(2015) 10 DEL CK 0319

In the Delhi High Court

Case No : FAO 385/2013 and C.M. No. 15735/2013

The New India Assurance Co. Ltd. APPELLANT

Vs

Puran Lal and Others RESPONDENT

Date of Decision : 28-10-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 1(4)
Criminal Procedure Code, 1973 (CrPC) — Section 173
Employees Compensation Act, 1923 — Section 10A(1), 25A

Citation : (2016) 1 ACC 109 : (2016) 226 DLT 520

Hon'ble Judges : J.R. Midha, J.

Bench : Single Bench

Advocate : Anup J. BhambhaniAdvocateAdvocate, as Amicus Curiae, Joydeep Majumdar, Satyam Thareja and Rohit Dutta, Advocates, for the Respondent

Judgement

J.R. Midha, J.—Mr. Rahul Mehra, learned Standing Counsel for Government of NCT of Delhi submits that five posts of Joint Labour Commissioners have been filled up, out of which four officers have already joined and one officer would be joining shortly. It is further submitted that two officers are already dealing with the Employees Compensation Act cases. It is submitted that the entire backlog is expected to be cleared by 29th February, 2016.

2. With respect to the fresh cases, the DCP (Railways) had submitted a report dated 03rd September, 2015 along with the format of the Employee Accident Report (EAR).

3. Mr. Anup J. Bhambhani, learned amicus curiae submits that the relevant provisions of the "Claims Tribunal Agreed Procedure" formulated by this Court in Rajesh Tyagi and Others Vs. Jaibir Singh and Others, be incorporated in the cases relating to the employees compensation. It is further suggested that the procedure relating to the Employees Accident Report (EAR) be implemented initially for a period of six months.

4. The Delhi Police and the Commissioners, Employees'' Compensation, shall

start the implementation of Employee Accident Report (EAR) w.e.f. 01st December, 2015 initially for a period of six months. The Delhi Police as well as Commissioners, Employees Compensation Act shall submit a report with respect to the functioning of this system for the first three months i.e. 01st December, 2015 to 29th February, 2016. The report be submitted by 10th March, 2016 whereupon this Court shall consider whether this procedure requires any modification/variation. The detailed procedure is as under:

"EMPLOYEES COMPENSATION AGREED PROCEDURE

1. Investigation of accidents arising out of and in the course of employment cases by the police

Immediately on receipt of the information of an accident, the Investigating Officer of Police shall inspect the site of accident, take photographs of the site of the accident from all angles, prepare a site plan and collect the relevant evidence. The Investigating Officer shall conduct spot enquiry by examining the eye-witnesses.

2. Duty of the police to complete the investigation of the criminal case and to file the chargesheet (Report under Section 173 Cr.P.C.) before the Metropolitan Magistrate and EAR along with copy of the chargesheet before the Commissioner, Employees'' Compensation within 30 days

The police shall make every endeavour to complete the investigation of the criminal case and shall submit the Employee Accident Report (EAR) with the Commissioner, Employees'' Compensation within 30 days of the accident. The EAR shall be in the form attached hereto as Annexure-A and shall be accompanied with the documents mentioned therein.

3. Copy of EAR to be furnished to the claimants, employer and the insurance company.

The Investigation Officer shall furnish the copy of EAR to the employee/legal representatives of the deceased employee, employer and the insurance company (if the employer had taken an insurance policy).

4. Extension of time to file EAR

Where the Investigating Officer is unable to complete the investigation within 30 days for reasons beyond his control, he shall seek extension of time to file EAR from the Commissioner, Employees'' Compensation.

5. Duty of the hospital to issue MLC and Post-mortem Report within 15 days of the accident

The concerned hospital shall issue the MLC and Post-Mortem Report, if any, to the Investigating Officer within 15 days of the accident.

6. Investigating Officer to seek necessary directions from the Commissioner, Employees'' Compensation

In the event of failure of the employer, Insurance Company and/or claimants to disclose the relevant information and documents required to complete the EAR, the Investigating Officer shall seek necessary directions from the Commissioner, Employees'' Compensation whereupon the Commissioner shall, in appropriate cases, direct the parties in default to disclose the relevant information on affidavit along with the original documents within 15 days.

7. Duty of the Investigating Officer to produce the employee/legal representatives of the deceased employee, employer and the eyewitnesses before the Commissioner, Employees'' Compensation along with the EAR

The Investigating Officer shall produce the employee/legal representatives of the deceased employee, employer and the eye witnesses before the Commissioner, Employees'' Compensation along with the EAR. However, if the Police is unable to produce the employer, claimants and eye-witnesses before the Commissioner, Employees'' Compensation on the first date of hearing for reasons beyond its control, the Commissioner, Employees'' Compensation shall issue notice to them to be served through the Investigating Officer for a date for appearance not later than 30 days. If the employer has taken an insurance policy, the Investigating Officer shall give an advance notice to the concerned Insurance Company about the date of filing of the EAR before the Claims Tribunal so that the nominated counsel for the Insurance Company can remain present on the first date of hearing before the Commissioner, Employees'' Compensation.

