IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

DATE OF DECISION: AUGUST 10, 2015

(1) C.M. NO.12128 CII OF 2015 & F.A.O. NO.3900 OF 2015

M/s YFC Project Pvt. Ltd., Gurgaon.

.....Appellant

VERSUS

Sh.Singhasan Mahto and another

....Respondents

(2)C.M. NO.12125 CII OF 2015 & F.A.O. NO.3899 OF 2015

M/s YFC Project Pvt. Ltd., Gurgaon.

.....Appellant

VERSUS

Sh.Santo Bai @ Gulab Bai and others

....Respondents

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

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

Present: Mr. Arjun Atri, Advocate,
for the appellant.

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AUGUSTINE GEORGE MASIH, J. (ORAL)

C.M. NO.12128 CII OF 2015 in F.A.O. NO.3900 OF 2015
C.M. NO.12125 CII OF 2015 in F.A.O. NO.3899 OF 2015

For the reasons mentioned in the applications, which are supported by affidavits, delay of 25 days and 42 days respectively is condoned.

Both the applications stand disposed of.

F.A.O. NOS.3900 & 3899 OF 2015

1. By this common order, both the abovesaid appeals are being decided. For disposal, the facts are being taken from F.A.O. No.3900 of 2015.

2. The appellant has challenged the award dated 12.02.2015 passed by the Commissioner under the Employee's Compensation Act, 1923, by which the claimants have been held entitled to grant of remaining compensation amount alongwith 12% interest from the date of accident i.e. 12.04.2008 to the date of order. Further, penalty of 40% of the compensation amount as awarded has been ordered to be deposited within a period of 60 days. In case of non-deposit of the amount within the prescribed period, simple interest @ 12% per annum on the awarded amount from the date of award till its realization has also been assessed.

3. It is the contention of counsel for the appellant that at the time of occurrence i.e. 12.04.2008, the appellant assessed the compensation and paid an amount of ₹ two lacs to the claimants, which was accepted by them. He contends that if the claimants were not satisfied, they should not have accepted the same and immediately put forth their claim under the Employee's Compensation Act, 1923 (for short, "the 1923 Act"). The claims were put forth in the year 2013. He contends that for the said period, the appellant cannot be foisted with the liability of interest as there was no claim raised by the respondents. The delay should act to the prejudice of the respondents and the appellant need not be penalized for the same.

4. Similar is the contention with regard to the penalty, which has been imposed upon the appellant by the Commissioner vide impugned award dated 12.02.2015.

5. This contention of counsel for the appellant cannot be accepted in the light of the fact that the amount of compensation, as has been assessed by the appellant and paid i.e. ₹ two lacs only has been credited and benefit thereof given in the awarded amount by the Commissioner in the impugned award. Further, on this amount of ₹ 2 lacs neither any interest has been awarded nor has the penalty been imposed.

6. As per the provision of the 1923 Act, there is no limitation prescribed as far as putting forth the claim is concerned and, therefore, merely because the claim has been lodged after some delay, the same cannot be a ground for not granting them interest and penalty, especially in the light of the provisions as contained in Section 4A of the 1923 Act, which reads 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 [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 payment 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."

A perusal of the above would show that the employer is required to assess the compensation as has been provided under Section 4A of the 1923 Act, where the schedule has been given as to how the calculations have to be made. The amount, which has been calculated by the employer, has been found to be not in consonance with the provisions of the 1923 Act i.e. less than the amount of compensation required to be paid. That being the position, the appellant has rightly been saddled with interest and penalty, which is the mandate of the statute. No interference is, thus, called for in the award dated 12.02.2015 passed by the Commissioner under the 1923 Act. The awards in both the appeals are, therefore, upheld and the appeals stand dismissed in limine.

August 10, 2015 **(AUGUSTINE GEORGE MASIH)**
khurmi **JUDGE**