(2013) 01 CHH CK 0027

In the Chhattisgarh High Court

Case No : M.A. (C) No. 935 of 2011

Smt. P. Narayanamma	APPELLANT
Vs	
General Manager, South Eastern Central Railway	RESPONDENT

Date of Decision : 22-01-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 33
Workmens Compensation Act, 1923 — Section 10, 19, 30, 4, 4A

Citation : (2013) 1 CG.L.R.W. 355 : (2013) 2 CGLJ 410

Hon'ble Judges : Gulam Minhajuddin, J;Abhay Manohar Sapre, J

Bench : Full Bench

Advocate : Renu Kocher, for the Appellant; Abhishek Sinha, Standing Counsel with Shri Ghanshyam Patel, for the Respondent

Final Decision : Partly Allowed

Judgement

Abhay Manohar Sapre, J.—This is an appeal filed by the appellant/claimant u/s 30 of the Workmen''s Compensation Act, 1923 (for short hereinafter called "The Act") against the award dated 6-7-2011, passed by the Commissioner for ''Workmen''s Compensation, Durg (Labour Court, Durg) (hereinafter ''Commissioner'' for brevity) In Case No. 85/2009/WC Act/Fatal. By the impugned award the Commissioner allowed in part the claim petition filed by the appellant herein and awarded a total sum of Rs. 2,42,100/- by way of compensation for the death of one P. Joglu, who sustained injuries in an accident during the course of employment and later succumbed to them. It was further directed that the awarded sum shall carry interest at the rate of 10% per annum payable on the awarded sum in case if the awarded sum is not deposited by the employer within one month from the date of the award. The Commissioner also directed that out of the total amount awarded, a sum of Rs. 1,50,000/- shall be kept in FDR scheme of a nationalized bank for a period of seven years and balance sum of Rs. 84,320/- shall be deposited in savings bank account of the appellant/claimant for being paid to her. It is this award which is impugned by the claimant by filing this appeal u/s 30 of the Act.

2. This appeal was admitted for final hearing because in our opinion it involved substantial question of law.

3. Facts of the case lie in a narrow compass. They however need mention infra.

4. The appellant is the wife of one P. Joglu, who was working on the post of Technician with the respondent-Railway. On 20th September, 2006, P. Joglu met with an accident while attending to his work and later died due to injuries sustained by him in the accident. He was aged 59 years at the time of death and was earning around Rs. 12,281/- per month by way of salary.

5. The appellant being his widow filed a claim petition u/s 10 of the Act out of which this appeal arises against the respondent-Railway claiming compensation for his death. Though it was contested by the respondent (employer), the Commissioner by impugned award partly allowed the claim petition. It was held that accident occurred during the course of employment and arising out of employment. It was also held that P. Joglu died due to injuries sustained by him. It was also held that claim petition was barred by limitation as provided in Section 10 of the Act. It is with these findings, the Commissioner partly allowed the claim petition and awarded a total sum of Rs. 2,42,100/- with interest as mentioned above. It is against this award, the claimant has felt aggrieved and filed this appeal. So far as the respondent is concerned they have neither filed any appeal and nor even objection.

6. The submission of learned counsel for the appellant was essentially one. According to her, the Commissioner erred in not awarding interest on the awarded sum in terms of Section 4A of the Act, 1923 to the claimant. Placing reliance upon a decision of the Supreme Court reported in Pratap Narain Singh Deo Vs. Srinivas Sabata and Another, , the learned counsel contented that the claimant was entitled to claim interest at the rate of 12% per annum on the awarded sum from the date when the payment of compensation became due for payment as per Section 4A(3) of the Act. According to her, the amount in this case became payable to the claimant on 20-9-2006 because the accident occurred on 20-9-2006, and yet the employer failed to pay the compensation to claimant within one month from the date of accident. The claimant thus became entitled to claim interest at the rate of 12% on the awarded sum from the date of accident in the light of the law laid down in Pratap Narayan case (supra).

7. In reply, learned counsel for the respondent while supporting the impugned award placed reliance upon three decisions of the Supreme Court viz.: National Insurance Co. Ltd. Vs. Mubasir Ahmed and Another, , Oriental Insurance Co. Ltd. Vs. Mohd. Nasir and Another, and Palraj Vs. The Divisional Controller, NEKRTC, and submitted that the appellant was not entitled to claim interest on the awarded sum w.e.f. 20-9-2006 but was entitled to claim interest only from the date of award, in the light of law laid down in these three cases.

8. Having heard learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeal in part finding force in the

submissions urged by learned counsel for the appellant and in consequence modify the award to the extent indicated infra, in appellant''s favour.