8. Duties of police shall be construed to be part of State Police Act

The duties of police enumerated above shall be construed as if they are included in the respective State Police Act and any breach thereof, shall entail consequences envisaged in that law.

9. Examination of EAR by the Commissioner, Employees'' Compensation

The Commissioner, Employees'' Compensation shall examine whether the EAR is complete in all respects and shall pass an appropriate order in this regard. If the EAR is not complete, the Commissioner shall direct the Investigating Officer to complete the same and shall fix a date for the said completion.

10. Commissioner, Employees'' Compensation to treat EAR as information under Section 10A(1) of the Employees'' Compensation Act

The Commissioner shall treat EAR as information under Section 10A(1) of the Employees'' Compensation Act. If the Police is unable to produce the claimants on the first date of hearing, the Commissioner, Employees'' Compensation shall initially register the EAR as a Miscellaneous Application which shall be registered as a claim petition after the appearance of the claimants. Where the claimants have filed a separate claim petition, the EAR shall be tagged to the claim petition. If a claimant opts to claim compensation under the Motor Vehicles Act instead of Employees Compensation Act, the Commissioner, Employees'' Compensation shall record the option of the claimant and close the matter.

11. Duty of the Insurance Company to appoint a Designated Officer within 10 days of the receipt of the copy of EAR

In cases of insurance by the employer, the Insurance Company shall appoint a Designated Officer within 10 days of the receipt of copy of the EAR. The Designated Officer shall be responsible for dealing / processing of that case and to pass a reasoned decision in writing with respect to the amount payable to the claimant in accordance with law.

12. Duty of employer and/or Insurance Company to process EAR and submit an offer for settlement within 30 days

The employer/Insurance Company shall examine the EAR and take a decision as to the quantum of compensation payable to the claimants in accordance with law. The decision shall be taken by the employer/Designated Officer of the Insurance Company in writing and it shall be a reasoned decision. The employer/ Designated Officer of the Insurance Company shall place the written reasoned decision before the Commissioner, Employees'' Compensation within 30 days of the date of receipt of the copy of EAR from the Investigating Officer.

13. Consent award to be passed where claimant accepts the offer of the employer/Insurance Company

If the compensation computed by the employer/Designated Officer of the Insurance Company is acceptable to all the claimants and is in accordance with law, the Commissioner, Employees'' Compensation shall pass a consent award whereupon the employer/Insurance Company shall make the payment of the award amount within 30 days. However, before passing the consent award, the Commissioner, Employees'' Compensation shall ensure that the claimants are awarded just compensation in accordance with law. The Commissioner, Employees'' Compensation shall also pass an order with respect to the respective shares of the individual claimants, where there are more than one, and the mode of disbursement.

14. In case of non-settlement, the Commissioner, Employees'' Compensation shall conduct an enquiry and pass an award within 30 day

If the offer of the employer/Insurance Company is not fair and not acceptable to the claimants or any of them or if the employer/Insurance Company has any defence available to it under law, the Commissioner, Employees'' Compensation shall proceed to conduct an inquiry and shall pass an award within a period of 30 days thereafter. The enquiry contemplated in the Employees Compensation Act is different from a trial. The principles relating to the scope of an enquiry are discussed in Mayur Arora Vs. Amit @ Pange and Others, . The Commissioners, Employees Compensation Act shall dispose of the cases within a period of three months in terms of Section 25A of the Employees Compensation Act.

15. Examination of the claimants before passing of the award

Before or at the time of passing of the award, the Commissioner, Employees'' Compensation shall examine the claimants to ascertain their financial condition/ needs to determine their share, mode of disbursement, amount to be kept in fixed deposit and period of fixed deposit. The Commissioner, Employees'' Compensation shall also ascertain the complete address and Bank Account details of the claimants. The Commissioner, Employees'' Compensation shall take on record the following documents from the claimants:

(i) Proof of residence;

(ii) Details of the Bank Account of the Claimants; and

(iii) Two sets of photographs and specimen signatures of the claimants.

18. Deposit of the award amount

18.1 In the award, the Commissioner, Employees'' Compensation shall specifically direct the employer/Insurance Company, as the case may be, to deposit the award amount with the Commissioner, Employees'' Compensation or the Bank along with the interest upto the date of notice of deposit to the claimants with a copy to their counsel within 30 days of the award. The names and addresses of the claimants and their counsel for issuance of notice of deposit be mentioned in the award.

18.2 The Commissioner, Employees'' Compensation shall keep the amount deposited by the owner/insurance company in fixed deposit till the disbursement of the amount to the claimants. The Commissioner, Employees'' Compensation shall ensure that the amount deposited is kept in fixed deposit within three working days of the deposit.

