UNREPORTABLE

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

FAO No.91/2009

Date of Decision: April 13, 2010

U.O.I. .....Appellant
Through Mr. A.S.Dateer, Advocate

versus

SUMITRA DEVI ..... Respondent
Through None

CORAM:
HON'BLE MISS JUSTICE REKHA SHARMA

1. Whether the reporters of local papers may be allowed to see the judgment? No
2. To be referred to the reporter or not? No
3. Whether the judgment should be reported in the 'Digest'? No

REKHA SHARMA, J.

The short question which falls for consideration in this appeal is, whether the Commissioner under the Workmen's Compensation Act, 1923 can suo-moto without reference/demand from the claimants issue direction to the employer to deposit interest calculated @ 12% per annum for the period of delay caused in not depositing the compensation within one month from the date it fell due.

The facts are not in dispute. They are as under:-

One Shiv Karan was working as Gang Man, SSB Yard with the appellant. On March 16, 2007 while he was on duty at Up Martial 3,

he died during the shunting movement in the same track. As his death had occurred while and in the course of his employment with the appellant, his widow became entitled to compensation under the Workmen's Compensation Act, 1923 (hereinafter referred to as the Act). The appellant assessed the compensation payable to the widow at Rs.2,71,120/- and deposited the same with the office of the Commissioner on February 05, 2008. The Commissioner by an order passed on November 26, 2008 has held that the compensation deposited with him was delayed by 10 months & 19 days and hence, has directed the appellant to deposit a sum of Rs.28,829/- towards interest for the delayed period calculated @ 12% per annum within 30 days from the date of the order, failing which the appellant has been put to notice that it shall be recovered as arrears of land revenue under Section 31 of the Act. By the same order, the Commissioner has also given notice to the appellant to show-cause why the penalty equivalent to 50% of the compensation amounting to Rs.1,35,560/- be not imposed upon it for not making the payment of compensation within the prescribed time limit.

It is the aforementioned order of November 26, 2008 which has been assailed in the present appeal.

In so far as the latter part of the order directing the appellant to show-cause why the penalty be not imposed upon it, the learned counsel for the appellant stated before this Court on March 17, 2009 that the appellant would give appropriate reply to the same before the Commissioner and if still aggrieved he will agitate the said issue after passing of the final order by the Commissioner. Hence, the only part

of the order with which the appellant is aggrieved is the direction to the appellant to deposit the interest calculated at Rs.28,829/- for the delayed period.

Before I proceed to deal with the question as noticed at the outset, it needs to be borne in mind that the Workmen's Compensation Act, 1923 is a beneficial piece of social legislation. The object of the Act is to provide financial assistance to those workmen who in the course of their employment receive such injuries which reduce their earning capacity or make them disable. In the case of death of a workman, the Act seeks to provide financial assistance to his dependants who are left to fend for themselves consequent upon the death of the bread-earner of the family. Not only does the Act provide for payment of compensation to the workman or his dependants but it also lays down the formula how the compensation payable is to be worked out. The relevant section in this regard is Section 4. It needs to be reproduced in totality. This is how it runs:-

> "**4. Amount of compensation –** (1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely:-

(a)	Where death results from the injury	an amount equal to fifty per cent of monthly wages of the deceased workman multiplied by the relevant factor; or an amount of fifty thousand rupees, which-ever is more;
(b)	Where permanent total disablement results from the injury	an amount equal to sixty per cent of the monthly wages of the injured workman multiplied by the relevant factor;

		or an amount of sixty thousand rupees, whichever is more;

Explanation I – For the purposes of clause (a) and clause (b) "relevant factor" in relation to a workman means the factor specified in the second column of Schedule IV against the entry in the first column of that Schedule specifying the number of years which are the same as the completed years of the age of the workman on his last birthday immediately preceding the date on which the compensation fell due.

Explanation II – Where the monthly wages of a workman exceed two thousand rupees, his monthly wages for the purposes of clause (a) and clause (b) shall be deemed to be two thousand rupees only;

(c)	Where permanent partial disablement results from the injury	(i) in the case of an injury specified in Part II of Schedule I, such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury; and (ii) in the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury;

Explanation I.– Where more injuries than one are caused by the same accident, the amount of compensation payable under this head shall be aggregated but not so in any case as to exceed the amount which would have been payable if permanent total disablement had resulted from the injuries.

Explanation II. – In assessing the loss of earning capacity for the purpose of sub-clause (ii), the qualified medical practitioner shall have due regard to the percentages of

loss of earning capacity in relation to different injuries specified in Schedule I;

(d)	Where temporary disablement whether total or partial results from the injury	a half monthly payment of the sum equivalent to twenty-five per cent of mostly wages of the workman, to be paid in accordance with the provisions of sub-section (2).

