

(2009) 09 CAL CK 0032

In the Calcutta High Court

Case No : F.M.A.T. No. 918 of 2009 and C.A.N. 7496 of 2009

Sri Sarbeswar Bhuimali @ Sarbeswar Bhunimali @ Bapi
Bhunimali

APPELLANT

Vs

Sri Ardhendu Kumar Roy and Another

RESPONDENT

Date of Decision : 16-09-2009

Acts Referred:

Workmens Compensation Act, 1923 — Section 19, 3, 3(5), 4A(3)

Citation : (2010) ACJ 2125 : (2009) 123 FLR 1084

Hon'ble Judges : Prasenjit Mandal, J; Bhaskar Bhattacharya, J

Bench : Division Bench

Advocate : Jayanta Kumar Mondal, for the Appellant; Sanjay Paul, for the Respondent

Judgement

Bhaskar Bhattacharya, J.—This appeal is at the instance of a claimant in a proceeding under Workmen's Compensation Act and is directed against an award dated 17th April, 2009 passed by the Commissioner for Workmen's Compensation, West Bengal, First Court, in Claim Case No. 326 of 2004, thereby disposing of the proceeding by awarding a sum of Rs. 1,31,970/- as compensation with a direction upon the United India Insurance Company Ltd. to pay the said amount within sixty days from the date of the award with a further stipulation that in default of such payment within the said period, the awarded sum would carry a simple interest @ 12% per annum till the date of realization.

2. Being dissatisfied, the claimant has come up with the present appeal.

3. The only point taken by Mr. Mondal, the learned advocate appearing on behalf of the appellant in this appeal, is that in view of the provision contained in Section 4A(3) of the Workmen's Compensation Act, it was the duty of the learned Commissioner to award interest at least @ 12% per annum from the expiry of one month from the date of accident till actual deposit of amount irrespective of the fact whether there was default on the part of the Insurance Company in making payment of the awarded sum within the time stipulated in

the award.

4. Mr. Paul, the learned advocate appearing on behalf of the respondent/ Insurance Company, has, however, opposed the aforesaid submission by contending that the interest on the awarded amount should be payable @ 12% per annum from the date such amount is assessed by the Commissioner by passing the award till actual deposit of the amount. According to Mr. Paul, the amount cannot "fall due" so long the same is not assessed. In support of such contention, Mr. Paul has relied upon the decision of the Supreme Court in the case of *Kamla Chaturvedi v. National Insurance Com. and Ors.* reported in 2009(1) T.A.C.1 (S.C.), and also that of the said Court in the case of *National Insurance Co. Ltd. v. Mubasir Ahmed and Anr.* reported in 2007(2) T.A.C.3, (S.C.). Mr. Paul, however, fairly conceded that there was no justification of granting interest only in case of default on the part of his client in making payment of the awarded sum within the time specified therein. Mr. Paul does not dispute the proposition of law that the interest should be payable irrespective of the fact whether there was default on the part of his client in making payment within the time stipulated in the award or not.

5. Therefore, the question that arises for determination in this appeal is what should be the rate of interest payable and what should be the starting point of computation of the amount of interest in a proceeding for compensation under the Workmen's Compensation Act, 1923.

6. In order to appreciate the aforesaid question, it will be appropriate refer to the provision contained in Section 4A(3) of the Act which is quoted below:

1) ..

2) ..

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. Explanation: For the purpose of this Sub-section, "scheduled bank" means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934).

7. A plain reading of the aforesaid provision makes it abundantly clear that if the employer is in default in paying compensation due under the Act within one month from the date it fell due, the Commissioner should pass order of payment of interest in addition to the amount of arrears at least @ 12% per annum or at such higher rate not exceeding the maximum of the lending rate of any scheduled bank as may be specified by the Central Government by notification in the Official Gazette on the amount due.

8. At this stage, it will not be out of place to refer to Section 3 of the Act which deals with the employer's liability for compensation. Sub-section (1) of that section provides that the employer shall be liable to pay compensation if personal injury is caused to a workman by an accident arising out of and in course of his employment. The employer, therefore, becomes liable to pay the compensation as soon as the aforesaid personal injury is caused to the workman by the accident. Therefore, the liability to pay compensation arises not from the date of order of assessment but from the date of accident itself. As provided in Section 4A(3) of the Act, the interest will be charged from the expiry of one month after it had fallen due, meaning thereby, that the same will be payable after the expiry of one month from the date of accident.

