

(2012) 09 UK CK 0012

In the Uttarakhand High Court

Case No : Appeal from Order No. 57-D of 2005 (Old No. 16 of 2005) with Appeal from Order No. 525 of 2011 (Old No. 94 of 1998)

Tehri Hydro Development Corporation Ltd. and National Insurance Company Ltd.

APPELLANT

Vs

Manju Tiwadi

RESPONDENT

Date of Decision : 10-09-2012

Acts Referred:

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

Citation : (2013) 1 ACC 721 : (2013) 137 FLR 134 : (2012) 3 UC 1778

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

Bench : Single Bench

Advocate : Sobhit Saharia, for the T.H.D.C. and Mr. D.S. Patni, for National Insurance Company Ltd, for the Appellant; Sachin Mohan Singh Mehta, for the Respondent

Judgement

B.S. Verma, J.—Since both the appeals have been directed against the same award dated, 9.12.1997, passed by Workmen's Compensation Commissioner, Tehri Garhwal in Workmen's Compensation Case No. 10 of 1996, Smt. Manju Tiwadi v. T.H.D.C. and Another, therefore, for the sake of convenience, these appeals are being decided by this common judgment. Brief facts of the case giving rise to these appeals are that late Sri Jagdish Chand Tiwadi was the driver in the employment of T.H.D.C. On 22.9.1992 at about 4.30 p.m., when he was going to D.P.H., after felling the earth at Khandkhal by Dumper No. S.D. 12, the Dumper fell in the deep ditch due to some technical fault, in which he sustained grievous injured and died. The claimant had informed the employer on which employment has been given to the claimant by the THDC. The claimant filed petition before the Workmen's Compensation Commissioner, Tehri Garhwal and alleged therein that the age of the workman was 27 years and his monthly salary was Rs. 3,000.

2. The employer/T.H.D.C. filed W.S. before the Workmen's Compensation Commissioner and admitted the accident of late Jagdish Chand during his

employment and also alleged that the claimant has been given employment as dependent of the workman. However, it was alleged that the claim petition has not been filed within the limitation.

3. The National Insurance Company also filed W.S. and alleged that the deceased workman was not insured with the Insurance Company therefore the Insurance Company is not liable to pay the compensation. It was also alleged that the claim has been filed beyond limitation.

4. The learned Workmen's Compensation Commissioner framed following issues:

1. Whether the application of the applicant is barred by limitation and is not maintainable?

2. Whether the deceased was not insured with O.P. No. 2?

3. Whether the deceased was not having a valid driving licence to driver the Dumper?

4. Whether the age and salary of the deceased have been shown wrong?

5. To what relief, if any, the applicant is entitled to get? If so, how-much?

5. Parties adduced evidence. The Workmen's Compensation Commissioner, after considering the material on recorded condoned the delay in filing the claim petition. On Issue No. 2 the learned Compensation Commissioner has held that the Insurance Company in its W.S. has admitted that the Dumper was insured with it and it has valid insurance cover at the time of accident. On issue No. 3 the Compensation Commissioner has recorded a finding that the deceased was in the employment of employer and only it is to be seen whether the Dumper was insured or not. The learned Commissioner awarded a sum of Rs. 2,13,570 against the Insurance Company and also awarded a sum of Rs. 1,80,960 as penalty on the above sum @ 12% per annum from the date of death of workman payable by the employer.

6. Feeling aggrieved by the impugned award the employer THDC has preferred A.O. No. 57-D of 2005 (Old No. 16/1998) and the National Insurance Company has preferred A.O. No. 525 of 2011 (Old No. 94/1998).

7. I have heard learned Counsel for the parties and perused the impugned award.

8. Learned Counsel appearing on behalf of THDC has submitted that the accident had occurred in the year 1992, and the compensation should have been computed under old Act, but the learned Commissioner has committed a manifest error of law by computing the compensation; under the Amending Act No. 30 of 1995, which came into force w.e.f. 15.9.1995. The learned Counsel has relied upon the judgment of Kerala State Electricity Board and Another Vs. Valsala K and Another, .

