

(1999) 05 P&H CK 0128

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No. 339 of 1995

Rattan Singh

APPELLANT

Vs

The Haryana State Electricity Board and Others

RESPONDENT

Date of Decision : 05-05-1999

Acts Referred:

Workmens Compensation Act, 1923 — Section 30, 4A(3)

Citation : (1999) 122 PLR 506 : (1999) 3 RCR(Civil) 601

Hon'ble Judges : V.S. Aggarwal, J

Bench : Single Bench

Advocate : Vikram Aggarwal and Subhash Goyal, for the Appellant; H.N. Mehtani, for the Respondent

Judgement

V.S. Aggarwal, J.—By this common judgment, F.A.O. Nos. 2164 of 1994 and 339 of 1995 can conveniently be disposed of. Both the appeals have been preferred against the common order of the Commissioner for Workmen's Compensation, Kurukshetra. The facts are being taken from F.A.O. No. 339 of 1995.

2. The facts are that an application was filed by Rattan Singh alleging that he was working with the employment of the Haryana State Electricity Board (for short "the Board"). On 18.1.1989 while he was working, he fell from the pole in village Khanpur at about 3.00 p.m. As a result of the fall, he suffered injuries on his back bone which was broken. Legs of the appellant Rattan Singh were also broken. As a result of the injuries, he could not sit or walk. The respondent-Board did not make payment. Appellant Rattan Singh served a notice for making payment of the compensation but without result. As per him, he was getting Rs. 978/- as monthly wages. When compensation was not paid, the appellant preferred an application before the Commissioner for Workmen's Compensation at Kurukshetra (for short "the Commissioner").

3. The application has been contested by the respondent-Board. It was denied that the appellant was their employee and thus liability to pay the compensation was denied.

4. Puran Chand contractor had also been arrayed as a party. He also denied his liability to pay compensation.

5. Learned Commission framed the issues and recorded the evidence. It was held that between the Board and the appellant there was a relationship of employer and employee. The employee suffered injuries out of and in the course of his employment with the Board. With these findings and further holding that there is 90% disability, the Commissioner awarded Rs. 97,127/- as compensation. In addition to that, a consolidated penalty of Rs. 40,000/- was awarded. It was directed further that if payment is not made within 30 days, the Board would be liable to pay 6% simple interest on the amount of compensation awarded per annum from the date of the accident upto the date of judgment.

6. Aggrieved by the same, appellant as well as the Board have preferred two separate appeals.

7. On behalf of the Board, it was alleged in the first instance that there was no relationship of employer and employee between the Board and the appellant and, therefore, the Board is not liable to pay compensation.

8. On behalf of the appellant, reliance strongly was placed on sub-section (1) of Section 30 of the Workmen's Compensation Act, 1923 (for short "the Act") to urge that there is no substantial question of law in this regard and the appeal on that fact is not maintainable. The relevant portion of sub-section (1) to Section 30 of the Act reads as under:-

"30. Appeals :- (1) An appeal shall lie to the High Court from the following orders of a Commissioner, namely: -

(a) an order of awarding as compensation a lump sum whether by way of redemption of a half-monthly payment or otherwise or disallowing a claim in full or in part for a lump sum;

(aa) an order awarding interest or penalty u/s 4A;

(b) an order refusing to allow redemption of a half-monthly payment;

(c) an order providing for the distribution of compensation among the dependents of a deceased workman, or disallowing any claim of a person alleging himself to be such dependent;

(d) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of sub-section (2) of Section 12; or

(e) an order refusing to register a memorandum of agreement or registering the same or providing for the registration of the same subject to conditions:

Provided that no appeal shall lie against any order unless a substantial question of law is involved in the appeal, and in the case of an order other than an order such as is referred to in clause (b), unless the amount in dispute in the appeal is not less than three hundred rupees:"

9. The extracted portion above shows that unless there is a substantial question of law involved in the appeal, no appeal shall be maintainable against the order awarding compensation.

10. In the present case in hand, the controversy was basically of facts. There is no misreading of evidence. The same has been appreciated. In fact, Baldev Raj Sahni, Junior Engineer of the Board, admitted that he was aware of the accident and the appellant had come to him for work. He asked him to climb the pole. Therefore, he started his work with the Board at the asking of Baldev Raj, Junior Engineer. The Commissioner rightly, therefore, concluded that there was a relationship of employer and employee between the parties. There was no other question of law involved. It was basically of facts. The appeal, therefore, on that account could not be filed.