9. The question, as to when the compensation becomes payable under the Act or in other words, when it falls due for being paid to employee concerned by his employer as provided in Section 4-A remains no longer res integra and stands already decided by four Judges Bench decision of the Supreme Court in the case reported in Pratap Narain Singh Deo (supra). It is in this case, Justice Shinghal, speaking through the Bench has held that an employer primarily 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 the employment. This is what was held by the Supreme Court in this case:

It is wrong to contend that the compensation had not fallen due until it was settled by the Commissioner u/s 19 by his impugned order dated May 6, 1969. The employer became liable to pay the compensation as soon as the personal injury was caused to the workman by the accident which admittedly arose out of and in the course of employment. There was no suspension of the compensation pending settlement. It was the duty of the appellant. u/s 4A(1) of the Act, to pay the compensation at the rate provided by Section 4 as soon as the personal injury was caused to the respondent.

(emphasis supplied)

10. This view was reiterated by a three Judges-Bench''s decision of the Supreme Court in Kerala State Electricity Board and Another Vs. Valsala K and Another, by following words:

3. A four-Judges Bench of this Court in Pratap Narain Singh Deo v. Srinivas Sabata speaking through Shingha, J. has held that an 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, the relevant date for determination of the rate of compensation is the date of the accident and not the date of adjudication of the claim.

5. Our attention has also been drawn to a judgment of the Full Bench of the Kerala High Court in United India Insurance Co. Ltd. v. Alavi wherein the Full Bench precisely considered the same question and examined both the above-noted judgments. It took the view that the injured workman becomes entitled to get compensation the moment he suffers personal injuries of the types contemplated by the provisions of the Workmen''s Compensation Act and it is the amount of compensation payable on the date of the accident and not the amount of compensation payable on account of the amendment made in 1995, which is relevant. The decision of the Full Bench of the Kerala High Court to the extent it is in accord with the judgment of the larger Bench of this Court in Pratap Narain Singh Deo v. Srinivas Sabata lays down the correct law and we approve it.

(emphasis supplied)

11. We may consider it apposite to mention here that two Judges Bench decision of the Supreme Court in the year 2007 took a contrary view to the one taken by the Supreme Court in the case of Pratap Narain Singh Deo (supra) and Kerala State Electricity Board v. Valsala K. (supra) in the case of National Insurance Co. Ltd. v. Mubasir Ahmed (supra). This contrary view was taken without noticing the two earlier decisions, which were rendered by the larger Benches, It was held inter alia in Mubasir Ahmed that the relevant date for payment of compensation would be the date when the award is passed by the Commissioner under the Act. In other words, it was held in National Insurance Co. Ltd. v. Mubasir Ahmed (supra) that compensation under the Act, 1923 becomes due or/and fall for payment to an employee concerned only when the award is passed by the Commissioner. This view was followed by the Supreme Court in another case i.e. Oriental Insurance Co. Ltd. v. Mohd. Nasir (supra), by two Judges Bench decision in 2009 again without noticing the earlier view of two larger Bench decisions reported in Pratap Narain Singh Deo (supra) and Kerala State Electricity Board v. Valsala K. (supra).

12. This conflict of two views on the issue was noticed by the Supreme Court in a decision reported in The Oriental Insurance Company Ltd. Vs. Siby George and Others, Their Lordship in this case took note of earlier two larger Bench decisions and analyzing their ratio held that the view taken in Mubasir Ahmed and Mohd. Nasir (supra) is per in curium because both have been rendered in conflict with the view already taken by the two larger Benches of Supreme Court in Pratap Narayan and Valsala K. (Supra) which are holding the field and not noticed. Their Lordships therefore restored the view taken in Pratap Narayan and Valsala K. (supra) by observing that it is the view taken in these two decisions which is the correct view on the issue. This is what Their Lordships, speaking through Justice Aftab Alam, held:

11. The decision in Pratap Narain Singh Deo Vs. Srinivas Sabata and Another, was by a four-Judge Bench and in Kerala State Electricity Board and Another Vs. Valsala K and Another, by a three- Judge Bench of this court. Both the decisions were, thus, fully binding on the court in National Insurance Co. Ltd. Vs. Mubasir Ahmed and Another, and Oriental Insurance Co. Ltd. Vs. Mohd. Nasir and Another,) each of which was heard by two Judges. But the earlier decisions in Pratap Narain Singh Deo and Valsala K. were not brought to the notice of the court in the two later decisions in Mubasir Ahmed and Mohd. Nasir.

12. In light of the decisions in Pratap Narain Singh Deo Vs. Srinivas Sabata and Another, and Kerala State Electricity Board and Another Vs. Valsala K and Another, it is not open to contend that the payment of compensation would fall due only after the Commissioner''s order or with reference to the date on which the claim application is made. The decisions in National Insurance Co. Ltd. Vs. Mubasir Ahmed and Another, and Oriental Insurance Co. Ltd. Vs. Mohd. Nasir and Another,) insofar as they took a contrary view to the earlier decisions in Pratap Narain Singh Deo and Valsala K. do not express the correct view and do not

make binding precedents.

