

(1984) 09 AHC CK 0059
In the Allahabad High Court

U.P. State Transport Corporation

APPELLANT

Vs

Abdul Hameed

RESPONDENT

Date of Decision : 14-09-1984

Acts Referred:

Workmens Compensation Act, 1923 — Section 30(1)

Workmens Compensation Act, 1923 — Section 30(1)

Workmens Compensation Act, 1923 — Section 30(1)

Citation : (1985) 1 ACC 425 : (1985) ACJ 832 : (1984) AWC 518 Supp

Hon'ble Judges : R.K. Shukla, J;B.D. Agarwal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.D. Agrawal, J.—These connected appeals u/s 30(1) of the Workmen's Compensation Act, 1923 (for short the "Act") are directed against an order of the Commissioner dated August 23, 1977.

2. Abdul Hameed was a workman under the employment of the U.P. State Road Transport Corporation (hereinafter referred to as the "Corporation") during the relevant period. On March 29, 1975, he was driving the bus No. USR 9194 carrying passengers from Nainital to Haldwani. Due to a sudden failure of the brake the bus met with an accident resulting in grievous injuries to Abdul Hameed, the driver. Medical examination took place the same day and later the Medical Board declared him absolutely unfit to continue in employment. As a result he was retired with effect from September 9, 1975. After giving notice to the Commissioner as required u/s 10(1) of the Act, Abdul Hameed preferred the claim for compensation before the Commissioner on March 26, 1977. The Commissioner found that Abdul Hameed receive Rs. 449.52 per month as the salary. The amount of compensation assessed on the basis thereof was Rs. 14,000/-. In addition the Commissioner found the claimant entitled to received Rs. 2,020/- as interest and a sum of Rs. 5,000/- by way of penalty. In all thus he has been granted a sum of Rs. 21,020.60 only.

3. Aggrieved against this order the Corporation preferred First Appeal from order No. 434 of 1977. Abdul Hameed has filed cross-appeal registered as First Appeal from Order No. 444 of 1977. These were heard together.

4. Learned Counsel for the Corporation contends that there could be no penalty awarded to Abdul Hameed. The argument is that the compensation should have been taken to fall due upon the determination, of the amount thereof. It was submitted that the Corporation may have pleaded that the accident occurred due to lack of adequate precaution taken by the claimant himself and there arose no liability of any kind against the Corporation. From the record it would appear that the Corporation did not put any contest before the Commissioner despite notice and the opportunity being accorded. In the absence of anything placed on the record from the side of the Corporation and in face of the evidence filed by the claimant having remained unrebutted there remains no basis to say that the liability against the Corporation may not have accrued.

5. There is no dispute that the claimant was during the relevant period a workman within the meaning of Section 2(n) of the Act under the employment of the Corporation. It is also established that personal injury was caused to him by accident arising out and in the course of his employment while he was carrying the bus belonging to the Corporation from Nainital to Haldwani on March 29, 1975. Section 4-A(1) of the Act provides that compensation u/s 4 shall be paid "as soon as it falls due". Sub-section (3) of Section 4-A reads as under:

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 may direct that, in addition 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.

6. The question for determination is as to when may the compensation u/s 4-A be said to fall due. In the present case the personal injuries were caused to the claimant on account of the accident on March 29, 1975.

Immediately upon the injuries being caused compensation became due to him within the meaning of Section 4-A(1) of the Act. This is not kept under suspense or deferred until the determination made by the Commissioner u/s 19 of the Act. In *Pratap Narain Singh Deo Vs. Srinivas Sabata and Another*, also a case arising due to personal injury caused to the workman under this Act, the Supreme Court held that it was the duty of the employer u/s 4-A(1) to pay the compensation at the rate provided by Section 4 "as soon as the personal injury was caused to the respondent". The employer having failed to do so, there was liability incorporated for payment of interest and penalty as contemplated under Sub-section (3). It was also laid down that there was no substance in the argument that the liability of the employer to pay compensation u/s 4 in respect of the injury was suspended until after the settlement contemplated by Section 19. To the same

effect is the view expressed by this Court in the case reported in *Saraswati Press, Dehradun v. Nand Ram* 1971 ACJ 842 . This also was a case of personal injury caused to the workman and it was held that u/s 4-A the workman becomes entitled to the compensation as soon as it falls due that is to say on the date the injury is caused and not at any subsequent occasion. Reference in this connection may also be made to the decisions reported in *Smt. Vimlaben Vashrambhai and Others Vs. The Gujarat Housing Board and Others*, and *Jayamma Vs. Executive Engineer, P.W.D.*, . These cases arose on the death of the workmen involved in the accident and the view taken was that the compensation became due immediately on the point of death. Accordingly it may not be doubted that Abdul Hameed became entitled in the instant case to compensation on March 29, 1975, when he received personal injury by accident arising out of and in the course of his employment under the Corporation.

7. Learned Counsel urged that the delay caused in making deposit of compensation due to the workman was open to be explained by the Corporation before the Commissioner. Apart from the fact that no explanation of any kind came to be advanced, it does not appear, taking into account Sub-section (3) of Section 4-A that this could be a matter for further enquiry. The deposit of the compensation was made by the Corporation, it appears, on or about March 29, 1977. This was two years after the compensation had become due. Sub-section (3) provides that where an employer is in default in paying compensation due under the Act within one month from the date it fell due, there accrues the liability to payment of interest and the penalty. The compensation having become due on March 29, 1975, itself, there is no error of law on the part of the Commissioner in directing payment of penalty besides interest over and above the Compensation.

8. For Abdul Hameed, the claimant, it was contended in the appeal filed by him that the compensation should have been assessed in the light of the revised schedule IV read with Section 4 of the Act. The revision in the Schedule took place with effect from October 1, 1975, by the Central Act 65 of 1976. The compensation has been assessed by the Commissioner in accordance with the schedule IV read with Section 4 as it was in force on March 29, 1975, the date when the compensation became due. In our opinion the submission for the claimant in this behalf cannot be sustained. Since the relevant date when the compensation fell due is, as discussed above. March 29, 1975, it would be incongruous to say in the same breath that the rate awarded should be as in force with effect from October 1, 1975. The compensation is to be considered due at the rate in force on March 29, 1975, the date of the accident itself.

9. For the reasons given above, these appeals are devoid of merit and, therefore, dismissed. There will be no order as to costs.