
(2017) 01 SHI CK 0012
In the High Court Of Himachal Pradesh
Case No : 389 of 2016

United India Insurance Company Ltd.

APPELLANT

Vs

Raj Kumari & others.

RESPONDENT

Date of Decision : 03-01-2017

Acts Referred:

[Workmens Compensation Act, 1923](#), [Section 10](#) - Notice and claim

Citation : (2017) 01 SHI CK 0012

Hon'ble Judges : Sureshwar Thakur

Bench : Single Bench

Advocate : P.S Chandel, Vinod Kumar Thakur, Nishi Goel

Judgement

1. One Kashmir Singh, the predecessor-in-interest of the claimants while performing employment as a driver on truck bearing registration No. HIE-1065 under its registered owner , impleaded herein as respondent No.3, died in an ill-fated accident involving the afore-stated truck. The afore-stated truck on eruption of a sudden mechanical defect therein, slipped into the fast flowing water of river Chandra, in sequel where to deceased Kashmir Singh drowned in the river alongwith the truck whereon he was aboard. One Parshotam, a co-occupant alongwith the deceased in the ill-fated vehicle was, however, able to survive. Despite concerted attempts being made to locate the body of deceased Kashmir Singh yet his body could not be located.

2. Upon hearing the learned counsel appearing for the parties, this Court admits the instant appeal on the following substantial questions of law:- " 1. Whether the liability for payment of compensation and interest could be foisted upon the appellant insurance company from 12.10.2000, when the application for compensation was filed on 15.05. 2014 and liability itself was determined on 17.09.2015?

2. Whether the learned Commissioner was justified in entertaining the petition and allowing the compensation with interest after the gap of 14 years after the

date of accident and death of the workman when the petitioners ignored to file the petition within the period of two years as per Act? Substantial questions of law No. 1 and 2

3. Deceased Kashmir Singh during the course of his performing employment as a driver on the aforesaid truck suffered his demise on 12.9.2000, in sequel to the vehicle whereon he stood borne slipping into the gushing fast flowing waters of River Chandra, whereinto it drowned. Also thereat the claimants despite holding knowledge qua the factum aforesaid also their concert to locate the body of deceased Kashmir Singh bearing no fruition they yet proceeded to belatedly in the year 3.11.2012 institute a civil suit before the learned Civil Court seeking a declaratory decree qua with the aforesaid Kashmir Singh not being heard for 7 years since the ill-fated occurrence of 12.9.2000 thereupon his standing pronounced to be dead. The Civil Court concerned under its verdict comprised in Ex. PW-1/B rendered a decree pronouncing qua deceased Kashmir Singh suffering his demise in an accident which occurred on 12.9.2000 also it pronounced a decree qua his hence being presumed to be dead.

4. The aforesaid verdict pronounced by the Civil Court concerned embodied in Ex.PW-1/B though relieves the rigor of the mandate of Section 10 of the Workmen's Compensation Act, 1923 (for short "the Act") holding a trite mandate therein qua the claimants of the deceased workman standing enjoined to, within two years from the occurrence of his demise, prefer an apposite claim petition before the learned Commissioner concerned, contrarily the mandate of the relevant proviso engrafted therein permitting the learned Commissioner to, on his standing satisfied qua the sufficiency of cause which deterred the claimants to earlier within the apposite period of limitation engrafted in sub Section (1) of Section 10 of the Act, provisions whereof stand extracted hereinafter, institute an apposite application for compensation before him, visibly stands attracted hereat, attraction whereof stands awakened by the factum of a declaratory decree comprised in Ex. PW-1/B standing rendered on 24.10.2013 wherewithin a pronouncement stands embodied qua deceased Kashmir Singh suffering his demise in an accident which occurred on 12.9.2000, decree whereof has acquired conclusivity whereupon hence the uncertainty engulfing the cause of demise of deceased Kashmir Singh stood removed also when within a short time thereafter an apposite petition stood instituted before the learned Commissioner, does fillip an inference from this Court qua the claimants within the ambit of the relevant proviso to Section 10 of the Act succeeding in establishing qua theirs standing deterred by the aforesaid uncertainty gripping the cause of demise of deceased to immediately on occurrence of the ill-fated mishap involving the truck whereon the deceased was aboard, as its driver, to hence promptly therefrom institute an appropriate petition for compensation also thereupon a justifiable reason stands assigned by the learned Commissioner in his impugned award qua its constituting a sufficient cause for his within its ambit nullifying the effect of subsection (1) of Section 10 of the Act, wherewithin an obligation stands cast upon the claimants to within a period of two years since the occurrence, institute