13. In the light of the law laid down by the Supreme Court in Oriental Insurance Co. Ltd. v. Siby George (supra) the legal position on the issue that emerges is that the law laid down by the Supreme Court in Pratap Narain Singh Deo Vs. Srinivas Sabata and Another, , and in Kerala State Electricity Board and Another Vs. Valsala K and Another, , continues to hold the field and not the view laid down in National Insurance Co. Ltd. Vs. Mubasir Ahmed and Another, and Oriental Insurance Co. Ltd. Vs. Mohd. Nasir and Another,). In other words the binding precedent on the issue in question would be the law laid down in Pratap Narain and Valsala K. and not what is laid down in Mubasir Ahmed and Mohd. Nasir, which is declared as per incurium.

14. The law laid down in Pratap Narain Singh Deo and Valsala K. (supra) is that employer becomes liable to pay compensation as soon as the personal injury is caused to the workman in the accident which arise out of and in the course of employment and therefore the relevant date for payment of the compensation and for payment of interest upon it if the compensation is not paid within one month from the date of accident, would be the date of accident and not the date of award of Commissioner. It is ruled that liability to pay interest at the rate of 12% on the sum in terms of the Section 4A(3) of the Act would accrue from the date of accident itself if the sum is not paid by the employer within one month from the date of accident.

15. Keeping in view the law laid down by the Supreme Court in Pratap Narain Singh Deo (supra) and in Valsala K. (supra), and applying the principle laid down therein to the facts of the case, we are of the considered view that the Commissioner erred in not awarding interest on the awarded amount to the appellant as provided in Section 4A(3) of the Act, 1923 and hence interference is called for.

16. Coming to the facts of the case, the accident occurred on 20-9-2006 which resulted in death of P. Joglu, whereas the employer (respondent) deposited the compensation amount of Rs. 2,34,820/- on 10-5-2010. In terms of Section 4A(3), as interpreted by the Supreme Court, the amount should have been deposited within one month from the date of accident (20-9-2006) i.e. on or before 20-10-2006. The Railway actually deposited part of the Compensation of Rs. 2,34,820/-on 10-5-2010 whereas balance amount of Rs. 7,280/- was deposited after the impugned award was passed.

17. Since the respondent deposited Rs. 2,34,820/- on 10-5-2010 and hence the interest at the rate of 12% on Rs. 2,42,100/- became payable from 20-9-2006 till 10-5-2010 and then on i.e. Rs. 7,280/- from 10-5-2010 till the date of its actual deposit.

18. This takes us to the next question raised by the respondent. It was urged by the learned counsel for the respondent that the Commissioner having rightly held that the claim petition filed by the claimant (appellant) u/s 10 of the Act was

barred by limitation, erred in not rejecting it on the said ground. In our view this submission has no merit for more than one reason.

19. In the first place the respondent neither filed any appeal and nor cross objection, questioning the correctness and legality of the impugned award. Secondly, this Court does have power by virtue of proviso to Section 10 of the Act, 1923 to condone the delay in filing the claim petition, if it comes to the knowledge of Court that there is delay in filing the claim petition and a case for condonation of such delay is made out by the claimant. True it is that the Commissioner did not condone the delay after having recorded a finding of limitation against claimant and proceeded to decide the claim petition on merits in claimant''s favour, yet in our considered opinion, what the learned Commissioner did not do, we, by taking recourse to our powers conferred under Order 41, Rule 33 of CPC would do in appellant''s favour by condoning the delay. One cannot dispute that proviso to Section 10 ibid does empower the Commissioner to condone the delay in filing claim petition u/s 10 ibid, if there is a sufficient cause to condone such delay. In the peculiar facts and circumstances of the case in hand and on perusal of claim petition so also the evidence and further keeping in view the object of the Act, we condone the delay in filing the claim petition as there exists sufficient cause for condonation.

20. The facts of this case also reminds us of the subtle observations made by Justice M.C. Chagla, in a case reported in (Firm Kaluram Sitaram Vs. The Dominion of India, . It is in this case the learned Chief Justice while deciding a dispute between citizen and Railways made following observations which later also received approval of the Supreme Court:

Practice-State and citizen-Technical pleas.--When the State deals with a citizen it should not ordinarily rely on technicalities and if the State is satisfied that the case of the citizen is a just one, even though legal defences may be open to it, it must act, as an honest person.

21. Keeping in view these observations coupled with our power to condone the delay by taking recourse to proviso to Section 10 of the Act read with our power under Order 41, Rule 33 of the CPC and lastly the genuineness of the cause for which the claim petition was filed, we have condoned the delay in filing the claim petition, which is around two years and hold the claim petition to have been filed within limitation.

22. Accordingly the appeal succeeds and is hereby allowed in part. The impugned award is modified to the extent indicated above.

23. The Commissioner is directed to calculate the interest in the light of our order and accordingly appellant/claimant be paid the deficit amount within a period of three months from the date of this order.

24. A copy of this order be filed before the Commissioner to enable him to ensure implementation of the order. No order as to costs.