9. In the above cited case the Hon''ble Apex Court has dealt this question whether the amendment of Sections 4 and 4A of the Workmen's Compensation

Act, 1923 made by Act No. 30 of 1995 with effect from 15.9.1995 would be applicable to the cases in which accident had taken place prior to 15.9.1995, and it has been held that in the cases where accident took place prior to 15.9.1995, the enhanced rates introduced by the amendment, did not attract.

10. This question was also considered in the case of *The Oriental Insurance Company Ltd. Vs. Siby George and Others*, , whether the amendment of Sections 4 and 4A of the Workmen's Compensation Act, 1923, made by Act No. 30 of 1995 with effect from 15.9.1995, enhancing the amount of compensation and rate of interest, would be attracted to cases where the claims in respect of death or permanent disablement resulting from an accident caused during the course of employment, took place prior to 15.9.1995 and it has been observed that various High Courts in the country, while dealing with the claim for compensation under the Workmen's Compensation Act uniformly taken the view that the relevant date for determining the rights and liabilities of the parties is the date of accident. The judgment rendered by four-Judge Bench of the Apex Court in *Pratap Narain Singh Deo Vs. Srinivas Sabata and Another*, , was also considered.

11. By a perusal of impugned award it reveals that the learned Commissioner has computed the compensation under the Amending Act of 1995, which came in to force w.e.f. 15.9.1995. The accident had occurred in the year 1992, and the relevant date of determination of rate of compensation is the date of accident and not the date of adjudication of claim, hence the enhanced rates by Act No. 39 of 1995 would not attract in the case at hand.

12. Sub-clause (a) of Section 4 of the Old Act provides that where death results from the injury, an amount equal to forty per cent, of the monthly wages of the deceased workman multiplied by the relevant factor; or an amount of twenty thousand rupees, whichever is more. Explanation-II appended to this section further provides that where the monthly wages of a workman exceed one thousand rupees, his monthly wages for the purpose of Clause (a) and Clause (b) shall be deemed to be one thousand rupees only. The case of claimant is that the deceased was getting a monthly salary of Rs. 3000, but as per Explanation-II the monthly salary is to be taken Rs. 1,000 per month and 40% of which comes to Rs. 400 per month.

13. The deceased workman was 27 years of age and the relevant factor provided in the Act is 213.57. Therefore the compensation comes to Rs. 400 x Rs. 213.57 = Rs. 85,428.

14. Learned Counsel appearing on behalf of the National Insurance Company has contended that the Dumper was goods vehicle and as per insurance policy the driver should have valid driving licence, but the employer could not prove that the driver was having valid driving licence, therefore, the Insurance Company is not liable to pay the compensation.

15. Learned Counsel appearing on behalf of THDC has contended that the deceased was a workman and was in the employment of THDC and there is no

need to the workman to have driving licence to drive the Dumper.

16. The Insurance Company has not pleaded this fact in its W.S. before the Workmen's Compensation Commissioner, although the issue No. 3 has been framed on this point and has given finding that it is only to be seen whether the Dumper was insured or not and since the Dumper was insured with National Insurance Company, therefore, the liability is upon the Insurance Company. Since the Insurance Company has conceded its liability in accordance with insurance policy, before the Workmen's Compensation Commissioner and has not pleaded this fact in its W.S. that the driver was not possessing valid driving license, therefore, it was the burden of Insurance Company to plead and adduce evidence that the driver was not having valid driving licence. Therefore, at the appellate stage without any evidence on the point liability to pay compensation cannot be shifted on T.H.D.C.

17. Learned Counsel appearing on behalf of THDC also contended that the penalty equal to 12% per annum u/s 4A(3) of the Act, awarded by the Commissioner on the amount of compensation, in default in depositing the compensation due within one month the date it fell due, is also against law. He has placed reliance on the case of National Insurance Co. Ltd. Vs. Mubasir Ahmed and Another, .

