

IN THE HIGH COURT OF BOMBAY AT GOA

Appeal Under Workmen's Compensation Act No. 1 of 2015

National Insurance Co. Ltd.,
Mapusa Branch, Vaman Smriti
Near Laxmi Narayan Temple,
Mapusa, Goa .. Appellant
Vs.

- 1) Shri Kashinath Naik
R/o H. No.349, Oxelbag,
Dhargal, Pernem, Goa.
- 2) Smt. Satyabama K. Naik
R/o. H. No.349, Oxelbag,
Dhargal, Pernem, Goa.
- 3) Shri Yogesh Rama Sharmalkar
R/o Deulwada, Dhargal,
Pernem-Goa
(Owner of Vehicle No.GA-01
V-2482 Mini Truck) .. Respondents

Mr. U. R. Timble, Advocate for the appellant.

Mr. Arjun Nak, Advocate for the respondent nos.1a, 1b, 1c,1d and 2.

Mr. J. P. Mulgaonkar, Advocate for the respondent no.3.

Coram : C. V. Bhadang, J.

Date : 7th August, 2015

ORAL JUDGMENT :

By this appeal, the appellant /original opponent no.2 is challenging the judgment and order dated 13/05/2010, passed by the Commissioner Workmen's Compensation, granting a

compensation of Rs.3,98,800/- with interest.

2. The brief facts are that now deceased Uttam Naik was a driver employed with the respondent no.3 Yogesh Sharmalkar on a Mini Truck bearing No.GA-01-V-2482. The vehicle met with an accident on 12/03/2004, in which Uttam Naik died. The first and the second respondents, who are the parents of Uttam Naik, filed an application before the Workmen's Compensation Commissioner for compensation in respect of death of Uttam Naik. It was claimed that the accident occurred out of and in the course of employment of Uttam Naik with the third respondent. The said application was initially filed only against the respondent no.3 (original opponent no.1). Subsequently, the present appellant came to be arrayed as opponent no.2 as the appellant had insured the risk arising out of the use of the said Truck and the accident had occurred during the course of the validity of the insurance policy. The learned Workmen's Compensation Commissioner, by the impugned judgment had granted compensation of Rs. 3,98,800/-, with interest at the rate of 12 % p.a. from 12/04/2004 (wrongly mentioned as 27/12/2001) till actual realisation. Feeling aggrieved, the Insurance Company is before this Court.

3. I have heard Shri Timble, the learned Counsel for the

appellant, Shri Arjun Naik, the learned Counsel for the respondent nos.1a, 1b, 1c, 1d and 2 and Shri Mulgaonkar, the learned Counsel for the respondent no.3.

4. Although in the appeal memo a ground about the insurance policy not covering a risk arising out of a claim under the Employees Compensation Act (the Act, for short), is taken, in all fairness, the learned Counsel appearing for the appellant submits that the appellant is not pressing for the said ground. In other words, it is not in dispute that the policy would cover risk arising out of a claim made under the Employees Compensation Act. The learned Counsel for the appellant has restricted his challenge only to the grant of interest at the rate of 12 % p.a. from 12/04/2004. It is submitted that under Section 4A(3) of the Employees Compensation Act, the appellant would not be liable to pay interest from the said date. It is submitted that the interest liability would only arise from the date of passing of the impugned award. The learned Counsel has placed reliance on the decision of the Hon'ble Apex Court in the case of **Ved Prakash Garg Vs. Premi Devi and others**, reported in (1997)8 SCC 1, in order to submit that the liability to pay interest would arise only in the event of non-payment of the compensation "after it falls due", namely the passing of the award. It is also submitted that the

appellant was made party opponent before the Commissioner subsequently i.e. on or about March, 2005. Thus, the liability to pay interest cannot extend to the period antecedent to the said date.

5. On the contrary, it is submitted by the learned Counsel for the respondent nos.1a,1b,1c,1d and 2 that the liability to pay interest has rightly been considered by the Workmen's Compensation Commissioner. It is submitted that the Workmen's Compensation Commissioner has held that the Compensation fell due and payable on 12/04/2004 as provided under Section 4A of the Act and as compensation is not paid within a period of one month from the date of the accident, interest has rightly been granted from 12/04/2004. It is submitted that the judgment does not need interference.