(1A) Notwithstanding anything contained in sub-section (1), while fixing the amount of compensation payable to a workman in respect of an accident occurred outside India, the Commissioner shall take into account the amount of compensation, if any, awarded to such workman in accordance with the law of the country in which the accident occurred and shall reduce the amount fixed by him by the amount of compensation awarded to the workman in accordance with the law of that country.

(2) The half-monthly payment referred to in clause (d) of sub-section (1) shall be payable on the sixteenth day –

(i) from the date of disablement where such disablement lasts for a period of twenty-eight days or more, or

(ii) after the expiry of a waiting period of three days from the date of disablement where such disablement lasts for a period of less than twenty-eight days; and thereafter half-monthly during the disablement or during a period of five years, whichever period is shorter:

Provided that –

(a) there shall be deducted from any lump sum or half-monthly payments to which the workman is entitled the amount of any payment or allowance which the workman has received from the employer by way of compensation during the period of disablement prior to the receipt of such lump sum or of the first half-monthly payment, as the case may be; and

(b) no half-monthly payment shall in any case exceed the amount, if any by which half the amount of the monthly wages of the workman before the accident exceeds half the amount of such wages which he is earning after the accident.

Explanation.– Any payment or allowance which the workman has received from the employer towards his medical treatment shall not be deemed to be a payment or allowance received by him by way of compensation within the meaning of clause (a) of the proviso.

> (3) On the ceasing of the disablement before the date on which any half-monthly payment falls due there shall be payable in respect of that half-monthly a sum proportionate to the duration of the disablement in that half-month.
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> (4) If the injury of the workman results in his death, the employer shall, in addition to the compensation under sub-section (1), deposit with the Commissioner a sum of one thousand rupees for payment of the same to the eldest surviving dependant of the workman towards the expenditure of the funeral of such workman or where the workman did not have a dependant or was not living with his dependant at the time of his death to the person who actually incurred such expenditure.

In view of the aforementioned formula laid down in Section 4 of the Act, the task of the employer in the matter of calculating compensation has been made much easier. All that the employer has to do is to calculate the compensation payable to a workman or his dependants in the manner indicated in the said section. It leaves no scope for delayed payment of compensation, specially, in those cases where there is no dispute that the workman suffered permanent or partial disability or died in the course of his employment. The employer in such cases in the event of the delayed payment of compensation cannot be allowed to take the plea that the time was taken in working out the compensation payable to the workman or his dependants.

In order to further ensure that the compensation calculated under Section 4 of the Act is paid without delay, adequate provision for the same has been made in Section 4-A of the Act. It runs as under:-

> "**4A. Compensation to be paid when due and penalty for default** – (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 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 as 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 payable under sub-section (3) shall be paid to the workman or his dependant, as the case may be, and the penalty shall be credited to the State Government."

The aforementioned Section not only mandates that the compensation shall be paid as soon as it falls due, but further mandates that where any employer is in default in paying any compensation under this Act within one month from the date it fell due, the Commissioner shall direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon @ 12% 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. The said Section nowhere lays down that the Commissioner shall pass an order directing deposit of interest only if a reference is made to him by the claimants asking for such interest. As a matter of fact, the said section casts an obligation on the Commissioner to issue a direction for payment of interest, in case the amount is not deposited with him within one month from the date it fell due; such date obviously being the date of the accident of the workman or the date of death of the workman.

It was sought to be contended by the learned counsel for the appellant that the delay in depositing the compensation amount was caused due to **'official procedure'**. As noticed above, it is to cut down the so called **'official procedural delays'** that Section 4 of the Act has laid down exhaustive formula to calculate the compensation payable to the workman or his dependants, as the case may be. If inspite of such readymade formula available with the employer, it chooses to take its own time in settling the claim for compensation in total disregard of the fact that the workman or his dependants on account of the accident would be living in a state of penury, the employer must be made to pay interest for the delayed deposit of the compensation by it. It is to check red-tapism which has taken deep roots in our bureaucracy that sub-section (3) of Section 4-A has been designed. It is a different matter that the bureaucracy does not care less. And why should it? It is answerable to none. The Act does not

provide for any penal action against those responsible for the delay and the system does not make them accountable. The end result is that payment such as interest goes out of the public exchequer, whereas ideally speaking it should be recovered from those who cause the delay. It is only when a hole will be created in their pockets that they will feel the pinch. Hence, it is time that some system is put in place and action is taken against those responsible for the delay caused.

For the foregoing reasons, I find no merit in the appeal. The same is dismissed.

REKHA SHARMA, J.

APRIL 13, 2010
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