18. The learned Counsel appearing behalf of claimant has submitted that the date of compensation "falls due" is the date of accident and not the date of adjudication and since the employer did not accept the liability for compensation and no provisional payment was deposited based on the extent of liability and the employer was in default in payment of the compensation within one month of the accident, the learned Commissioner was justified in awarding the interest from the date of accident. He has placed reliance on the case of Oriental Insurance Co. Ltd. v. Siby George and Others (supra).

19. In the above cited case of National Insurance Co Ltd. v. Mubasir Ahmed and Another (supra), it has been held by Apex Court that the period starts on completion of one month from the date on which compensation fell due. The date when compensation becomes due cannot be the date of accident but it is the date of adjudication of claim. This principle has also been followed in the case of Kamla Chaturvedi Vs. National Insurance Co. and Others, .

20. However, in the recent case of Oriental Insurance Co. Ltd. v. Siby George and Others, reported in 2012 (5) Supreme Court 254, cited on behalf of claimant the Division Bench of Hon'ble Apex Court interpreted the earlier judgments National Insurance Co. Ltd. v. Mubasir Ahmed and Another (supra), and Oriental Insurance Co. Ltd. Vs. Mohd. Nasir and Another, , and the view taken in the above two judgments has been held a contrary view and relied on the earlier decision of Pratap Narain Singh Deb and Valsala do not express the correct view and do not make binding precedents and it was laid down 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.

21. Therefore, in view of above principle of law laid down by Apex Court the date "falls due" cannot be taken from the date of adjudication of claim but it is the date of accident, i.e. 22.9.1992.

22. By perusal of impugned award it transpires that the learned Commissioner has awarded penalty, for the delay caused in the disposal of the claim petition by the employer, @ 12% per annum on the awarded amount, i.e. a sum of Rs. 1,80,960. Learned Counsel for the THDC has contended that no notice was ever served by the learned Workmen's Compensation Commissioner upon the employer for imposition of penalty, therefore, the penalty imposed on the employer is against law and is liable to be quashed.

23. On a plain reading of the provisions of Sub-section (3) of Section 4A it becomes clear that payment of interest is a consequence of default in payment without going into the reasons for the delay and it is only in case where the delay is without justification, the employer might also be held liable to penalty after giving him a show cause. In the case at hand admittedly no show cause notice was served upon the employer before imposing penalty for the unjust delay in the disposal of the petition, therefore, the order of imposition of penalty upon the employer is against the provision of law.

24. Sub-section (3) of Section 4A makes provision for award of simple interest at the rate of six percent per annum on the amount due where the employer is in default in paying the compensation due under the Act within one month from the date it fell due. The date of the compensation "fell due" is the date of accident and the employer committed default in payment of compensation within one month of the date of accident, therefore, the employer is liable to pay simple interest @ 6% per annum, on the amount of compensation of Rs. 85,428, from the date of accident, i.e. 22.9.1992.

25. The A.O. No. 57D of 2005 preferred by THDC is partly allowed and award directing to pay a sum of Rs. 1,80,960 penalty for causing delay in the disposal of claim petition is hereby quashed. However, the employer THDC is liable to pay simple interest on the awarded amount of Rs. 85,428 @ 6% per annum from the date of accident i.e. 22.9.1992, till the date of final payment, to the claimant for default of payment of compensation under Sub-section (3) of Section 4A of the Act.

26. The A.O. No. 525/2011, is partly allowed. The impugned award dated 9.12.1997 is modified to the extent that the claimant is entitled to get a sum of Rs. 85,428 payable by National Insurance Company, instead of Rs. 2,13,570, as has been directed in the impugned award. If the amount has not been deposited within the prescribed time given by the learned Commissioner, the claimant shall be entitled to get interest as has been directed by the learned Workmen's Compensation Commissioner. Let a copy of this order be placed in the file of A.O. No. 525 of 2011.