

(2011) 06 BOM CK 0185
In the Bombay High Court
Case No : First Appeal No. 75 of 2004

Tapowan Steel Industries, Midc Area, Jalna	APPELLANT
Vs	
Babasaheb Chikhale and another	RESPONDENT

Date of Decision : 09-06-2011

Acts Referred:

Workmens Compensation Act, 1923 — Section 4, 4(1)

Citation : (2013) ACJ 974 : (2012) 4 ALLMR 769 : (2012) 133 FLR 492 : (2012) 2 MhLj 240

Hon'ble Judges : R.M. Borde, J

Bench : Single Bench

Advocate : V.C. Solshe, for the Appellant; Manoj Shinde, for the Respondent

Final Decision : Dismissed

Judgement

R.M. Borde, J.—This is an appeal by the employer taking exception to the judgment and award dated 7-7-2003, passed by the Commissioner for Workmen's Compensation & Judge, Labour Court, Jalna, in Application (W.C.) No. 2/1994. The application was presented by the Respondent No. 1-workman initially claiming compensation to the tune of Rs. 35,011.50 together with interest @ 12% p.a. on the amount of compensation from the date of accident till realisation of the amount.

2. Certain facts, which are undisputed, are that Respondent No. 1-workman was employed by the appellant-employer and was getting daily wages amounting to Rs. 40/- per day. As a result of accident occurred on 26-10-1993 at about 6.00 p.m., the workman suffered injury resulting 34% permanent disablement. The claim petition was presented claiming compensation on account of disablement suffered by the employee and the claim was got amended during pendency of the application and compensation was claimed to the tune of Rs. 70,023/-.

3. Learned Commissioner for Workmen's Compensation, after considering the evidence led by the respective parties, allowed the application and directed the

employer to pay compensation, as prayed for by the workman along with interest @ 12% p.a. from the date of accident till realisation of the amount.

4. The appellant-employer has raised challenge only in respect of computation of the compensation by the Commissioner for Workmen's Compensation as well as levy of interest to the tune of 12% on the amount of compensation. The finding recorded by the Commissioner in respect of employee sustaining permanent disablement to the extent of 34% and employee earning wages @ Rs. 40/- per day, is not controverted in the appeal.

5. Considering the provisions of section 4(1) Explanation II of the Workmen's Compensation Act, 1923, where the monthly wages of a workman exceed one thousand rupees, his monthly wages for the purposes of clause (a) and clause (b) shall be deemed to be one thousand rupees only, as per the provisions applicable on the date of presentation of claim petition and on the date of occurrence of the accident. The relevant factor to be applied in the matter is 208.95. The workman has suffered 34% disablement and, therefore, as per clause (c) of section 4, the employee would be entitled to the compensation to the extent of 34% of the amount receivable by the employee, out of the amount which can be computed in accordance with section 4(b) of the Act. On consideration of monthly wages earned and applicability of relevant factor, the claimant shall be held entitled to receive Rs. 35,011.50 towards the amount of compensation in respect of permanent partial disablement suffered by him to the extent of 34%. The Commissioner for Workmen's Compensation has erred in awarding compensation to the tune of Rs. 70,023/- to the workman. The amendment to the claim petition permitted by the Commissioner during pendency of the claim petition is erroneous and based on change in law at subsequent point of time. The computation of interest on the amount of compensation receivable by the claimant also shall be @ 6% p.a. as per the provisions prevailing then. The Commissioner has erred in awarding interest @ 12% p.a. on the amount of compensation receivable by the claimant. The amendment in respect of payment of interest @ 12% is brought on statute book in the year 1995. The law prevailing on the date of occurrence of the accident shall have to be made applicable.

6. Reliance is placed on the judgment in the matter of Kerala State Electricity Board and Another Vs. Valsala K and Another, . In para 5 of the judgment, the Apex Court has observed thus :

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. vs. Alavi, 1998 (1) Ker LT 951 (FB) 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 Vs. Srinivas Sabata and Another, lays down the correct law and we approve it.

7. In accordance with the judgment cited supra, the workman would be entitled to receive benefits prevailing on the date of accrual of the cause of action i.e. date of occurrence of accident. In the instant matter, the accident occurred in the year 1993 and the Claim Petition was presented in the year 1994, before the amending provisions were brought on the statute book. The workman, thus, would be entitled to claim compensation amounting to Rs. 35,011.50 together with interest @ 6% p.a. from the date of accident till realisation of the amount. Hence, the following order :

Appeal is allowed. The judgment and order dated 7-7-2003, passed by the Commissioner for Workmen's Compensation & Judge, Labour Court, Jalna, in Application (W.C.) No. 2/1994, is modified and appellant herein/original Opponent No. 1 is directed to pay compensation to the tune of Rs. 35,011.50 along with interest @ 6% p.a. from the date of accident till realisation of the amount. Parties shall bear their own costs.