9. We do not find any substance in the contention of Mr. Paul, the learned advocate appearing on behalf of the respondent, that the liability to pay compensation had not fallen due until it was settled by the Commissioner u/s 19 of the Act.

10. At this juncture, it may be profitable to refer to the following observations of four-Judge-Bench of the Supreme Court in the case of Pratap Narain Singh Deo Vs. Srinivas Sabata and Another, where the aforesaid question was answered by the said Bench in the following manner:

6. It has next been argued that the Commissioner committed a serious error of law in imposing a penalty on the appellant u/s 4A(3) of the Act as the compensation had not fallen due until it was "settled" by the Commissioner u/s 19 by his impugned order dated May 6, 1969. There is however no force in this argument.

7. Section 3 of the Act deals with the employer's liability for compensation. Sub-section (1) of that section provides that the employer shall be liable to pay compensation if "personal injury is caused to a workman by accident arising out of and in the course of his employment." It was not the case of the employer that the right to compensation was taken away under Sub-section (5) of Section 3 because of the institution of a suit in a civil court for damages, in respect of the injury, against the employer or any other person. The employer therefore became liable to pay the compensation as soon as the aforesaid personal injury was caused to the workman by the accident which admittedly arose out of and in the course of the employment. It is therefore futile to contend that the compensation did not fall due until after the Commissioner's order dated May 6,

1969 u/s 19. What the section provides is that if any question arises in any proceeding under the Act as to the liability of any person to pay compensation or as to the amount or duration of the compensation it shall in default of agreement, be settled by the Commissioner. There is therefore nothing to justify the argument that the employer's liability to pay compensation u/s 3, in respect of the injury, was suspended until after the settlement contemplated by Section 19. The appellant was thus liable to pay compensation as soon as the aforesaid personal injury was caused to the appellant, and there is no justification for the argument to the contrary.

11. The aforesaid question again came up for consideration before a three-Judge-Bench of the Supreme Court in the case of Kerala State Electricity Board and Another Vs. Valsala K and Another, where the said Bench made the following observations in paragraphs 2 and 3 of the said judgment:

2. Various High Courts in the country, while dealing with the claim for compensation under the Workmen's Compensation Act have uniformly taken the view that the relevant date for determining the rights and liabilities of the parties is the date of accident.

3. A four-Judge Bench of this Court in Pratap Narain Singh Deo Vs. Srinivas Sabata and Another, speaking through Shinghal, 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.

12. It appears that in the two decisions relied upon by Mr. Paul, the learned advocate for the Insurance Company, viz. National Insurance Co. Ltd. v. Mubasir Ahmed and Anr. (supra), and Kamla Chaturvedi v. National Insurance Co. and Ors. (supra), the two-Judge-Bench of the Supreme Court did not take in the consideration the aforesaid two earlier decisions of the said Court in the case of Pratap Narain Singh Deo (supra) and Kerala State Electricity Board (supra), which were binding on those two Benches. We are, therefore, unable to accept those two decisions in the case of Kamla Chaturvedi (supra) and Mubasir Ahmed and Anr. (supra) as a valid precedent.

13. It further appears that recently, another two-Judge-Bench of the Supreme Court in the case of Oriental Insurance Co. Ltd. v. Mohd. Nasir and Anr. reported in 2009 (4) supreme 589 has relied upon the decisions of the said Court in the case of Mubasir Ahmed (supra), but in that decision also, the said two-Judge-Bench did not take note of the earlier decisions of the Supreme Court by the Benches consisting of four Judges and three Judges respectively.

14. We are, therefore, even unable to accept the view taken in the case of Mohd Nasir and Anr. (supra), as a valid precedent.

15. In view of what have been stated above, we are of the opinion that in the facts of the present case, it was the duty of the learned Commissioner to award interest on the awarded sum from the expiry of one month from the date of accident till actual deposit of the amount by the Insurance Company.

16. We, accordingly, modify the award impugned by directing the Insurance Company to pay interest @ 12% per annum from the expiry of one month from the date of accident till deposit of the awarded amount before the Commissioner. Such additional amount be deposited before the Commissioner within a month from today.

17. The appeal is, thus, disposed of with the above observation.

18. In the facts and circumstances, there will be, however, no order as to costs.

19. I agree.