6. It is submitted by the learned Counsel for the respondent no.3 that the liability to pay interest would arise only after the passing of the award and not otherwise.

7. I have considered the rival circumstances and the submissions made. The only point, which arises for determination is as to whether the grant of interest at the rate of 12 % p.a. from

12/04/2004 is legal and proper. My answer is in the affirmative for the reasons to follow.

8. At the outset, it may be mentioned that although in paragraph 23 of the impugned award, the Workmen's Compensation Commissioner has held that the first and the second respondents are entitled to interest at the rate of 12 % p.a. from 12/04/2004, in the operative part in paragraph 24, it has been mentioned that the interest is granted at the rate of 12 % p.a. from 27/12/2001. This appears to be clearly an error arising out of accidental slip or omission, in as much as the accident itself had occurred on 12/04/2004. Thus, the date 27/12/2001 in paragraph 24 of the impugned award has to be corrected and read as 12/04/2004. The next question is whether the grant of interest at the rate of 12 % p.a. from 12/04/2004 is legal and proper.

9. Section 4A of the Employees Compensation Act reads thus :

“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 employee, as the case may be, without prejudice to the right of the employee 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.

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.

(3A) The interest and the penalty payable under sub-

section (3) shall be paid to the employee or his dependent, as the case be."

10. It can, thus, be seen that under subsection (1) of Section 4A of the Act, the compensation determined under Section 4 of the Act has to be paid as soon as it "falls due". Subsection (2) of Section 4A of the Act deals with a situation, where although the employer accepts the liability, disputes the quantum. In that case, the employer is bound to make a provisional payment based on liability, which he accepts and has to deposit such compensation before the Commissioner or to be paid to the employee or his legal representatives as the case may be. Subsection (3) of Section 4A of the Act, which is relevant for the present purpose provides that where any employer is in default in paying the compensation due under the 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 at the rate of 12 % p.a. or at such higher rate not exceeding maximum of the lending rates of any scheduled bank as may be specified by the Central Government. Presently, we are not concerned with Section 4A(3)(b) of the Act, which provides for penalty as no penalty is imposed in this case. It is thus, clear from a bare reading of Section 4A(3)(a) of the Act that minimum rate on which

such interest shall be awarded is 12 % p.a. The phraseology as used in Section 4A(3) of the Act would make it clear that the Commissioner shall grant such interest in the event the same is not paid within one month from the date the compensation falls due. The question is what would be the date on which the compensation can be said to have fallen due. Whether it would be one month from the date of occurrence of the accident, as has been held by the learned Commissioner or the date of the award, as is claimed on behalf of the appellant. It is trite that the liability to pay the compensation would arise on the date of the accident itself. There are two situations envisaged one each, by subsections (2) and (3) of Section 4A. There may be a case where the employer although accepts the liability, but disputes the quantum. In that case, the employer is bound to make provisional payment, as noticed earlier, to the extent of the liability, which he accepts. Such a deposit will have to be made within the period of one month. That would be the effect of conjoint reading of subsections (2) and (3) of Section 4A of the Act. The reading of Section 4A nowhere indicates that the compensation would fall due on an award being passed. There may be cases as in the present matter, where the entire liability is disputed. However, even in such a case, once an award is passed, the liability will relate back to the date of occurrence of the accident and if the

amount is not paid within one month, interest would start from one month after the date of occurrence of the accident as has been held by the learned Commissioner.