18.3 If the award amount has been directed to be deposited by the Insurance Company with the bank, copy of the award be sent to the Nodal Officer of the Bank along with the Court stamped copy of the photographs, specimen signatures, proof of residence and bank account details of the claimants. In case of direction to deposit the award amount directly with the Bank, the Commissioner, Employees'' Compensation shall direct the cheque be issued in the name of the Bank so that the award amount can earn interest till the claimant approaches the Bank.

19. Protection of the award amount

The Commissioner, Employees'' Compensation shall, depending upon the financial status and financial need of the claimant(s), release such amount as may be considered necessary and direct the remaining amount to be kept in fixed deposits in phased manner (for example, if a sum of Rs. 5,50,000/- has been awarded to the claimants, Rs. 50,000/-may be released immediately and the remaining amount of Rs. 5,00,000/- may be kept in 10 fixed deposits of Rs. 50,000/- each for a periods of six months, one year, one and a half years, two years and so on till five years or one year, two years, three years and so on till ten years). The Commissioner, Employees'' Compensation shall also consider imposing following conditions with respect to the fixed deposits:--

(i) The interest on the fixed deposits be paid monthly to the Claimant(s).

(ii) The monthly interest be credited automatically in the saving account of the claimant(s).

(iii) Original fixed deposit receipts be retained by the bank in safe custody. However, a passbook of the FDRs be given to the claimant(s) along with the photocopy of the FDR. At the time of maturity, the fixed deposit amount shall be automatically credited in the savings bank account of the Claimant(s).

(iv) No cheque book be issued to the claimant(s) without permission of the Court. However, a photo identity card be issued to the claimant(s) and the withdrawal be permitted upon production of the identity card.

(v) No loan, advance or withdrawal be allowed on the fixed deposits without permission of the Court.

(vi) The Bank shall not permit any joint name(s) to be added in the savings bank account or fixed deposit accounts of the victim.

(vii) Half yearly statement of account be filed by the Bank with the Commissioner, Employees'' Compensation.

20. Commissioner, Employees'' Compensation shall fix a date for reporting compliance

20.1 The Commissioner, Employees'' Compensation shall fix a date for reporting compliance in the award itself. The Commissioner, Employees'' Compensation shall also direct the employer/Insurance Company to place on record the proof of deposit of the award amount, the notice of deposit and the calculation of interest on the date fixed. Upon such proof being filed, the Commissioner, Employees'' Compensation shall ensure that the interest upto date of notice of deposit has been deposited by all concerned.

20.2 If the award amount is not deposited within the stipulated period, the Commissioner, Employees'' Compensation shall attach the bank account of the employer/insurance company.

21. Record of deposit of the award amount

The Commissioner Employees'' Compensation shall maintain the record of the deposit of the award amount in the following form:--

(i) Case title and number.

(ii) Date of award.

(iii) Award amount.

(iv) Date of deposit of the award amount.

(v) Date on which the amount was kept in fixed deposit.

(vi) Date of notice by the employer/insurance company to the claimant.

(vii) Date of notice by the Commissioner, Employee''s Compensation to the claimant.

(viii) Period for which the claimant is entitled to interest under Order XXI Rule 1(4) , CPC.

(ix) Amount of interest to which the claimant is entitled under Order XXI Rule 1(4) , CPC.

(x) Amount of interest actually received by the claimant under Order XXI Rule 1(4) , CPC.

5. It is hoped that the implementation of the Employees Compensation Agreed Procedure will start a new era in investigation and award of compensation under the Employees Compensation Act. However, the success of the Employees Compensation Agreed Procedure shall depend upon the implementation of the scheme by the Delhi Police and the Commissioners, Employees'' Compensation in its true letter and spirit.

6. The successful implementation of the Employees Compensation Agreed Procedure shall result in payment of compensation to the victims of the accidents within 90 days of the accident in terms of Section 25A of the Employees Compensation Act.

7. The Commissioners, Employees'' Compensation shall ensure that just compensation is paid to the victims of the accident or dependents within agreed time frame and the quality of justice is not compromised.

8. List as a part heard matter on 11th March, 2016.

9. This Court appreciates the assistance rendered by Mr. Anup J. Bhambhani with Mr. Joydeep Majumdar and Mr. Satyam Thareja, learned amicus curiae, Mr. Rahul Mehra, learned Senior Standing Counsel for GNCT of Delhi and Mr. Rajesh Mahajan, learned Additional Standing Counsel for GNCT of Delhi in formulating the Employees Compensation Agreed Procedure.

10. Copy of this order be given dasti to learned Senior Standing Counsel as well as learned Additional Standing Counsel under signature of the Court Master, for being circulated to Delhi Police and Commissioners, Employees'' Compensation for compliance. Copy of this order be also given dasti under signature of the Court Master to Mr. D.K. Nag, learned counsel for IRDA, who shall send the same to IRDA for being circulated to the insurance companies for compliance. Copy of this order be also given dasti under the signature of the Court Master to learned amicus curiae.

