
(2009) 03 UK CK 0003
In the Uttarakhand High Court

Smt. Guddi Devi and Others

APPELLANT

Vs

The New India Insurance Company Ltd. and Another

RESPONDENT

Date of Decision : 16-03-2009

Acts Referred:

Employees Compensation Act, 1923 — Section 30

Citation : (2009) 3 UC 1471 : (2009) 1 UD 306

Hon'ble Judges : B.C. Kandpal, J

Bench : Single Bench

Judgement

B.C. Kandpal, J.—This appeal u/s 30 of the Workmen Compensations" Act, 1923 has been filed by the appellants against the judgment and award dated 13.09.2006 passed by learned Workmen Compensation Commissioner/District Magistrate, Chamoli in W.C. Case No. 9 of 2004-05, Smt. Guddi Devi and Ors. v. The New India Insurance Company Ltd. and Anr.

2. Brief facts of the case are that Balbir Singh (deceased) was working as a driver in tanker No. DL1G/6474, under the employment of Sri Dayal Singh. On 24.07.2004, at about 01:00 p.m., at Vindalpour, Thana Gulana, District Ambala (Haryana), the said tanker met with an accident to the another truck, in the said accident Balbir Singh died due to injuries sustained by him. According to the claim petition The claimant No. 1 is the wife and claimant Nos. 2 and 3 are the minor children of the deceased. The claimants are the family members of his family and dependents upon him. Therefore they have filed an application before the learned Workmen Compensation Commissioner claiming Rs. 10,00,000/- as compensation in lieu of the death of her husband.

3. Thereafter, notices were served upon the opposite parties. Both the parties filed their separate written statement before the learned Workmen Compensation Commissioner. The learned Workmen Compensation Commissioner, after having considered the entire material available on record and hearing learned Counsel for the parties, awarded a sum of Rs. 2,16,036/- as compensation which shall be payable within one month failing which, the same shall be paid along with

interest @ 9% per annum vide judgment and award dated 13.09.2006.

4. Feeling aggrieved by the aforesaid judgment and award, the appellants/claimants have preferred this appeal before this Court.

5. Heard Sri Pankaj Purohit, learned Counsel for the appellants, Sri M.K. Goyal, learned Counsel for the respondent No. 1 and perused the record.

6. Learned Counsel for the appellants/claimants has submitted before the Court that in case of death, the interest shall be awarded from the date of the death or permanent disability/accident and not from the date of the adjudication of the award. In support of his contention, he has cited before me a decision of Hon''ble Apex Court in Kerala State Electricity Board and Another Vs. Valsala K and Another, .

7. Learned Counsel for the respondent No. 1/New India Insurance Company on the other hand has submitted that in this case, the interest on the awarded amount has been levied by the Workmen Compensation Commissioner from the date of filing the petition. He has submitted that the interest should have been awarded by the Workmen Compensation Commissioner from the date of adjudication of the award. He has relied on the judgment of the National Insurance Company Ltd. v. Mubasir Ahmed reported in 2007 (2) T.A.C. 3 (S.C.).

8. Having considered the rival contention of the parties and perusing the judgment cited before me by the learned Counsel for the parties, the condition emerges as follows.

The judgment of Kerala State Electricity Board (Supra) deals with the question where the claim in respect of death or permanent disablement resulting from an accident caused during the course of employment took place prior to 15.09.1995 while the judgment of the Supreme Court, National Insurance Company v. Mubasir Ahmed (Supra) deals with the point about the payment of the rate of interest, in case, where the accident took place after amendment of Section 4-A in the year 1995.

9. The Hon''ble Supreme Court in the judgment cited by the appellant, National Insurance Company v. Mubasir Ahmed (Supra) has held in paragraph 9, as follows:

9. Interest is payable u/s 4-A(3) if there is default in paying the compensation due under this Act within one month from the date it fell due. The question of liability u/s 4-A was dealt with by this Court in Maghar Singh v. Jashwant Singh. By amending Act 30 of 1995, Section 4-A of the Act was amended, inter alia, fixing the minimum rate of interest to be simple interest @ 12%. In the instant case, the accident took place after the amendment and, therefore, the rate of 12% as fixed by the High Court cannot be faulted. But the period as fixed by it is wrong. The starting point is on completion of one month from the date on which it fell due. Obviously it cannot be the date of accident. Since no indication is there as to when it becomes due, it has to be taken to be the date of

adjudication of the claim. This appears to be so because Section 4-A(1) prescribes that compensation u/s 4 shall be paid as soon as it falls due. The compensation becomes due on the basis of adjudication of the claim made. The adjudication u/s 4 in some cases involves the assessment of loss of earning capacity by a qualified medical practitioner. Unless adjudication is done, question of compensation becoming due does not arise. The position becomes clearer on a reading of Sub-section (2) of Section 4-A. It provides that provisional payment to the extent of admitted liability has to be made when employer does not accept the liability for compensation to the extent claimed. The crucial expression is "falls due". Significantly, legislature has not used the expression "from the date of accident". Unless there is an adjudication, the question of an amount falling due does not arise.

10. The Hon"ble Apex Court has thus expressed the view that the crucial expression is "falls due" and for the same reason the legislature, significantly has not used the expression "from the date of accident". Hence, unless there is adjudication, the question of an amount falling due does not arise.

11. Learned Counsel for the appellants/claimants has further submitted that the learned Workmen Compensation Commissioner has not awarded the amount as per rule. He 5 has submitted that the learned Workmen Compensation Commissioner has fell in error by not awarding the amount of compensation along with interest.

12. As far as the amount of compensation is concerned, learned Workmen Compensation Commissioner fell in error in not awarding the interest on the amount of compensation. The learned Workmen Compensation Commissioner should have awarded the interest @ 12% per annum from the date of the adjudication of the award, which he has not done in the instant case.

13. In view of the aforesaid discussion, I am of the view that the claimants would be entitled for an interest of 12% on the awarded amount from the date of adjudication till the date of actual payment.

14. Accordingly, the appeal is partly allowed. The impugned judgment and award is modified to the extent that the appellants/claimants are entitled for a sum of Rs. 2,16,036/-along with interest @ 12% per annum from the date of adjudication till the date of actual payment.