an apposite application for compensation before the learned Commissioner. "(1) No claim for compensation shall be entertained by a commissioner unless notice of the accident has been given in the manner hereinafter provided as soon as practicable after the happening thereof and unless the claim is preferred before him within (two years) of the occurrence of the accident or, in case of death, within {two years} from the date of death. Provided that, where the accident is the contracting of a disease in respect with the provisions of sub-section (s) of Section 3 are applicable, the accident shall be deemed to have occurred on the first of the days during which the workman was continuously absent from work in consequence of the disablement caused by the disease. {Provided further that in case of partial disablement due to the contracting of any such disease and which does not force the workman to absent himself from work, the period of two years shall be counted from the day the workman gives notice of the disablement of his employer. Provided further that if a workman who, having been employed in an employment for a continuous period, specified under sub-section (2) of Section 3 in respect of that employment, ceases to be so employed and developed symptoms of an occupational disease peculiar to that employment within two years of the cessation of employment, the accident shall be deemed to have occurred on the day on which the symptoms were first detected:} {Provided further that the want of or any defect of irregularity in a notice shall not be a bar to the {entertainment of a claim} (a) If the claim is { preferred} in respect of the death of a workman resulting from an accident which occurred on the premises of the employer, or at any place where the workman at the time of the accident was working under the control of the employer or of any person employed by him and the workman died on such premises or at such place, or on any premises belonging to the employment, or die without having left the vicinity of the premises or place where the accident occurred, or (b) If the employer { or any one of several employers or any person responsible to the employer for the management of any branch of the trade or business in which the injured workman was employed} had knowledge of the accident from any other source at or about the time when it occurred:} Provided further that the Commissioner may (entertain)and decide any claim to compensation in any case notwithstanding that the notice has not been given, or the claim has not been {preferred}, in due time as provided in this sub-section, if he is satisfied that the failure so to give the notice or {prefer} the claim, as he case may be, was due to sufficient cause."

5. Be that as it may the apposite petition for compensation constituted by the claimants before the learned Commissioner though may fall within the ambit of the relevant statutorily engrafted proviso vis-vis the mandate of sub Section (1) of Section 10 of the Act, whereupon the disabling effect of immensity of delay in the institution of the apposite claim petition before the learned Commissioner stands negated also thereupon the claim petition is rendered maintainable, yet the statutory liability of interest within the mandate of sub Section (3) of Section 4-A of the Act on the judicially determined compensation amount, as stands

fastened upon the insurer, given its evidently executing a valid contract of insurance with the employer of the deceased wherewithin the insurer accepts its liability for indemnifying the employer qua the judicially determined compensation amount vis-vis the claimants on occurrence of demise of a workman during the course of his performing his relevant employment under his employer, may not stand tenably fastened upon the insurer by the commissioner. The reason for erecting the aforesaid conclusion rests upon the factum of the deceased at the relevant time standing evidently accompanied by one Parshottem, the lone survivor in the ill-fated mishap, yet the claimants immediately on the mishap taking place omitted to promptly therefrom file an appropriate claim petition before the learned Commissioner rather they waited up till 3.11.2012 whereat they filed a suit for a declaratory decree standing pronounced qua deceased Kashmir Singh standing declared to be dead also therein they claimed a decree qua his suffering his demise on 12.9.2000 in an accident involving the relevant vehicle, claim whereof projected by the claimants in their suit stood affirmatively countenanced, on anvil of the Civil Court concerned placing implicit reliance upon the testimony of one Parshotam. If so, the claimants could well have immediately besides promptly, at the relevant time qua the apposite vehicle slipping into the gushing waters of river Chandra whereon deceased Kashmir Singh was astride as its driver, instituted an apposite petition before the learned Commissioner wherein they could well have cited Purshotam as a witness for proving the cause of demise of Kashmir Singh occurring in the manner enumerated in the petition. However, they omitted to do so, rather they procrastinated upto 3.11.2012 for obtaining a declaration qua the cause of demise of Kashmir Singh arising from the aforesaid factum. Though the aforesaid decree rendered by the Civil Court concerned as stands embodied in Ex. PW-1/B does countenance the aforesaid plea espoused by the claimants also given its acquiring conclusivity, it hence does not warrant its standing interfered with, nonetheless as aforestated the imprompt institution of the claim petition by the claimants since 12.9.2000 uptill 2014, significantly after the pronouncement of a Civil Court embodied in Ex. PW-1/B, whereas they immediately on the vehicle slipping into the gushing waters of river Chandra whereon the deceased at the relevant time was astride as its driver, who alongwith the relevant vehicle drowned in the aforesaid river when stood facilitated to through Purshotam, the lone survivor in the mishap, project before the learned Commissioner qua the demise of deceased Kashmir Singh arising from the aforesaid factum, yet they omitted to do so, apparently with theirs holding uncertainty qua the cause of demise of deceased Kashmir Singh standing sequelled in the manner as ultimately pronounced in Ex. PW- 1/E. "(1) Compensation under Section 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 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."