11. In the case of **Ved Prakash Garg** (supra), the question was whether the insurance company can be made liable to pay penalty under Section 4A(3)(b) of the Act. The Hon'ble Apex Court held that although the Insurance Company would be liable to pay interest, no penalty can be levied on the Insurance Company under Section 4A(3)(b) of the Act. The learned Counsel for the appellant has relied upon the following observations in paragraph 9 of the judgment :

“.....A mere look at the aforesaid provision shows that Section 4-A deals with the time for payment of compensation as required to be computed under Section 4. Sub-section (1) thereof mandates that compensation shall be paid as soon as it falls due. Sub-section (2) thereof contemplates a situation wherein the employer though accepting his liability to pay compensation to his injured workman disputes the extent of the claim of compensation and in such a case sub-section (2) enjoins him to make provisional payment based on the extent of accepted liability by depositing it with the Commissioner or to pay it directly to the workman. It is obvious that such an obligation of the employer would not arise under Section 4-A sub-

section (2) if he totally disputes his liability to pay on grounds like the injured person being not his employee or that the accident was caused to him at a time when he was not in the course of employment or that the accident caused to him did not arise out of his employment. If such disputes are raised by the employer then his obligation to make provisional payment under sub-section (2) of Section 4-A would not arise and his liability would depend upon the final adjudication by the Workmen's Commissioner at the end of the trial. In that light when sub-section (3) of Section 4-A is seen it becomes obvious that once the compensation due under the Act becomes ascertained either provisionally under sub-section (2) or finally on adjudication by the Commissioner and if the employer does not pay the same within one month from the date it thus falls due, the Commissioner can direct under sub-clause (a) of Section 4-A(3) interest at the rate provided therein and also penalty as contemplated by sub-clause (b) thereof as per the amended Section 4-A(3) of the Compensation Act but even under the unamended Section 4-A(3) which applied at the relevant time a clear distinction is made by the legislature between the imposition of penalty by way of a further sum not exceeding fifty per cent of compensation amount and the imposition of interest on the amount of compensation found payable when it is not paid within the requisite time as and when it fell due. Thus even in the scheme of unamended Section

4-A(3) or as per the amended Section 4-A(3) read with clauses (a) and (b) thereof, it becomes clear that additional amount of compensation can be levied against the defaulting employer by way of penalty if it is shown that there is no justification for the delay on his part in making good the compensation amount to the claimant. Interest payable on the principal amount, if not paid when it fell due, is not considered by the legislature to be a penalty. This is further highlighted by the proviso to  12 Section 4-A(3) as substituted by Act 30 of 1995 which clearly indicates that a penalty amount under clause (b) cannot be imposed against the employer without giving him reasonable opportunity to show cause. No such show-cause notice is contemplated while imposing interest on default of payment of the principal amount on the part of the employer as per Section 4-A(3)(a). Absence of this provision is obviously based on the legislative intent that interest on principal amount is not by way of penalty. Therefore, the employer need not be heard in this connection. A simpliciter default in payment of compensation within the time of one month from the date it fell due would automatically attract the provision for simple interest under Section 4-A(3) as per the rate prescribed therein and for such imposition of interest no question of justification for the delay is countenanced by the legislature. But while imposing penalty justification for delay would be a good defence for the employer for meeting such claim for penalty.

The same aspect is further highlighted by Section 4-A(3)(a) of the Compensation Act as existing on the statute-book at present which shows that the interest payable under sub-section (3-A) is to be paid to the workman or his dependant while the penalty imposed is to be credited to the State Government. It is in the light of the aforesaid statutory scheme of Section 4-A that the question posed for our consideration has to be resolved."

12. It can, thus, be seen that the issue there essentially pertains to the question whether the Insurance Company would be liable to pay penalty. There is nothing in the judgment in case of **Ved Prakash Garg** (supra) to indicate that interest would be payable (in the case where the entire liability is disputed) from the date of the award. Thus, the submission on behalf of the appellant in this regard, cannot be accepted. Even so far as the submission based on the fact that the appellant was arrayed subsequent to the filing of the application is concerned, I find that the appellant was arrayed as opponent no.2 within less than a year of the filing of the original application. It is well settled that any amendments allowed and incorporated, relate back to the filing of the original proceedings unless otherwise directed by the Court. Thus, the amendment would relate back to the date of filing of the original application. Even otherwise on facts, the period, being minimal,

would hardly make any difference on the amount of interest. In that view of the matter, no case for interference in the impugned award is made out, except the modification/ correction that the interest would be payable from 12/04/2004.

13. Subject to this, the appeal is without any merit and is hereby dismissed, with no order as to costs.

C. V. BHADANG, J.

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