharat Kumar Premji Chauhan v. Gurkrupa Aluminum Corporation, Junagadh, and Anr.* 1985 LIC 1327; *Pratap Narain Singh Deo Vs. Srinivas Sabata and Another, ; and Rakha Ram v. Harcharan Dass* 1983 CLJ 175.

8. In *Municipal Commissioner, Baroda's* case (supra), the Supreme Court has held as under:

Sub-section (1) of Section 4A of the Act provides that compensation u/s 4 shall be paid as soon as it falls due. Sub-section (3) of Section 4A of the Act provides that where any employer is in default in paying the compensation due under the 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 6 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. A bare reading of these provisions indicates that the employer is under the obligation to pay the amount of compensation as soon as it falls due and the compensation shall fall due on the date on which the incident occurred. If the employer fails to do so the law casts a duty on him to pay interest at the rate of 6 per cent if the Commissioner so orders. The employer, who does not pay compensation on the date when it falls due, can be made liable to pay interest on the amount of compensation because there is a delay in the payment which the statute requires him to pay as soon as it falls due.

The learned Counsel for respondent No. 1 has argued that the Commissioner has not issued notice to the respondent to show cause for the delay in making the payment of compensation and, therefore, respondent No. 1 is not liable to pay penalty and interest. In support of his argument, he has relied upon Section 10A of the Act, *Amarnath Baldev Raj and Anr. v. Commissioner under the Workmen's Compensation Act and Ors.* 1981 ACJ 14, and *Vijay Ram v. Janak Raj.* 1981 A.C.J 84.

9. Section 10A of the Act reads as under:

10A. Power to require from employers' statements regarding fatal accidents.-

(1) Where a Commissioner receives information from any source that a workman has died as a result of an accident arising out of and in the course of his employment, he may send by registered post a notice to the Workman's employer requiring him to submit, within thirty days of the service of the notice, a statement, in the prescribed form, giving the circumstances attending the death of the workman, and indicating whether, in the opinion of the employer, he is or is not liable to deposit compensation on account of the death.

(2) If the employer is of opinion that he is liable to deposit compensation, he shall make the deposit within thirty days of the service of the notice.

(3) If the employer is of opinion that he is not liable to deposit compensation, he shall in his statement indicate the grounds on which he disclaims liability.

(4) Where the employer has so disclaimed liability, the Commissioner, after such enquiry as he may think fit, may inform any of the dependents of the deceased workman, that it is open to the dependents to prefer a claim for Compensation, and may give them such other further information as he may think fit.

The learned Counsel for respondent No. 1 has further submitted that, on its plain language, Sub-section (3) of Section 4A of the Act empowers the Commissioner to allow simple interest at the rate of not more than 6 per cent per annum on the amount of compensation awarded, provided the same remains unpaid for a period exceeding one month after it has fallen due; that it further empowers the Commissioner to impose penalty not exceeding fifty per cent on the said amount, if he is further satisfied that there was no justification for the delay in making the payment of the amount of compensation that, to put it the other way round, if it is shown that there was sufficient cause for the delay in making the payment, he cannot impose any penalty, though he may still award simple interest not exceeding 6 per cent per annum and that this is distinctly borne out from the expression "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" occurring in Sub-section (3) of Section 4A of the Act. What was the reason for not making payment without delay can be known to that person alone who is required to make the payment and to none else. Unless, therefore/he is called upon to show cause for the delayed payment, it is not reasonably possible for the Commissioner to come to the conclusion whether or not there is any justification for the delay. The Commissioner cannot be allowed to reach his satisfaction at his whim and caprice simpliciter, when an appeal is also provided against his order imposing penalty under Sub-section (3) of Section 4A of the Act. The Commissioner's approach has to be objective. He must record his reasons for coming to the conclusion that there was no justification for the delay in making the payment of compensation and thereby provide an opportunity to the appellate court to see whether or not his order is justified which satisfied the test of objectivity. Where a finding of fact has been recorded without any material, the same can be challenged on a question of law. Obligation on the part of the Commissioner to hear the party adversely affected is clearly implicit in Sub-section (3) of Section 4A of the Act, for no one can be condemned unheard. An interpretation of Sub-section (3) of Section 4A of the Act, not requiring the Commissioner to hear the party adversely affected before imposing penalty against it, would be plain obnoxious.

10. The learned Counsel for the respondent No. 1 has further submitted that an order imposing penalty for failure to carry out a statutory obligation, it is true, is in the nature of a quasi-criminal proceeding, and the penalty may not be

imposed unless the party obliged has either acted deliberately in defiance of law or was guilty of contumacious conduct or dishonesty or acted in conscious disregard of its obligation; that penalty will also be not imposed merely because it is lawful to do so; and that it is a matter of discretion of the authority, to be exercised judiciously and on a consideration of the relevant circumstances. In support of his argument, he has relied upon a Division Bench decision in Oriental Insurance Company v. Jeva Ram and Ors. 1988 ACC 248.

11. The learned Counsel for respondent No. 2 has submitted that the Insurance Company is liable to meet only the compensation payable for the risk covered and not the penalty unless the terms of the policy specifically include payment of penalty also; that penalty is not a necessary part of the compensation; that compensation is a pecuniary damage payable in respect of damage or injury caused, including death, but penalty is material reparation payable for breach of duty to pay the compensation within the statutory period prescribed under the Act; and that the penalty is distinctly different from compensation. He has further slated that, in the instant case, there is no specific term or condition in the insurance policy, which binds the Insurance Company to pay the penalty apart from compensation. In support of his argument, the learned Counsel for respondent No. 2 has relied upon Oriental Insurance Company's case (supra).

12. The learned Counsel for the respondents have further submitted that Municipal Commissioner Baroda's case (supra), Bharat Kumar Premji Chauhan's case (supra) and Pratap Narain Singh Deo's case (supra) are not applicable to the facts of the present case, because in all the above-mentioned cases, notice was issued to the employers to pay compensation but, in spite of the notice, no compensation was paid to the claimants.

13. It has been further submitted by the learned Counsel for the respondents that Rakha Ram's Case (supra) is also not applicable because, in that case, the High Court has only followed the decision of the Supreme Court in Municipal Commissioner Baroda's case (supra) which is not applicable to the facts of the present case.

14. After hearing the learned Counsel for the parties, I find force in the argument of the learned Counsel for the respondents and hold that the judgments relied upon by the learned Counsel for the appellants are not applicable to the facts of the present case and that, since the Commissioner has not issued notice to respondent No. 1 to show cause for the delay in making the payment of compensation, therefore, the respondents are not liable to pay penalty and interest in view of M/s. Amarnath Baldev Raj's case (supra), Vijay Ram's case (supra) and Oriental Insurance Company's case (supra) which are applicable to the facts of the present case.

15. In view of the above-mentioned discussion, there is no merit in the appeal and the cross-objections and the same are dismissed with no order as to costs.