

(2012) 02 BOM CK 0013
In the Bombay High Court
Case No : C.A.J. First Appeal No. 1106 of 2006

Smt. Shuklabai Vitthal Kamble and others	APPELLANT
Vs	
Mrs. Asha Chintaman Pawar and another	RESPONDENT

Date of Decision : 17-02-2012

Acts Referred:

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

Citation : (2013) ACJ 1476 : (2012) 133 FLR 572 : (2012) 3 LLJ 726

Hon'ble Judges : Mridula Bhatkar, J

Bench : Single Bench

Advocate : A.M. Gokhale, instructed by M.B. Katak, for the Appellant; D.R. Mahadik, instructed by S.R. Singh and Co. for the Respondent No. 2, for the Respondent

Judgement

Mrs. Mridula Bhatkar, J.—Admit.

Learned Counsel for the respondent waives service.

Heard finally with the consent of both the sides.

2. Perused record.

3. This appeal is filed under the Workmen Compensation Act, 1923. A substantial question of law is--

4. "Whether the appellants are entitled to the compensation and interest from the date of accident or not in view of section 4 (A) of the Workmen Compensation Act, 1923?"

5. The applicant was working as a driver with the original opponent No. 1. He met with an accident on 3/6/2004 at Govandi dumping ground. At the time of death he was drawing salary of ` 4,000/- p.m. and was employed with opponent No. 1. Respondent No. 2 is insurance company. The appellants, mother and three minor children of the deceased, are the dependents. The appellants made application under the Workmen Compensation Act. The Commissioner of

Workmen Compensation and the Judge, 9th Labour Court, Mumbai by order dated 18.3.2006 awarded compensation to the tune of ` 3,68,340/- at the rate of interest 12% per annum from the date of adjudication of the application. The appellants challenged this order only on the ground that the interest awarded should have been given from the date of accident and not from the date of adjudication of the award.

6. Learned Counsel Mr. Gokhale has submitted that the Commissioner has committed an error while passing such order and have not considered the law laid down by the Supreme Court in :-

1. Pratap Narayan Singh Deo v. S. Sabata 1976 (32) FLR 92 (SC) : 1975 SCLJ 499.

2. K.S.E.B. v. Valsala K. 1999 (83) FLR 508 (SC)

3. Marimuthammal @ Marimuthu and M. Periyasamy Vs. R.P.P. Construction (P) Ltd. and Others, Madras High Court

He has also relied on three judgments of the Single Bench of this Court, which are as follows.

(i) Muley Brother Pvt. Ltd., Aurangabad and another Vs. Samindarabai Karbhari Dandge, (SAU.) Aurangabad and others, (By Mr. Justice A.S. Oka)

(ii) F.A. No. 2009/2011 by Mr. J.A.V. Nirgude

(iii) F.A. No. 2373/2011 by Mr. J.C.L. Pangarkar

7. Per contra learned Counsel for the Insurance Company has submitted that in the judgment Pratap Natayan Singh (supra) the Hon''ble Judges of the Supreme Court did not deal with section 4 (A) of the W.C. Act directly. However, in only National Insurance Co. Ltd. Vs. Mubasir Ahmed and Another, the Division Bench of the Supreme Court has directly dealt with the interpretation of section 4(A) in paragraph 9 of the Judgment. It is observed that 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 starting point is on completion of one month from the date on which it fell due. It is true that the legislature while enunciating section 4 of the Act has not used the term that the amount is payable from the date of accident, but it is mentioned "from the date when it falls due". However, this issue is not res integra as there is catena of judgments which are placed on record by the learned Counsel of the appellants. In the case of Pratap Narayan (supra) though it is not specifically dealt with, the Hon. Supreme Court has observed that the employer is liable to pay penalty and interest from the date of the accident and is liable to pay compensation from the date of personal injuries caused to the workman and the liability arose from the date when the accident has taken place. In Kerala State Electricity Board v. Vaisala K., 1999 (83) FLR 508 (SC) the Supreme Court has interpreted section 4 and 4-A in paragraph 3 of the judgment and it is specifically held that 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.

8. Single Judges of this Court have taken similar view that the amount of compensation and rate of interest is payable from the date of the accident. I rely on the judgments of this Court which are as follows.

(i) Muley Brother Pvt. Ltd., Aurangabad and another v. Samindarabai Karbhari Dandge (Sau.) Aurangabad and others, 2009 (120) FLR 701(Bom.-A.B.) (By Mr. justice A.S. Oka)

(ii) F.A. No. 2009/2011 (by Mr. J.A.V. Nirgude)

(iii) F.A. No. 2373/2011 (by Mr. J.C.L. Pangarkar)

9. Hence the award of the 9th Labour Court, Mumbai dated 18.3.2006 in Application (WCA) No. 497/B-107 of 2004 is to be modified to that extent only.

10. Hence the Appeal is partly allowed. The Award of the 9th Labour Court, Mumbai dated 18.3.2006 in Application (WCA) No. 497/B-107 of 2004 be modified to the extent of only the rate of interest is payable from the date of the accident.

Rest of the award be kept intact.