
(2014) 07 RAJ CK 0080

In the Rajasthan High Court

Case No : Civil Misc. Appeal No. 701/2003 and Cross Objection No. 43/2003

United India Insurance Co. Ltd.

APPELLANT

Vs

Nopa Ram

RESPONDENT

Date of Decision : 07-07-2014

Acts Referred:

Workmens Compensation Act, 1923 — Section 4(1)(b), 4(1)(c), 4A(3)(a)

Citation : (2015) 147 FLR 499

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : Ashok Mehta, Sr. Advocate and Devendra Sharma, Advocate for the Appellant; A.S. Shekhawat, Advocate for the Respondent

Judgement

Alok Sharma, J.—This order will dispose of both the civil misc. appeal and the cross-objection thereto.

2. Counsel for the appellant-United India Insurance Co. Ltd. (hereinafter "the Insurance Company") submitted that the award of Rs. 2,36,472/- to the respondent-claimant (hereinafter "the claimant") for the injuries suffered by him in an accident of 09.11.2001 when he was working on the thresher attached to the tractor No. RJ-23-R-3138 insured with the Insurance Company is unsustainable as the claimant's employment with the insured, Richhpal, the owner of the tractor No. RJ-23-R-3138, was not proved. It was further submitted that despite the lack of any documentary evidence, the income of the claimant was wrongfully taken at the maximum permissible of Rs. 4,000/- p.m. at the relevant time under Explanation II of Section 4(1)(b) of the Workmen's Compensation Act, 1923 (hereinafter "the Act of 1923"). It was then submitted that an accident occasioned by a thresher attached to the insured tractor could not be construed an accident from the use of the insured motor vehicle i.e. the tractor as the liability arising out of operating agricultural implements or machinery with the potential to cause injury to a workman is a liability covered under a separate policy in respect of which there was no contract of insurance

between the Insurance Company and the owner of the tractor No. RJ-23-R-3138. It was finally submitted that the learned Commissioner for arriving at the compensation of Rs. 2,36,472/- has not adverted to any formula mandated under the Act of 1923, the award amount is thus arbitrary and therefore liable to be redetermined/reduced as per provisions of the Act of 1923.

3. Mr. A.S. Shekhawat, appearing for the claimant, submitted that far from awarding excess compensation to the claimant, the Commissioner has awarded adequate compensation. He submitted that in terms of Section 4(1)(c) of the Act of 1923, the injured workman where he suffers partial permanent disablement is entitled to compensation computed with reference to loss of income first determined at 60% of his monthly salary multiplied by the relevant factor relatable to the workman's age and thereafter pro-rata adjusted with the percentage of loss of earning capacity proved. It was submitted that in terms of Schedule I part II entry 4, loss of a hand or of the thumb and four fingers of one hand or amputation entails partial permanent disablement and 60% loss of earning capacity. Before the Commissioner, even though the income of the claimant was proved to be Rs. 4,500/- p.m. by the employer, it was limited to Rs. 4,000/- p.m. as per the limiting provisions of the then extant Section 4(1)(b) of Explanation II of the Act of 1923. Counsel submitted that the age of the injured at the relevant time was 35 years (as per his injury report) consequent to which the claimant was entitled to a factor 197.06. Counsel then submitted that in the circumstances obtaining, the compensation payable to the claimant was Rs. 2,400/- (being 60% of the maximum income permissible of Rs. 4,000/- p.m. under the Explanation II to Section 4(1)(b) of the Act of 1923) multiplied by the factor of Rs. 197.06 (age 35) which works out to Rs. 4,72,944/-. Thereafter in terms of entry 4 of part II of Schedule I, the claimant was entitled to 60% of the amount of Rs. 4,72,944/- as loss of earning capacity which works out to Rs. 2,83,766/-. It was submitted that as against the amount thus due under the Act of 1923 to the claimant, the claimant was wrongly awarded a sum of Rs. 2,36,472/- only. Counsel further submitted that the learned Commissioner also failed to award interest as mandated by Section 4A(3)(a) of the Act of 1923 where in the event of failure to pay compensation due within 30 days from the date it fell due, interest @ 12% p.a. is to be paid along with the compensation determined. Counsel submitted that under the award dated 20.11.2002, the learned Commissioner had directed that the claimant would be entitled interest @ 9% p.a. only in the event the award amount were not paid within 60 days of the date of the award. The Insurance Company having deposited the said amount within 60 days, the claimant was altogether denied interest on the compensation amount--not that such a payment would have absolved the employer and his insurer from the liability to pay interest, compensation having not been admittedly paid within 30 days of the accident.

