

(2002) 10 KAR CK 0038

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 2763 of 2001

Smt. Vimalabai

APPELLANT

Vs

Babu and Another

RESPONDENT

Date of Decision : 31-10-2002

Acts Referred:

Workmens Compensation Act, 1923 — Section 22, 4 A (3)

Citation : (2003) ACJ 2127 : (2003) 96 FLR 740 : (2003) 2 KarLJ 301 : (2003) 1 KCCR 13 SN

Hon'ble Judges : S.B. Majage, J

Bench : Single Bench

Advocate : Ashok K. Kalyanshetty, for the Appellant; G. Narayana Rao, for Respondent 2, for the Respondent

Judgement

S.B. Majage, J.—The appellant filed a petition u/s 22 of the Workmen's Compensation Act before the Commissioner for Workmen's Compensation at Belgaum, claiming compensation of Rs. 5 lakhs stating that her son viz., Mahesh Naik, aged 20 years, who was working as Cleaner on vehicle bearing No. KA-22/5631 belonging to the first respondent on monthly salary of Rs. 2,000/- with bhatta of Rs. 1,000/- per month, met with an accident on 24-8-2000 near National Restaurant near Tumkur when said vehicle was dashed by another vehicle bearing No. KA-02/D-7779 coming from opposite direction and later died while taking treatment and hence, she, being the mother of deceased, is entitled to compensation. The first respondent-owner of the vehicle did not appeal-before the Commissioner in spite of service of notice and hence, he was proceeded ex parte. The second respondent-Insurance Company, which was wrongly impleaded earlier, did not prefer to file any objections. However, third respondent (another Insurance Company), impleaded later, filed objections. After enquiry, the Commissioner allowed the claim petition and held that appellant is entitled to compensation of Rs. 1,86,548.00 with interest @ 12% per annum, if the amount is not paid within 30 days from 3-4-2001. Not satisfied with the said order, the appellant has filed present appeal before this Court.

2. According to the appellant, in view of her positive and un rebutted evidence that her son was getting wages @ Rs. 2,000/- with Rs. 1,000/- as "bhatta" per month, the Commissioner was not right in invoking the minimum wages notification with regard to the wages of her deceased son and in not determining proper compensation u/s 4 of the Workmen's Compensation Act and also in ordering interest from 3-5-2001. Heard argument and perused the record.

3. Following substantial questions of law arise for consideration.--

(i) Whether minimum wages fixed under Government notification issued under the Minimum Wages Act can be taken as wages of a workman, when there is un rebutted evidence about it?

(ii) Whether interest on compensation can be after 30 days from the date of adjudication of claim?

4. In the present matter, there is specific evidence of the appellant examined as P.W. 1 that her deceased son was getting salary of Rs. 2,000/- and "bhatta" of Rs. 1,500/- per month from the first respondent. It has remained unchallenged, though she was cross-examined. In the case of A.E.G. Carapiet Vs. A.Y. Derderian,

it is held as under.--

"10. The law is clear on the subject. Wherever the opponent has declined to avail himself of the opportunity to put his essential and material case in cross-examination, it must follow that he believed that the testimony given could not be disputed at all. It has been stated on high authority of the House of Lords that this much a Counsel is bound to do when cross-examining that he must put to each of his opponent's witnesses in turn, so much of his own case as concerns that particular witness or in which that witness had any share. If he asks no question with regard to this, then he must be taken to accept the plaintiff's account in its entirety".

(emphasis supplied)

Same has been reiterated later in the decision of Babulall Choukhani Vs. Caltex (India) Ltd., This is the view of Punjab High Court also in the decision of Chuni Lal Dwarka Nath Vs. Hartford Fire Insurance Co. Ltd. and Another, and also of Rajasthan High Court in the decision in State Vs. Bhola Singh, . In this view of the matter, there was no reason for the Commissioner to ignore the statement of appellant made about wages of her deceased son and to take wages fixed under notification issued under the Minimum Wages Act as wages, particularly when her evidence has remained unchallenged.

5. Of course, it is vehemently argued for the Insurance Company that since both sides agreed to take the minimum wages fixed under Government notification issued under the Minimum Wages Act, now the appellant cannot go back against it. As against this, it is submitted for the appellant that no such submission was

made and in this regard, there is specific ground in the appeal memo also denying such submission made before the Commissioner. If there had been no evidence with regard to wages or, if such an evidence available on record had been challenged, the matter would have been different, but not now. So, when there is un rebutted evidence regarding wages, taking minimum wages, fixed under Government notification issued under the Minimum Wages Act, as wages of a workman under the Workmen's Compensation Act, cannot be said to be proper. This answers first question of law.

6. For second question of law relating to interest, the relevant provision is Section 4-A(3) of the Act. Under said provision of law, where an employer is in default in paying the compensation within one month from the date it fell due, the Commissioner shall direct for payment of interest on the amount of compensation. In other words, payment of interest will be only when the compensation falls due. So, what is to be seen is, when the liability to pay compensation arises and falls due? As per Section 4-A(2) of the Act, an employer is bound to make provisional payment based on the extent of liability he accepts and, u/s 4-A(1) of the Act, compensation u/s 4 shall be paid as soon as it falls due. So, a combined reading of said provisions make it clear that an employer is bound to make even provisional payment also as soon as it falls due. The words "as soon as" mean, immediately after the accident, in which the workman sustains injuries or dies. In the case of Pratap Narain Singh Deo Vs. Srinivas Sabata and Another, the Supreme Court has held that an employer becomes liable to pay compensation as soon as the personal injury is caused to the workmen by the accident which arose out of and in the course of employment. So, compensation requires to be paid on the date of accident when workman sustains injury or dies and if not paid, then, it falls due and liable to carry interest as provided u/s 4-A(3)(a) of the Act. This does not mean that interest can be ordered from the date of adjudication of claim or at any time thereafter. It has been held by the High Court of Andhra Pradesh also in the case of Patalapati Venkatanarasayamma v Susarla Subbalaxmi 1986 ACJ 526 that liability of the employer to pay interest arises as soon as it falls due i.e., on the workman's sustaining injury or death during the course of employment and not from the date of quantification of compensation. However, after accident (when compensation falls due), time of 30 days is given for paying the compensation amount and if not paid within that period, the Commissioner shall have to direct for payment of interest thereafter, and not from the date of adjudication or thereafter. Thus, answered the second question of law in negative.

7. Coming to the present matter, as per P.W. 1, the salary of the deceased was Rs. 2,000/- with bhatta of Rs. 1,500/- per month. However, in view of the upper limit fixed by Explanation II to Section 4(1)(a) of the Act, wages have to be taken at Rs. 2,000/- per month only. So, 50% of the said wages will have to be multiplied by the relevant factor to arrive at the amount of compensation as per Section 4(1)(a) of the Act. When done so, the amount of compensation payable to the appellant comes to Rs. 2,21,370/- [Rs. 2,000/2 = Rs. 1,000/- x 221.37

(multiplier)]. Admittedly, deposit/payment of compensation has not been made on the date of accident/death i.e., on 24-8-2000 when it fell due or, within 30 days thereafter i.e., 24-9-2000. So, interest should have been ordered from 24-9-2000 and not from 30 days after adjudication of the claim as ordered by the Commissioner.

In the result, the appeal is allowed in part with cost modifying the impugned order holding that the appellant is entitled to have compensation of Rs. 2,21,3707- with interest @ 12% per annum from 24-9-2000.

Fee of Advocate is fixed at Rs. 500/-.