11. However, it was urged on behalf of the Board that penalty of Rs. 40,000/- could not be awarded, while the appellant contended that interest should have been more than 6%. Reliance strongly was placed on sub-section (3) to Section 4A of the Act. Both the parties referred to different precedents to which references can well be made with advantage.

12. In the case of Rakha Ram v. Harcharan Das, 1983 Current Law Journal (Civil & Criminal), 175, this Court held that the worker is entitled to interest at the rate of 6 per cent per annum from the date of injuries suffered. The employer can also be liable to make penalty to the extent of 50% of the amount of compensation for not paying the compensation in time. The said decision was based on the decision of the Supreme Court in the case of Municipal Commissioner, Baroda v. Patel Engineering Co. Ltd. and Ors., 1976 A.C.J. 104. Once again in the decision rendered in the case of Raj Dulari v. Superintending Engineer, PSEB and Anr., 1989 A.C.J. 129, sub-section (3) to Section 4A of the Act had been considered. It was held that interest is to be allowed at the rate of 6 per cent per annum from the date of accident till final payment is made.

13. A few years later in the case of Babu Ram Vs. Labour Officer and Others, while interpreting the same provision, this Court held as under-

"The penalty imposed was fully justified taking into consideration the conduct of the appellant. It is most unfortunate that the accident took place in the year 1974 and upto today no compensation has been paid to the injured. As a matter of fact, no writ petition, as such, was maintainable and it was only appeal which could be filed after depositing the amount determined by the Commissioner. The authorities cited on behalf of the respondents have no applicability to the facts of the present case. Sub-section (3) of Section 4A of the Act contemplates that "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 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". Thus the penalty was rightly imposed by the learned Commissioner in this case. Consequently, this appeal fails and is dismissed with costs."

14. Same view prevailed in the case of Smt. Chonto and Anr. v. M/s Industrial Cables (India) Ltd., and Anr., (1992) P.L.R. 6.

15. Gujarat High Court in the case of Baria Guman Hamji and Another Vs. Rajanikant J. Shah, noted that where employer not only delayed the payment of compensation, but also went on resorting to and applying tactics for defeating the rightful claim of the claimants, penalty of 50% was justified to be imposed. In paragraph 15 of the judgment, the Court held as under:-

" If the amount is not paid within a period of one month from the date on which it became payable or fell due, the Commissioner can grant interest from the date of the accident. Therefore, the applicants are entitled to interest at the rate of 6 per cent per annum from the date of the accident till realisation. In fact, unfortunately, this Court is helpless in awarding the rate of interest more than 6 per cent because there is specific provision in Section 4A(3) of the Act that the maximum rate of interest should be 6 per cent per annum. This court is of the view that substantial higher rate of interest should be awarded in view of the prevalent high rate of interest of nationalised banks and other Government financial institutions but for the inhibition incorporated in Section 4A(3) of the Act, prescribing the maximum rate of interest at 6 per cent per annum. Be as, it may. It is for the concerned legislature to reconsider or revise the poor rate of interest in Section 4A(3) of the Act. This Court is inclined to award full and maximum rate of interest, which is fixed at 6 per cent per annum, from the date of the accident, i.e. 14.10.1978, till realisation."

16. Reverting back to the facts of the present case, it is obvious that the order passed by the Commissioner requires modification. In the present case., there has been delay and the payment had not been made. In these circumstances, in terms of the clear language of sub-section (3) to Section 4A of the Act, the penalty amount could be 50% of the total amount to be awarded. The same has been taken at Rs. 40,000/- and there is no ground to interfere in this regard. But the interest has only been awarded by the Commissioner in case within 30 days, the payment has not been made. The Act has been enacted for protecting the rights of the workmen. It has also been enacted to ensure that there is no inordinate delay in making the payment. There is no justification in delaying the payment. Therefore, interest of 6% on the amount of Rs. 97,127/- would be payable from the date of the accident till final payment is made. To that extent, the order of the Commissioner is modified.

The order is made accordingly.