

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

+ **FAO 301/2007**

Reserved on : 09.11.2010
Date of Decision : 12.11.2010

M/S ERA CONSTRUCTIONS INDIA LTD. NOW ERA INFRA
ENGINEERING LTD. Appellant
Through: Mr. Ankit Parmar, Adv.

Versus

COMMISSIONER, WORKMEN COMPENSATION & ORS.
.... Respondents
Through: Mr. Vikrant Sharma, Mr. Ravi
Shankar Garg, Adv. for R-5.
Mr. Y.D. Nagar, Adv. for GNCTD.

CORAM:
HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

: **MOOL CHAND GARG,J**

1. The short point raised in this appeal by the appellant was that the claim became due and payable to the dependents of the deceased only when the claim was adjudicated upon by the Commissioner, Workmen's Compensation Act, 1923, (hereinafter referred to as "the Commissioner") and therefore the liability to pay penalty or interest can accrue only from the date of such adjudication. He has relied upon a judgment of the Hon'ble Supreme Court delivered in the case of National Insurance Company Ltd. Vs. Musbasir Ahmed & Anr., AIR 2007 SC 1208, decided on 01.02.2007, wherein the Hon'ble Supreme Court while interpreting the liability to pay interest under Section 4A(3) has been pleased to make the following observations:-

"8. Interest is payable under Section [4-A\(3\)](#) if there is default in paying the compensation due under this Act within one month from the date it fell due. The question of

liability under Section [4A](#) was dealt with by this Court in Maghar Singh v. Jashwant Sing : (1998)9SCC134 . By Amending Act, 14 of 1995, Section [4A](#) of the Act was amended, inter alia, fixing the minimum rate of interest to be simple interest @ 12%. In the instant case, the accident took place after the amendment and, therefore, the rate of 12% as fixed by the High Court cannot be faulted. But the period as fixed by it is wrong. The starting point is on completion of one month from the date on which it fell due. Obviously it cannot be the date of accident. Since no indication is there as when it becomes due, it has to be taken to be the date of adjudication of the claim. This appears to be so because Section [4A\(1\)](#) prescribes that compensation under Section [4](#) shall be paid as soon as it falls due. The compensation becomes due on the basis of adjudication of the claim made. The adjudication under Section [4](#) in some cases involves the assessment of loss of earning capacity by a qualified medical practitioner. Unless adjudication is done, question of compensation becoming due does not arise. The position becomes clearer on a reading of Sub-section (2) of Section [4A](#). It provides that provisional payment to the extent of admitted liability has to be made when employer does not accept the liability for compensation to the extent claimed. The crucial expression is "falls due". Significantly, legislature has not used the expression "from the date of accident". Unless there is an adjudication, the question of an amount falling due does not arise."

2. It may however be observed that this judgment does not help the case of the appellant inasmuch as the present case was a case of death and therefore, the date of arising of the cause of action for payment was known to everyone including the appellant who admittedly was a sub-contractor and thus is covered in the definition of "managing agent" as defined in Section 2 (f) of the Workmen's Compensation Act 1923 and therefore becomes an "employer" as defined Section 2 (e). The two Sections are also reproduced for the sake of reference:-

"2(e)"employer" includes anybody of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer, and, when the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, means such other person while the workman is working for him.

2(f)"managing agent" means any person appointed or

acting as the representative of another person for the purpose of carrying on such other person's trade or business, but does not include any individual manager subordinate to an employer."

3. Additionally, it may also be observed that in a Constitution Bench judgment delivered in the case of Pratap Narain Singh Deo Vs. Srinivas Sabata & Anr. (1976) 1 SCC 289 the issue as to when the liability to pay compensation arises has been discussed. The relevant discussion appears in para 4, 6 and 7 of the said judgment and reads as under:-

"4. It has not been disputed before us that the injury in question was caused to the respondent by an accident which arose out of and in the course of his employment with the appellant. It is also not in dispute that the injury resulted in amputation of his left arm at the elbow. It has however been argued that the injury did not result in permanent total disablement of the respondent, and that the Commissioner committed a gross error of law in taking that view as there was only partial disablement within the meaning of Section [2\(1\)\(g\)](#) of the Act which should have been deemed to have resulted in permanent partial disablement of the nature referred to in item 3 of Part II of Schedule I of the Act. This argument has been advanced on the ground that the amputation was from 8" from tip of acromion and less than 4 1/2" below tip of olecranon. As will appear, there is no force in this argument.

6. It has next been argued that the Commissioner committed a serious error of law in imposing a penalty on the appellant under Section [4A\(3\)](#) of the Act as the compensation had not fallen due until it was 'settled' by the Commissioner under Section [19](#) by his impugned order dated May 6, 1969. There is however no force in this argument.

