(2013) 10 BOM CK 0199

In the Bombay High Court

Case No : First Appeal No. 495 of 2009

Sanjay Bhimrao Sule — APPELLANT

Vs

Omkar Singh Harman Singh and Another — RESPONDENT

Date of Decision : 07-10-2013

Acts Referred:

Citation : (2014) 2 ACC 637 : (2014) 1 AnWR 465 : (2014) 1 BomCR 824 : (2013) 139 FLR 956 : (2013) 4 LLJ 276 : (2014) LLR 201

Hon'ble Judges : A.P. Bhangale, J

Bench : Single Bench

Advocate : A.M. Gokhale, for the Appellant; A.Z. Mookhtiar, for the Respondent

Judgement

A.P. Bhangale, J.—The appeal is preferred against the Judgment and award dated 22-01-2009 passed by learned Commissioner for workman''s compensation in application WCA No. 586/C-230/2005 whereby the application was partly allowed and the amount in the sum of Rs. 1,87,062/- only was awarded @ interest at the rate of 12 % p.a. from the date of adjudication till the date it''s realization payable by the Insurer and the employer Mr. Onkarsingh Harnamsingh (hereinafter referred as "Opposite party"). Heard submissions at the Bar.

2. Facts stated are:-

The appellant Sanjay aged about 33 years was Driver earning salary of Rs. 4000/- per month on the Motor Vehicle No. MH-04-F-7938 owned by the opposite party. The motor vehicle was insured with the New India Assurance Co. Ltd. under Policy No. 140400/31 /04/14800 valid and operative during the period 16-10-2004 to 15-11-2005. On 04-11-2004 on Pune-Mumbai highway No. 4, Khopoli, he met with an accident and sustained serious injuries during the course of his employment with the opposite party. He was admitted in Khopoli Municipal Hospital and was shifted to Accident Hospital at Solapur on 12-11-2004 and was discharged from the Hospital on 19-11-2004. It is case of the appellant that he is unable to work as Driver after the accident and therefore lost his ability 100% to work as Driver. The insurer had resisted the claim on the ground that the Driver was responsible for high speed of the vehicle and lost control therefore he was responsible. Opposite party supported the claimant''s case by filing the written statement. While the insurer prayed for rejection of the application.

3. I have perused the record and proceedings. The evidence led revealed that the accident occurred due to failure of brakes, in the course of the claimant''s employment with the opposite party. Dr. Naresh Khanna supported the case of the claimant workman to depose that the claimant had suffered from the permanent partial disability of 40% but due to the said disability the workman is unable to drive the vehicle in future because the claimant is unable to move his leg due to permanent partial disability. Grievance of the appellant is that the learned Commissioner failed to appreciate the total inability of the workman to drive the vehicle in future due to permanent partial disability certified by the Doctor, while restricting the compensation computing it on the monthly basis of Rs. 2400/- only, when sum of Rs. 4000/- as monthly wages of the workman was established and undisputed. The Tribunal also erred to award the interest, payable from the date of the accident at the rate of 12% p.a. statutorily. The law contemplates early payment of compensation payable and therefore levy of higher rate of interest % 12% p.a. is also provided to ensure that arrears of compensation must be cleared as early as possible. Unjust delay on the part of the employer/insurer can attract hefty penalty up to 50% of the compensation payable. Section 4A of the Act reads thus:-

Section 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 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 shall-

(a) direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve per cent 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 on the amount due; and

(b) if, in his opinion, there is no justification for the delay, direct that the employer shall, In addition to the amount of the arrears and interest thereon, pay a further sum not exceeding fifty per cent of such amount by way of penalty:

Provided that an order for the payment of penalty shall not be passed under clause (b) without giving a reasonable opportunity to the employer to show cause why it should not be passed.

Explanation.-For the purposes of this subsection, "scheduled bank" means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934.

(3A) The interest payable under subsection (3) shall be paid to the workman or his dependent as the case may be, and the penalty shall be credited to the State Government.

Honourable Supreme court in the Four Judges Bench ruling in Pratap Narain Singh Deo Vs. Srinivas Sabata and Another, held that the employer becomes liable to pay compensation as soon as the personal injury is caused to the Workman by the accident which arose out of and in the course of employment. Thus it was unjust on the part of the learned Commissioner to ignore this settled legal position u/s 4 of the Act.

Section 4-Amount of compensation

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

The relevant factor applicable was 201.66 x monthly salary of Rs. 4000/- divided by 50% of the deceased employee.

4. The Commissioner ought to have awarded the interest payable from the date of the accident i.e. 04-11-2004 the date when claimant workman suffered and sustained the permanent partial disability of 40% which in effect resulted in permanent inability of the claimant to pursue his bread earning occupation as Driver of the Motor vehicle. The art of driving involves skill and alertness to put the motor vehicle in motion, to move the feet for to use and apply accelerator, clutch, simultaneous change of gears, applying brakes, giving signals etc. Is it possible for the workman in future? The answer has to be in the negative. To drive the motor vehicles was only source of livelihood for the claimant hence it was total loss of livelihood for him of whose only source of earning wages was as Driver. The tragedy of the accident is that poor workman would not be able to drive the motor vehicle for whole of his lifetime. This was also ignored by the learned Commissioner in the facts and circumstances of the case in hand. The compensation ought to have been awarded at Rs. 4000/- divided by 50% comes to Rs. 2000(2000 x 201.66 factor applied as prescribed for workman aged 33 years). Thus the compensation payable was Rs. 4,03,320/- (Rupees Four Lakhs Three Thousand Three Hundred Twenty Only). The compensation amount must be paid with interest @ 12% p.a. from the date of the accident till realization/ deposit of compensation amount payable accordingly.

In the result therefore the appeal succeeds. The impugned Judgment and award is modified as under:-

The opposite parties the employer and the insurer are jointly and severally liable to pay the compensation in the sum of Rs. 4,03,320/-@ interest @ 12 % p.a. from the date of the accident till realization.

The amount deposited by the employer/insurer be adjusted accordingly and the surplus if any balance after the payment of compensation as directed be refunded to the Insurer/employer as the case may be, who deposited the surplus amount.