

(2022) 06 SHI CK 0022

In the High Court Of Himachal Pradesh

Case No : First Appeal From Order No.116 Of 2022

Rajender Kumar Thakur

APPELLANT

Vs

Bishma And Others

RESPONDENT

Date of Decision : 17-06-2022

Acts Referred:

Workmen's Compensation Act, 1923 — Section 22

Citation : (2022) 06 SHI CK 0022

Hon'ble Judges : Jyotsna Rewal Dua, J

Bench : Single Bench

Advocate : Tek Chand, L.S. Mehta, Virender K. Sharma, Narender Singh Thakur, Gaurav Sharma, Ram Lal Thakur, Jagdish Thakur

Final Decision : Allowed

Judgement

Jyotsna Rewal Dua, J

CMP(M) No. 284 of 2022

1. The applicant seeks condonation of delay of four years and eight months in filing the main appeal. The impugned judgment was passed by learned Civil Judge (Sr. Division) (I), Shimla, (Exercising the powers of the Commissioner under the Employees Compensation Act) (Commissioner in short) on 21.02.2017, whereby the claim petition preferred by respondents No.1 to 3 was allowed. The judgment has been questioned by the applicant by filing the main appeal on 07.01.2022. The reasons put forth in the application for condoning the delay are that the counsel for the applicant had not informed the applicant about decision of the petition. That the applicant was neither informed about disposal of the case nor about the judgment passed therein. It was only in the year 2021, when the order of attachment of his property was passed, that the applicant came to know about disposal of the claim case, whereafter, he took steps for preferring the appeal against the judgment dated 21.02.2017. In the aforesaid circumstances, the delay was occasioned in filing the main appeal. The delay was

neither intentional nor willful, but because of the applicant's ignorance about the case having been disposed of by the learned Commissioner.

2. The application has been opposed by the non-applicants. The facts asserted by the applicant have been disputed by the non-applicants in the reply filed to the application.

3. The applicant has pleaded that he received a Court notice on 6.12.2021, directing him to appear in person before the Court. The Court notice pertained to the execution petition filed by the claimants seeking implementation of the order dated 21.02.2017. Considering the facts and circumstances in totality and also taking note of an absolutely unsustainable liability fastened upon the applicant under the impugned judgment, the grounds put forth seeking condonation of delay are taken as plausible circumstances and sufficient for condoning the delay as occurred in filing the main appeal. The applicant has not gained anything by not preferring the appeal within limitation. For the aforesaid reasons, the application for condonation of delay is allowed and disposed of accordingly.

FAO No.116 of 2022.

4. Appeal be registered.

5. With the consent of the learned counsel for the parties, the matter is taken up for disposal at this stage.

6. Only a short point is involved in the instant appeal:- whether the liability to pay the principal compensation amount is to be borne by the employer when the liability to pay the interest upon principal compensation amount has been fastened upon the insurer.

One Shri Bishan Ram Thakur, was employed with the appellant as driver. Shri. Bishan Ram Thakur died during the course of his employment on 20.06.2009. A claim petition under Section 22 of the Workmen Compensation Act (Act hereinafter) was preferred by his legal heirs i.e. respondents No.1 to 3. This claim petition was allowed by the learned Commissioner on 21.02.2017. The monthly wages of the deceased were determined as Rs.3000/-. His age at the time of his death was ascertained as 29 years. In accordance with the provisions of Act, factor of 207.98 was applied on 50% of his monthly wages i.e. Rs.1500/-. The compensation in this manner was assessed at Rs.3,11,790/-. The claimants were held entitled for interest on this amount @ 12% per annum, w.e.f. 22.07.2009 calculated till 28.02.2017 i.e. Rs.2,87,024.4/-. Thus the total compensation for which the claimants were held entitled was determined as Rs.5,98,982.4/-. The liability to pay the interest component was fastened upon the insurance company, whereas, the liability to pay the principal compensation amount of Rs.311,790/- was fixed upon the employer.

Aggrieved against fastening of the liability to pay principal compensation amount upon him, the employer has preferred the instant appeal.

In 1998(1) SCC 1, titled Ved Prakash Vs Premi Devi and others, the Hon'ble Supreme Court held that it is the liability of the insurance company to pay the principal compensation amount as well as interest unless and until the liability to pay interest has been contracted out by the insurer. In the facts of the present case, there is no plea of the insurance company that liability to pay interest component on the assessed principal amount of compensation was contracted out. Therefore, learned Commissioner was justified in imposing liability to pay interest upon the insurance company. However, the directions in the impugned judgment of fastening the liability to pay the principle compensation amount upon the employer cannot be sustained. In the face of an admitted insurance policy, where liability to pay interest upon the principal amount of compensation was also that of insurer, the insurer is definitely liable to pay the assessed principal amount of compensation.

For the foregoing reasons, the appeal is allowed. The impugned judgment is modified to the extent that the liability to pay the principal compensation amount awarded in the impugned judgment dated 21.02.2017 passed by Civil Judge (Sr. Division) (I), Shimla, (Exercising the powers of the Commissioner under the Employees Compensation Act) shall also be borne by the insurer-respondent No.5. The pending miscellaneous application(s), if any, also stand disposed of.