(1996) 09 BOM CK 0004

In the Bombay High Court

Case No : F.A. No. 118 of 1994

Shivaji Krishna Gaikwad and others APPELLANT

Vs

Telecom District Engineer, Sangli RESPONDENT

Date of Decision : 05-09-1996

Acts Referred:

Workmens Compensation Act, 1923 — Section 4, 4A

Citation : (1997) ACJ 246 : (1997) 1 BomCR 270 : (1996) 98 BOMLR 64 : (1997) 2 LLJ 1155 : (1996) 2 MhLj 874

Hon'ble Judges : V.H. Bhairavia, J

Bench : Single Bench

Advocate : T.S. Ingale, for the Appellant; S.R. Rajguru, for the Respondent

Judgement

1. Heard the learned counsel Shri T. S. Ingale for the appellants, and Shri S. R. Rajguru for the Respondent. 1

2. This appeal has been filed by the appellants against the order dated January 2, 1993 passed by the Commissioner for Workmen''s Compensation Act in W.C. No. 49 of 1990. An application was made u/s 4-A Of the Workmen''s Compensation Act, 1923 (hereinafter referred to as the said Act) and demanded the amount of penalty and interest on the compensation amount. 5

3. It is the case of the appellants that they are the dependent parents of the workman who died by accidental death while he was in the employment of the respondent-employer. However, 10 the respondent-Telecom Department failed to deposit an amount of compensation under Sec. 4(A)(3) of the Act within the stipulated time. It reveals that the respondent-Telecom Department deposited the amount of compensation for is a sum of Rs. 13,5001with the office of the Commissioner for Workmen''s Compensation Act on April 4, 1991 i.e. after lapse of 12 years and on receiving the deposited compensation amount, the dependants of the said workman, 2o filed an application being Application W.C. No. 29190 before the Commissioner for Workmen''s Compensation Act, Sangli and prayed for awarding them an amount of payment and interest on the

compensation amount. The said 2s application came to be dismissed by the order of the Commissioner dated January 2, 1993. The learned Commissioner for Workmen''s Compensation Act rejected the application with the following observations :

"Considering the short period of 21 days employment of the deceased with the employer i.e., the Telecom District Engineer, Sangli, 1 am inclined to hold that this is not a fit case 3, 5 where any penalty or interest can be imposed on the employer. The claimants cannot take advantage of their own mistake.

In my view, this is a very absurd view taken by 4o the Commissioner for Workmen''s Compensation i Act which is untenable at law. Section 3 of the i Workmen''s Compensation Act, 1923 makes the i employer liable to pay compensation for injury i caused to the workman by accident arising out of 4s and in course of his employment. The liability to at under the act is no fault liability and the amount of compensation to be awarded is precisely laid down in the table u/s 4 of the Act. Section 4 reads as under :-

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

(a) where death results from the injury an amount equal to forty per cent of the monthly wages of the deceased workman multiplied by the relevant factor; 10

or an amount of twenty thousand rupees, whichever is more.

"The quantum of liability of compensation prescribed in the table is "an amount equal to 15 forty per cent of the monthly wages of the deceased workman multiplied by the relevant factor; or an amount of twenty thousand rupees whichever is more. " zo

4. In the instant case, the respondent employer has not discharged this liability. It is submitted that according to the respondent employer ,a sum of Rs. 13,5001was deposited on humanitarian ground and no demand for as compensation was made by the dependents of the workman. This is also an absurd defence of the respondent-employer. The compensation u/s 4 is no fault liability and it should he paid or deposited when it becomes due i.e. 30 within one month. Further, the minimum amount of compensation is also prescribed in the table of Section 4.

5. In the instant case, the respondent-employer has deposited only Rs. 13,5001not as a compensation but on humanitarian ground. Therefore, it is to he held that the respondent employer has not discharged his statutory liability under the Act. For non-payment, the io employer would he liable for penalty and interest from the date from which the amount has become due and payable which means the date of the accident or at the latest one month thereafter (Relied on 1985 L. 1. C. 1327, Gujarat) and the is employer need not wait till the compensation is demanded or claimed by the "workmen or his repentant in case of his death. The liability of penalty and interest on the amount of compensation

is a liability arising out of his own default i.e., making late payment.

6. It has been contended by the learned counsel that the appeal is barred u/s 30 of the Act as no award of compensation has been passed by the competent authority and therefore, the question of paying interest and penalty .5 does not arise in the instant case. In support of this argument, the learned counsel relied on Oriental Fire and General Insurance Co. Ltd. v. Smt. Manorama Devi and Ors. 1985 (1) LLN 700 . In that case, it was 10 held that :

"No claim was ever put before the petitioner company by the claimant and therefore, the petitioner cannot be saddled with the, penalty 15 which is leviable only in cases of unjustifiable delays. The sum of Rs. 80001awarded as penalty is, therefore disallowed.

7. In my aforesaid view, the respondent employer has not deposited the compensation as per Section 4 of the Act, but the amount which is deposited on humanitarian ground sought to be treated as compensation. The compensation provided under the Workmen''s Compensation Act is not a charity to the workman but it is a legal right and security against any accidental .5 event arising out of and in the course of employment. The minimum amount of compensation u/s 4-A is Rs. 20,000/-. The in workman may be a casual labourer or a .iu regular employee, even if a work has to worked for a day and he met with an accident, the length of his service is irrelevant for the purpose of awarding compensation under the Act. Hence, the order passed by the Commissioner is required to be set aside and hence, it is 1 5 set aside. Appeal is allowed with costs.

8. The respondent-employer is directed to pay Rs. 20,0001to the appellants and interest thereon till the payment and the penalty thereon .o according to law. The respondent-employer is further directed to pay the amount indicated in this order within six weeks to the appellants.

