

(2010) 12 CHH CK 0012
In the Chhattisgarh High Court
Case No : Writ Petition No. 2185 of 2001

Smt. Sukhani Bai and Others

APPELLANT

Vs

Commissioner, Workmen Compensation, Labour Court, Raipur
and Another

RESPONDENT

Date of Decision : 08-12-2010

Acts Referred:

Workmens Compensation Act, 1923 — Section 4, 4A

Citation : (2011) 2 MPHT 16

Hon'ble Judges : Pritinker Diwaker, J

Bench : Division Bench

Advocate : Pradeep Saxena, for the Appellant; P.S. Koshy, for the Respondent

Final Decision : Allowed

Judgement

Pritinker Diwaker, J.—According to the case of the petitioners deceased Shyam Badar who was an employee of South Eastern Railways died on 25-11-1987 during employment while attending the defective grinding machine in Carriage Shed Raipur and that the petitioners are his legal heirs. Further case of the petitioners is that according to the legal provisions respondent No. 2 was under obligation to deposit the compensation before the Commissioner, Workmen Compensation within a period of thirty days but an amount of Rs. 72,548 was deposited by it before the Commissioner, Workmen Compensation, Labour Court, Raipur only on 9-7-1996, i.e., after about two years of the death of the deceased employee.

After receiving the notice, the petitioners appeared before the Commissioner, Workmen Compensation and also filed an application on 10-10-1996 (Annexure P-6) for getting the said amount of Rs. 72,548 along with penalty and interest. On 6-1-1997, vide Annexure P-5 an order was passed by the Commissioner, Workmen Compensation in Case No. 28/1996 for release of the said amount and for depositing the same under various heads. However, no order whatsoever has been passed by the Court in respect of grant of penalty and interest. On

5-3-1997 (Annexure P-7) another application was filed by the petitioners praying that the compensation amount has been deposited by respondent No. 2 after a period of 9 years without assigning any reason for depositing the said amount with an inordinate delay and, therefore, the respondent No. 2 may be directed to deposit 50 per cent penalty and interest in favour of the petitioners. This application was replied to by respondent No. 2 on 17-3-1998 (Annexure P-8) denying the additional claim in favour of the petitioners. The record reveals that on 15-6-1998, vide Annexure P-9 an application was filed on behalf of the petitioners for condonation of delay in entertaining the application for releasing the compensation amount and also for penalty and interest. This application was also replied to by respondent No. 2, vide Annexure P-10 on 19-8-1998 and by the order impugned dated 4-1-2000 (Annexure P-1) learned Commissioner, Workmen Compensation, has dismissed the application for condonation of delay and consequently the application dated 10-10-1996 (Annexure P-6) has also been dismissed. Counsel for the petitioners submits that as per Section 4-A of the Workmen Compensation Act, 1923 the petitioners are entitled not only for compensation but also for the penalty and interest for the late payment of compensation. He submits that the deceased employee died on 25-11-1987 and admittedly the compensation was deposited on 9-7-1996, i.e., after about 9 years and ultimately it was disbursed on 6-1-1997. He submits that the petitioners were not required to file an application for condonation of delay because the amount of compensation itself was deposited on 6-7-1996 but even if the application has been filed for the said purpose, instead of taking a hyper technical approach in not awarding the penalty and interest the same ought to have been allowed by the Commissioner, Workmen Compensation keeping in view the fact that the Workmen Compensation Act is benevolent in nature.

2. On the other hand Counsel for the respondents submits that though the amount of compensation has not been deposited by respondent No. 2 till 6-7-1996, even the petitioners have not approached the Commissioner, Workmen Compensation for getting the compensation. He submits that even if this Court comes to the conclusion that the delay is required to be condoned, the matter may be remanded to the Commissioner, Workmen Compensation for determining the penalty and interest.

3. Heard Counsel for the parties and perused the material available on record.

4. Undisputedly, the amount of compensation was deposited on 6-7-1996 and no explanation is there for this inordinate delay in depositing the compensation. Section 4-A of the Workmen's Compensation Act, 1923 entitles the claimants not only for the compensation but also for the penalty and interest. For ready reference Section 4-A of the Workmen's Compensation Act reads thus :-

4-A. 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.

5. The Commissioner, Workmen Compensation has erred in law in passing the order impugned and dismissing the application for condonation of delay and consequently the entire application for penalty and interest. After going through the documents on record this Court is of the considered opinion that the order impugned is liable to be set aside. I do not find any force in the argument of the Counsel for the respondents that the matter may be remanded to the Commissioner, Workmen Compensation because the deceased employee died on 19-11-1987, i.e., 23 years back and it would be too technical for this Court to remand the matter after a lapse of 23 years. Section 4-A of the Workmen Compensation Act, which is a benevolent provision provides for penalty for delayed payment. Accordingly, the petition is allowed. Respondent No. 2 is directed to deposit the interest on the principal amount till 6-7-1996, the date on which the compensation was deposited before the Commissioner, Workmen Compensation. This apart, 50 per cent of the entire compensation is also to be paid by respondent No. 2 as penalty. Respondent No. 2 shall also pay a cost of Rs. 10,000 to the petitioners.