(2012) 09 RAJ CK 0111

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 3140 of 2011

United India Insurance Co. Ltd. APPELLANT

Vs

Smt. Panki and Others RESPONDENT

Date of Decision : 06-09-2012

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

Citation : (2012) 4 WLN 421

Hon'ble Judges : R.S. Chauhan, J

Bench : Single Bench

Advocate : Sanjay Raj Paliwal, for the Appellant; Sunil Purohit and Mr. Sunil Bishnoi, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Chauhan, J.—The United India Insurance Company Ltd., is aggrieved by the award dt. 24.04.2009 passed by the Workmen''s Compensation, Jodhpur whereby the learned Commissioner has awarded a compensation of Rs. 4,07,700/- along with interest @ 9% per annum from 01.03.2005 i.e., a mother after the date of the accident, till the final payment of the amount, and has imposed a penalty of Rs. 2 lacs on the employer. The brief facts of the case are that Tejaram was working as a driver on a tractor owned by respondent-non-claimant, Mohanlal. On 28.01.2005, while trying to bring foodstuffs for other employees of Mohanlal while discharging his duties as a driver, the tractor turned turtle. Consequently, Tejaram came under the trolley. He was seriously injured. He was rushed to the Civil Hospital. However, during the course of treatment, he expired. Having lost the sole bread earner of the family, his wife, four minor children and his mother filed a claim petition before the learned Commissioner. According to them, Tejaram was thirty-two years old and was earning Rs. 4,000/- as monthly income. They claimed that despite the accident, Mohanlal did not pay them any compensation under the Workmen''s Compensation Act 1923 (Henceforth referred as the Act). Thus, they filed a claim petition for Rs.

8,11,000/- along with interest @ 18% per annum. In order to support their case, Tejaram''s wife, Panki Devi examined herself as a witness and submitted eight documents. The employer examined a single witness; the Insurance Company also examined two witnesses. After going through the oral and documentary evidence, the learned Commissioner passed the award dt. 24.04.2009 in the aforementioned terms. Hence, this appeal by the Insurance Company.

2. Mr. Sanjay Raj Paliwal, the learned counsel for the appellant, has raised the following contentions:-firstly, the Insurance Company is not liable for the payment of the interest amount. Secondly, relying on the case of Kamla Chaturvedi Vs. National Insurance Co. and Others, he has contended that the words "fell due" would mean the date one month from the date of adjudication. Therefore, the interest would be payable from one month after the date of adjudication. Thirdly, the Commissioner has taken the age of the deceased as 32 years whereas according to his driving licence he was born on 10.04.1967. Thus, on the date of accident, he was almost thirty-eight years old. Still the learned Commissioner has taken his age to be 32 years old. Hence, he has applied a wrong multiplier in order to calculate the compensation.

3. On the other hand, Mr. Sunil Purohit and Sushil Bishnoi, the learned counsel for the respondents, have contended that in the case of Kamla Chaturvedi (supra) the Hon''ble Supreme Court had already opined that the Insurance Company would be liable for the payment of interest. Secondly, recently in the case of Oriental Insurance Company Ltd. vs. Siby George & Ors., Civil Appeal No. 5669/2012 arising out of SLP (C) No. 9516 of 2010-decided on 31st July, 2012], the Apex Court has settled the entire issue with regard to the date from which the interest would be payable. Thirdly, the decision with regard to the age of the deceased is a question of fact which cannot be gone into in an appeal. Lastly, no substantial question of law has been raised by the Insurance Company. Therefore, this appeal deserves to be dismissed.

4. However, the learned counsel for the respondent has raised an additional plea. The learned Judge has erred in granting the compensation amount from 01.03.2005 i.e., almost one month from the date of the accident. In fact, the compensation and the interest should have been paid from 28.01.2005, the date of the accident.

5. Heard the learned counsel for the parties, examined the record as submitted by the learned counsel for the appellant and perused the impugned award and.

6. The issues whether the Insurance Company is liable to pay interest amount or not, and the issue as to from which date the interest would be payable, both these issues are not longer res integra as they have been settled by the Apex Court.

7. In the case of Ved Prakash Garg Vs. Premi Devi and others, the Apex Court had clearly held that the Insurance Company would not only be liable for payment of principal compensation amount, but would also be liable to pay

interest thereon, if any, imposed by the Commissioner on the employer under Sec. 3 and Section 4A(3) of the Act. Therefore, the first contention raised by the learned counsel for the appellant that the Insurance Company is not liable for the payment of interest amount is without any merit.

8. The Second issue mentioned above as to from which date the interest would be payable, the said issue was settled in the case of Bhagwan Singh Vs. The State of Haryana, The Hon''ble Supreme Court held that "the relevant date for determination of the date of compensation is the date of the accident and not the date of adjudication of the claim". Despite the fact that the case of Pratap Narain Singh Deo (supra) was decided by a Bench of four Judges, in the case of National Insurance Co. Ltd. Vs. Mubasir Ahmed and Another, the Apex Court opined that the compensation becomes due on the basis of the adjudication of the claim. Therefore, no interest would be levied prior to the date of the passing of the order determining the amount of compensation. Relying upon the case of Mubasir Ahmed & Anr. (supra), a similar view has expressed by the Apex Court in the case of Kamla Chaturvedi (supra). However, recently in the case of Siby George & Ors. (supra), the Hon''ble Supreme Court has noticed that the case of Mubasir Ahmed and other (supra) and the case of Oriental Insurance Co. Ltd. Vs. Mohd. Nasir and Another, have not noticed the judgment of the larger Bench in the case of Pratap Narain Singh Deo (supra). Therefore, in the case of Siby George & Ors. (supra), the Apex Court has overruled the case of Mubasir Ahmed (supra) and the case of Mohd. Nasir & Ors. (supra). Thus, even the interest payable on the compensation amount would be levied from the date of the accident, and not from the date of the adjudication of the claim. Therefore, the learned counsel for the appellant is not justified in claiming that the interest would be payable and leviable only from the date of the adjudication of the claim.

9. As far as the age of the deceased is concerned, a bare perusal of the Post-Mortem Report clearly reveals that he was thirty-two years old on the date of his death. Even if the driving licence shows his date of birth as 10.04.1967, mere mention of the date of birth cannot be said to be a clinching evidence as the basis for giving the date of birth is unknown. Moreover, since it is a question of fact which has been adjudicated upon, this Court will not enter into the said controversy.

10. The contention raised by the learned counsel for the respondents with regard to the date of the payment of the compensation and interest from 28.01.2005 is mis-directed. For, the claimants have not filed any appeal against the award. Therefore, the said contention cannot be raised by them. Lastly, no substantial question of law has raised in the present appeal. Therefore, the appeal is without any merit. It is, hereby, dismissed.

