(2008) 03 DEL CK 0058

In the Delhi High Court

Case No : FAO No. 282 of 2005

United India Insurance Co. Ltd. APPELLANT

Vs

Sh. Brij Raj Singh and Another RESPONDENT

Date of Decision : 13-03-2008

Acts Referred:

Citation : (2009) ACJ 1452

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : Sanjay Kumar Chetry, for the Appellant; Nasreen Hasan, for R-1 and Y.R. Rao, for R-2, for the Respondent

Judgement

Pradeep Nandrajog, J.—2 short and crisp submissions have been made by learned Counsel for the appellant, the insurance company.

2. It is firstly urged that since accident in question took place on 12.10.2000 and the workman died on 20.10.2000, compensation payable had to be determined with reference to the statutory limits in force when accident took place. The second contention urged is that the insurance company cannot be saddled with liability to pay any compensation.

3. As on date of accident i.e. 12.10.2000 Explanation II to Section 4 reads as under:

Where the monthly wages of a workman exceed Rs. 2000/-, his monthly wages for purposes of Clause (a) and Clause (b) shall be deemed to be Rs. 2000/- only.

4. By Act No. 46 of 2000 the figure of Rs. 2,000 was replaced by figure of Rs. 4,000 with effect from 8.12.2000.

5. Under the impugned order dated 24.6.2005 Commissioner, Workmen''s Compensation has assessed compensation at the monthly income of Rs. 4,000/-.

6. The issue stands foreclosed by the decision of the Hon''ble Supreme Court

reported as Kerala State Electricity Board and Another Vs. Valsala K and Another, . view taken is that compensation has to be assessed with reference to statutory provisions in force as on date of accident and not in force when the claim petition is decided.

7. The first contention is accordingly accepted.

8. Pertaining to the second contention that penalty could not be levied on the insurance company relevant statutory provision is Section 4A of the Workmen''s Compensation Act 1923. The same reads as under:

4A. Compensation to be paid when due and penalty for default.-(1) Compensation u/s 4 shall be paid as soon as it falls due.

(2) In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts, and, such payment shall be deposited with the Commissioner or made to the workman, as the case may be, without prejudice to the right of the workman to make any further claim.

(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:

PROVIDED that an order for the payment of penalty shall not be passed under Clause (b) without giving a reasonable opportunity to the employer to show cause why it should not be passed.

Explanation.--For the purposes of this sub-section, ``scheduled bank''` means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934).

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

9. The issue pertaining to liability of the insurance company to pay compensation is also foreclosed by the decision of the Hon''ble Supreme Court reported as Ved Prakash Garg Vs. Premi Devi and others, followed in the decision reported as (2000) 1 ACC 326 L.R. Ferrow Alloys Ltd. v. Mahavir Mahato and Anr. It has been held in the two authorities that liability to pay interest and penalty on the compensation assessed are 2 distinct liabilities arising under the Act and that

while liability to pay interest is part and parcel of legal liability to pay compensation upon default of payment of the amount due within 1 month, penalty imposed under the Act is referable to Section 4A which makes the employer exclusively liable to pay the penalty.

10. Under the circumstances, the appeal stands disposed of reducing the compensation payable by the Commissioner, Workmen Compensation to Rs. 1,97,060/- (Rupees One Lakh Ninety Seven Thousand and Sixty only). Interest payable thereon @12% per annum, which is not disputed as the liability to pay in the appeal would be paid with effect from 21.10.2000 till date of payment.

11. 50% penalty levied on sum of Rs. 3,94,120/-, the sum payable under the award is corrected, in that, the penalty shall be paid on sum of Rs. 1,97,060/-. Further correction is made that the penalty would not be paid by the appellant. It shall be the liability of the employer i.e. respondent No. 2.

12. Vide order dated 20.9.2005, 50% of the compensation assessed under the award was directed to be paid to respondent No. 1, meaning thereby 50% of the compensation assessed was released to respondent No. 1.

13. The Commissioner, Workmen Compensation shall accordingly refund the balance amount lying in credit with him together with accrued interest thereon to the appellant.

14. No costs.