6. The afore-extracted mandate of sub Section (3) of Section 4 -A of the Act enjoining the insurer of the employer to bear the liability of interest levied on the compensation amount besides its levying thereon commencing on one month elapsing since the accident, graphically remains un-attracted vis-vis the insurer. The reason for erecting the aforesaid inference stands anchored upon the factum of the provisions preceding thereto standing enjoined to be read cumulatively besides conjointly alongwith its provisions, preceding provisions whereto hold a clear mandate qua the employer holding a statutory liability vis-vis the dependants of the deceased workman to pay compensation to them "as soon as it falls due" also he stands fastened with a statutory liability to immediately on occurrence of the mishap, make the relevant payment(s) to the dependents of the deceased workman. The obvious bespeakings which emanate from the aforesaid provisions occurring precedingly vis-vis Sub Section (3) rather are qua the dependants of the deceased workman holding a forthright firm opinion qua the demise of their predecessor-ininterest wherefrom they hold an indefeasible right to entail the relevant employer to comply with the mandate of the statutory provisions preceding thereto. Also theirs immediately on occurrence of the ill-fated mishap involving the vehicle whereon he stood astride as its driver stood enjoined to hold an invincible opinion qua the demise of the deceased workman standing sequeulled by a cause which stands belatedly enunciated in the claim petition instituted by the claimants subsequent to the rendition of a Civil Court embodied in Ex.PW-1/B. However, hereat the claimants nursed a deep ambiguity besides a pervasive uncertainty qua the cause of demise of deceased Kashmir Singh, concomitantly thereupon they held no empowerment thereat inasmuch as to on occurrence of the ill-fated mishap whereat within the mandate of sub Section (1) of Section 4-A of the Act, the employer stood obliged to defray compensation to them, to hence call upon the employer or the insurer, to make defrayment of compensation amount vis-vis them nor obviously the insurer or

the relevant employer, stood enjoined to defray compensation amount to the claimants of deceased workman Kashmir Singh. The corollary of the aforesaid inference is with the claimants wavering besides theirs holding a dithering view qua the cause of demise of deceased upto 24.10.2013 whereon Ex. PW-1/B stood pronounced thereupon they cannot when for reasons aforestated, the provisions of Sub Section (1) and sub Section (2) preceding the apposite relevant provisions held in Sub Section (3) stand un-attracted vis-vis the insurer also when all the aforesaid provisions are enjoined to be conjointly read, hence make any claim upon the insurer to defray to them the interest on the compensation amount on its levying thereon on one month elapsing since the ill fated mishap. Tritely, the aforesaid omission(s) of the claimants cannot render them to be befitting recipients of the benefit of sub section (3) of Section 4-A of the Act.

7. Further more, though the insurer has concerted to exculpate its liability to pay interest on compensation amount, yet the aforesaid concert is rudderless, as the insurer has only adduced into evidence the cover note, holding details of the contract of insurance executed by it with the employer of the deceased workman encompassing therein its liability to indemnify the employer the judicially determined compensation amount vis-vis the claimants, on occurrence of demise of the deceased workman, yet no disclosure exists therein qua the apposite liability of the insurer to pay interest on the compensation amount standing exculpated. The aforesaid pronouncement though may stand manifested in the comprehensive cover note, yet the latter has remained unadduced into evidence, for its non-adduction into evidence, an adverse inference stands drawn against the insurer, thereupon it stands concluded qua its holding the relevant liability to pay interest on the compensation amount as stands hereinafter assessed by this Court vis-vis the claimants.

8. Consequently, the award of the Commissioner in levying interest on compensation amount assessed qua the claimants is modified to the extent that interest on the compensation amount shall accrue thereon not from one month elapsing since the occurrence rather shall accrue thereon since the filing of the claim petition.

9. In view of the above the appeal is partly allowed. Substantial question of law No. 1 stands answered in favour of the appellant and question No.2 is answered accordingly in favour of the respondents. Pending applications stands disposed of accordingly.