

(2000) 02 KAR CK 0021

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 5282 and 5284 of 1999

The Oriental Insurance Co. Limited

APPELLANT

Vs

Sri. Ningachari and Others

RESPONDENT

Date of Decision : 23-02-2000

Acts Referred:

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

Citation : (2000) 3 KCCR 2001

Hon'ble Judges : V.P. Mohan Kumar, J

Bench : Single Bench

Advocate : S.P. Shankar, for the Appellant; D. Nagaraj, C/Respondent 1, for the Respondent

Judgement

V.P. Mohan Kumar, J.—An accident took place at the work spot and the claimants in these proceedings suffered certain injuries. They moved the Workmen's Compensation Commissioner, seeking compensation. An award of compensation was made by the Commissioner in each case wherein while awarding interest at 12% from the date of accident, the insurance company was made liable to pay the same. The Insurance Company has come up in appeal, challenging the order in so far as it makes them liable to pay interest from the date of the award.

2. The only point urged by the Insurance Company is that the fastening of the liability to pay the interest is illegal, in that it can arise only 30 days after the quantification of the compensation by the Commissioner and that from thirty days after the sustaining the injury and till quantification the quantum, the liability to pay the interest is on the employer. This is the only point urged in these appeals.

3. I have heard Mr. S.P. Shankar, learned Counsel for the appellant-Insurance Company and as also Mr. D. Nagaraj, learned Counsel for the respondent-workman in both the appeals.

4. The question raised mainly revolves on the meaning to be ascribed to the

expression "fell due" occurring in Section 4A(3) of the Act. The statute does not define the expression and we have to gather its meaning by looking at the words occurring in the provision of law. We are at present concerned with Section 4A(3) (3A) in this behalf. These sections have undergone amendment and Sub-section (3A) was added in 1995. The statute as it earlier is as follows:

4(A)(3)-Where an employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner may direct that in addition to the amount of the arrears, simple interest at the rate of six per cent per annum on the amount due together with, if in the opinion of the Commissioner there is no justification for the delay, a further sum not exceeding fifty per cent of such amount, shall be recovered from the employer by way of penalty.

(Underlining for reference)

In other words, it meant that the employee can claim interest if the amount of compensation is not paid by the employer within 30 days it fell due. The statute also postulates the existence of "justification for the delay" in making such payment. The expression "fell due" occurring therein takes its colours from the consequence of the subsequent words. Its meaning, hence has to be understood in the light of the wording employed in the subsequent clause in the sentence invoking the rule of "nocitur a socii". The subsequent words in the sentence states as follows:

...if in the opinion of the Commissioner there is no justification for the delay...

That is to say if there is no justification for the delay in paying the amount from the date on which it actually fell due, i.e., on the date of the accident, it attracts penalty up to 50% and not otherwise. This means penalty is for the delay in paying the amount that fell due from the date of the accident. If there is no justification, a penalty to the extent of 50% can be imposed. In other words, if there be justification there is no need to pay any penalty. Penalty is clearly a penal consequence for the delay and if there is no penal consequence at all, there be no need to pay interest as well. The amount of compensation obviously falls due immediately after the accident took place. The victim gains the right to claim compensation on the date on which the accident took place. The quantification alone is postponed. Two fold liability attached to the employer as per the section stood prior to amendment are,

(i) to pay interest from the date on which it fell due and

(ii) to pay penalty if there is undue delay in making the payment.

To put it differently, if there is no payment made by the employer as soon as it fell due, he suffers penalty. But if the expression "fell due" is to be understood as meaning, the date of accident as urged, then there would be a double advantage gained by the worker, in that he earns interest as well as the penalty. Interest itself is the damages for the illegal retention of the money due to the employee

by the employer. It is intended to reimburse the pecuniary loss sustained by him. It is infact intended to compensate the delay and in a form of penalty. As such, a double payment of such compensation by way of interest and penalty also may not be contemplated by the statute. If so, the expression "fell due" has to take colour of it meaning keeping these circumstances in mind. It would then mean only with reference to the time when it was quantified.

5. As such, this aspect necessitated clarification which was achieved by enacting of Act 30 of 1995, amending Section 4(A). It came into effect from 15.9.1995. The amended section reads as under:

4(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:

3(A) The interest payable under Sub-section (3) shall be paid to the workman or his dependent, as the case may be, and the penalty shall be credited to the State Government.

By the amendment, the payment of interest and penalty was separated. The rate of interest was varied. Sub-clause (b) clearly stated that the penalty payable is on "the arrears and interest thereon". Sub-section 4(3) gears the liability to pay the interest on the compensation due under the Act on the amount due. That is, interest is treated as part of the compensation to reckon penalty.

6. Beside by the addition of Sub-section 3(A) the position has been further clarified. It is stated interalia that interest payable u/s shall be paid to the worker or his dependent as the case may be and penalty shall be credited to the State Government. In other words, on the delaying of payment of compensation on unjustifiable count, the employee does not earn any penalty; apparently he is being compensated with higher rate of interest i.e., at 12% as against 6% that was earlier provided. This means, the liability to make good the loss sustained by the employee due to the delay has been taken care of. This can be achieved by interpreting the expression "fell due" to mean the time when the right to claim compensation accrued due. It means by taking away the entitlement of the employee to receive penalty u/s 3(A), the words "fell due" in Section 4(3) would take a different colour. In other words, the additional advantage that would be gained by the employee by means of interest for the amount due as well as the penalty for the delay has been taken care of and his claim is restricted to the

claim of interest alone. If that be the position, then the interest at the rate of 12% has to be paid to the employee from one month after the date on which it actually fell due. Thus a specific meaning has been attained by the "fell due" expression by means of amendment of the statute by introducing Sub-section 3(A). In view of the matter, the interest would accrue 30 days after the date of accident and not from the date of quantification. The award of Workmen's Compensation Commissioner which holds that the interest is payable from the date of accident should be modified and held that falls due only after 30 days from the date of accident, i.e. in the instant case from 22.6.1996. In all other respects, the award of the Commissioner stands confirmed. The amount deposited may be withdrawn by the claimant.