4. Heard. Perused the award dated 20.11.2002, passed by the learned Commissioner.

5. In my considered opinion, there is no force in the contention of the counsel for the Insurance Company that the award dated 20.11.2002 is liable to be set aside. The finding of the claimant being an employee of the insured is a finding of fact arrived at on the basis of evidence before the Commissioner and brooks no interference by this Court. Counsel for the Insurance Company has not been able to point out any perversity or illegality in the said finding. The contention on this ground is rejected. I also find little force in the contention of the counsel for the Insurance Company that the income of the claimant ought not to have been taken at Rs. 4,000/- p.m. The reason lies in the fact that the employer of the claimant appeared before the Commissioner and admitted to the salary of the claimant being Rs. 4,500/- p.m. The Commissioner thereafter with reference to explanation II of Section 4(1)(b) of the Act of 1923 kept the upper limit as per the maximum wages to be statutorily reckoned for determination of compensation i.e. Rs. 4,000/- p.m. The conclusion of the Commissioner on this count cannot be displaced on the mere argument of the counsel for the Insurance Company without any contra evidence to displace the employer's testimony on the claimant-workman's wages. I also find no force in the contention of the counsel for the Insurance Company that because the injury was occasioned in the course of use of the thrasher attached to the insured tractor No. RJ-23-R-3138, it did not tantamount to an injury caused by use of the insured vehicle. It is now well settled that the use of agricultural machinery attached to a tractor insured, is the use of the insured vehicle itself and injury to a workman in the course of such use entitles him to compensation. Reference in this regard can be had to the judgment of this Court in the case of National Insurance Company Vs. Meera [2009 (2) RJT 1067]. This contention of the counsel for the Insurance Company is also therefore rejected.

6. Consequently the civil misc. appeal stands dismissed.

7. The cross-objections of the claimant however have substance and deserve to be allowed. The reason lies in the fact that the salary of the claimant was found to be Rs. 4,500/- p.m. on the admission of his employer. But thereafter calibrated to Rs. 4,000/- in terms of explanation II of Section 4(1)(b) of the Act of 1923. The claimant was entitled for compensation to be determined in terms of Section 4(1)(c) of the Act of 1923 read with Schedule I part II entry 4 thereof as he had admittedly suffered partial permanent disablement with the amputation of his thumb and four fingers. The claimant was therefore entitled for compensation to be worked out as under: Rs. 2,400/- (60% of Rs. 4,000/-) X 197.06 (in view of age of the claimant being 35 years as per injury report) which equaled to Rs. 4,72,944/-. The said amount had to be calibrated with reference to Schedule I part II entry 4 which provides for 60% of the loss of income to be determined as compensation in cases of injury such as one suffered by the claimant leading not to total but partial permanent disablement. By an arithmetical calculation it works out to Rs. 4,72,944 X 60/100 equivalent to Rs. 2,83,766/-. The award of Rs. 2,36,472/- was therefore quite plainly inadequate. The claimant was thus entitled to difference of Rs. 47,294/- [Rs. 2,83,766/- - Rs.

2,36,472/-] as enhanced compensation.

8. I also find force in the contention of the counsel for the claimant that in the facts of the case the claimant was wrongly denied the statutory interest on compensation found payable as mandated by Section 4A(3)(a) of the Act of 1923. The direction of the Commissioner that interest on the compensation due would be payable only @ 9% p.a. and that too only in the event of award amount not being paid within 60 days from the date of the award is thus wholly illegal. It is well settled by a catena of decision of the Hon''ble Supreme Court as also this Court that the amount of compensation determined under the Act of 1923 if not paid by the employer or the Insurance Company within 30 days of the date it become due i.e. the date of accident, it would carry interest @ 12% p.a. Reference in this regard can be had to the judgment of the Hon''ble Supreme Court in the case of *Saberabibi Yakubbbhai Shaikh and Others Vs. National Insurance Co. Ltd. and Others*,

9. To my mind, the claimant was thus entitled to interest on the compensation payable to him @ 12% p.a. from the date of accident i.e. 09.11.2001 till the date of payment of the compensation amount--which counsel for the parties agree was 06.02.2003.

10. Consequently, the cross-objections filed by the respondent-claimant are allowed as under:

(i) The compensation amount payable to the claimant is enhanced from Rs. 2,36,472/- to Rs. 2,83,766/-.

(ii) The claimant would consequently be entitled to an additional payment of Rs. 47,294/- as enhanced compensation.

(iii) Interest @ 12% p.a. would be payable to the claimant on Rs. 2,36,472/- effective 09.11.2001 (date of accident) till 06.02.2003 when the compensation awarded by the Commissioner is stated to have been paid.

(iv) The claimant would be entitled additionally to interest on the enhanced award amount of Rs. 47,294/- from 09.11.2001 (date of accident) till the date of payment.