7. Section [3](#) of the Act deals with the employer's liability for compensation. Sub-section (1) of that section, provides that the employer shall be liable to pay compensation if "personal injury is caused to a workmen by accident arising out of and in the course of his employment". It was not the case of the employer that the right to compensation was taken away under Sub-section (5) of Section [3](#) because of the institution of a suit in a civil court for damages, in respect of the injury, against the employer or any other person. The employer therefore become liable to pay the compensation as soon as the aforesaid personal injury was caused to the workmen by the accident which admittedly arose out of and in the course of the employment. It is therefore futile to contend that the compensation did not

fall due until after the commissioner's order dated May 6, 1968 under Section [19](#). What the section provides is that if any question arises in any proceeding under the Act as to the liability of any person to pay compensation or as to the amount or duration of the compensation it shall, in default of agreement, be settled by the commissioner. There is therefore nothing to justify the argument that the employer's liability to pay compensation Section [3](#), in respect of the injury, was suspended until after the settlement contemplated by Section [19](#). The appellant was thus liable to pay compensation as soon as the aforesaid personal injury was caused to the appellant, and there is no justification for the argument to the contrary.

4. In another judgment also given by the Apex Court in the case of Kerala State Electricity Board & Anr. Vs. Valsala K & Anr. (1999) 8 SCC 254 this issue again came up for consideration where the ratio laid down in Pratap Narain Singh's case (supra) was discussed with approval. Para 3 & 7 of the said judgment are reproduced hereunder:-

“3. A four judge Bench of this Court in Pratap Narain Singh Deo v. Srinivasa Sabata and Anr. : (1976)ILLJ235SC speaking through Shinghal, J. has held that an employer becomes liable to pay compensation as soon as the personal injury is caused to the workmen by the accident which arose out of and in the course of employment. Thus, the relevant date for determination of the rate of compensation, is the date of the accident and not the date of adjudication of the claim.

7. In so far as these special leave petitions are concerned, we find that the accident took place long time back. Compensation became payable to the workmen, as it is not disputed that the accidents occurred during the course of employment, as per the law prior to the amendment made in 1995. Keeping in view the peculiar facts and circumstances of these cases, pettiness of the amounts involved in each of the cases and the time that has since elapsed, we are not inclined to interfere with the impugned orders, decided on the basis of the 1995 amendment, in exercise of our jurisdiction under Article [136](#) of the Constitution of India and, therefore, dismiss the special leave petitions, but, after clarifying the law, as noticed above.”

5. I have also gone through the two judgments cited at bar by the learned counsel for the appellant delivered in the case of Kerala State Electricity Board & Anr. Vs. Valsala K & Anr. (1999) 8 SCC 254 and

Oriental Insurance Company Ltd. Vs. Mohd. Nasir & Anr. (2009) 2 SCC (Crl) 987. However, these two judgments are of no consequence in view of the Constitution Bench judgment of the Apex Court as discussed above.

6. At this stage, it would also be relevant to taken note of the observations made by the learned Commissioner while granting compensation along with penalty, interest and funeral expenses to the respondents:-

“(a) The Respondent after receiving the summon has neither deposited the amount of compensation payable to the claimant/petitioners nor deposited the same in this court as per the provisions of Act inspite of the fact that deceased Dharmendra Paswan admittedly died during the course and out of his employment with the Respondent No.1 and as such the respondent has deliberately delayed the payment of compensation to the claimant. Therefore, in exercise of powers conferred in the Court under clause (b) of sub-Section(3) of Section 4A to pay the claimant, in addition to the amount of compensation as above, further sum to the extent of 50% of the amount of compensation mentioned above as penalty.

(b) As per the provisions of the Act, the amount of compensation is payable to the workman within one month of the date on which compensation becomes due. In this case the accident has taken place on 29.06.2004 and the amount of compensation would have been paid to the claimants by 28.7.2004, but the same has not yet been paid to them. Therefore, as per the provisions of Clause (a) of sub-section(3) of Section 4A of the Act, the claimants are also entitled to receive simple interest @12% p.a. on the amount of compensation of ₹ 3,22,920/- (Rupees three lakhs twenty two thousand nine hundred twenty only) w.e.f. 29.06.2004 till its realization.

(c) It is also observed that employer has not paid any sum to the family of the deceased workman Dharmendra Paswan on account of funeral expenses as per the provision of the sub-Section (4) of Section 4 of the Act. Therefore, the respondent is also liable to pay the claimant a further sum of ₹ 2500/- on account of funeral expenses of the deceased Dharmendra Paswan.”

7. In view of the judgments cited above, which clarifies the legal position and also discusses the date when the compensation will become due and payable, which date has not been adhered to by the appellant, there is no infirmity in the order of the Commissioner. Consequently, the order passed by the Commissioner directing the appellant to pay compensation along with penalty and interest does

not suffer from any infirmity which calls for an interference by this Court. Accordingly, the order passed by the Commissioner dated 14.5.2007 is upheld. The appeal filed by the appellant is dismissed. No costs.

CM No. 10484/2007

CM No.10484/2007 stands disposed of with a direction to the appellant to pay the entire amount of compensation, penalty, funeral charges and the interest as awarded by the Commissioner w.e.f. 01.08.2004 till the amount is deposited with the Commissioner. Interim orders dated 28.01.2008 are modified accordingly.

CM No. 10486/2007

Dismissed as infructuous.

NOVEMBER 12, 2010
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MOOL CHAND GARG, J