IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.514 of 2014

==

Rekha Devi, W/o Late Damodar Chaudhary, resident of village-Ghosawar Post-Rajauli, P.S. Hajipur, Distt-Vaishali.

.... Claimant/ Appellant

Versus

Divisional Manager, New India Insurance Company Limited, Club Road, Near Jubba Sahni Park, Muzaffarpur.

.... Opposite Party/ Respondent

==

Appearance :

For the Appellant/s : Mr. Sunil Kumar Pandey-Advocate

For the Respondent/s : Mr. Bimlesh Kumar Jha-Advocate

==

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

CAV JUDGMENT

Date: 29-07-2016

A Short, but ticklish question has arisen for consideration whether the Deputy Labour Commissioner-cum-Commissioner, Workmens Compensation so identified under Employees Compensation Act has power to review in order to reduce the claim amount.

2. In order to properly appreciate the point, there should be a glance over the facts of the case.

Appellant/ claimant filed claim petition against the respondent disclosing the fact that her husband Damodar Chaudhary was engaged as truck driver by one Bina Goyal. While he reached near godown at Gaziabad on 02.08.2009 at 10.00p.m. Goons led by one Rajesh Kumar, who had some sort of rivalry with the husband of Bina Goyal, brutally assaulted him (Damodar Chaudhary) as a result of which, Damodar Chaudhary sustained severe injuries. For better treatment, he was taken to Safdarganj Hospital, New Delhi where he died during course of treatment on 24.08.2009 and for that, Gaziabad G.R.P. Case No.96 of 2009 was registered.

3. Belatedly, with a prayer to condone the delay, Claim Petition No.07 of 2013 was filed wherein the respondent appeared after being noticed and after condoning the delay, petition was allowed vide judgment and order dated 05.04.2014 identifying Rs.7,36,680/- as claim amount with a further direction that the aforesaid amount should be deposited within one month, failing which it will incur an interest @ 12.5% per annum enforceable from the date of death.

4. During course of identifying the claim amount, the learned Commissioner had considered age of the deceased to be 40 years, monthly salary Rs.9,000/-, which was fixed at Rs.8,000/- and further, applying the multiplier as provided under law calculated the amount as Rs.7,36,680/-.

5. After the aforesaid judgment and order, the Insurance Company/ Opposite Party no.2 under whom the truck in question was insured, filed a petition for review on the ground that on the date of accident the permissive monthly salary was Rs.4,000/- and so the award amount be accordingly modified, which has been accepted and the amount has been reduced to Rs.3,68,340/-.

6. Learned counsel for the appellant happens to be

emphatic in his submission that Workmen's Compensation Act which now been substituted as the Employees Compensation Act did not allow the laxity of review like C.P.C. There was, in the opinion of the respondent no.2/ opposite party no.2, wrong appreciation of identification of monthly wages as well as aggrieved thereby, should have challenged the same in an appeal and it was the appellate Court, in case so approached, competent enough to appreciate the grounds so raised by the respondent no.2/ opposite party no.2. Therefore, the action of the learned Commissioner happens to be wrong, illegal and is fit to be set aside.

7. On the other hand, learned counsel for the Insurance Company has submitted that it was not the review of the order in its true sense rather it happens to be wrong appreciation of the law, which was prevailing at the relevant time of accident on account thereof, wrong calculation during course of ascertainment of claim amount was done, which has subsequently been perceived by the learned Commissioner and on account thereof, rightly been corrected. Therefore, even considering that it happens to be an event of review, for that, the learned Commissioner was fully competent as it happens to be mere arithmetical error.

8. Review is the power having vested to the Court. Unless and until vested, it could not be exercised. Apart from this, it has also to be perceived whether the permissive power of review

contains some rigor. For better appreciation, Section 6 of the Act is quoted below:-

> *"**6. Review**.-(1) Any half-monthly payment payable under this Act, either under an agreement between the parties or under the order of a Commissioner, may be reviewed by the Commissioner, on the application either of the employer or of the workman accompanied by the certificate of a qualified medical practitioner that there has been a change in the condition of the workman or, subject to rules made under this Act, on application made without such certificate.*
>
> *(2) Any half-monthly payment may, on review under this section, subject to the provisions of this Act, be continued, increased, decreased or ended, or if the accident is found to have resulted in permanent disablement, be converted to the lump sum to which the workman is entitled less any amount which he has already received by way of half-monthly payments."*

9. Half monthly wages has been explained under Section 4 which details the head as well as amount of compensation whereunder at Sub-clause 1(d), the same has been identified as:-

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

xxxxxxxxxxxxxxxxxxxxxxxxxxxxx

(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 monthly wages of the workman, to be paid in accordance with the provisions of sub-section (2)*

10. From plain reading of Section 4(1)(d), it is evident that half wages is permissible only in cases where there happens to be temporary disablement. Temporary disability has been defined under Section 2(g) as partial disablement and defines as follows:-

> ***"2. Definitions***.*-(1) In this Act, unless there is anything repugnant in the subject or context.-*
>
> *xxxxxxxxxxx*
>
> *(g) "partial disablement" means where the disablement is of a temporary nature, such disablement as reduces the earning capacity of a workman in any employment in which he was engaged at the time of the accident resulting in the disablement, and where the disablement is of a permanent nature, such disablement as reduces his earning capacity in every employment which he was capable of undertaking at that time; provided that every injury specified Subs."*

11. As it happens to be temporary disability, therefore, there happens to be every possibility that in due course of time, the

percentage of disablement may reduce and on account thereof, Section 6, the power of review is found to affix or to weigh the quantum of compensation in accordance with the nature of the disablement and to substantiate the same, the certificate granted by medical practitioner was warranted. From plain reading of Section 6, it is apparent that save and except empowering the Commissioner to review its own order relating to temporary disablement, nothing more has been subscribed. When the statute lacks the same, then in that event, the learned Commissioner should not have allowed itself to re-adjudicate whereunder the amount of compensation has been reduced. Furthermore, under the act, no inherent power has been embeded, consequent thereupon, the learned Commissioner was not competent enough to tackle the situation as flashed at the end of respondent no.2/ opposite party no.2, insurer.

12. In ***M/s Govind Sugar Mills Ltd., Appellant v. Deputy Labour Commissioner-cum-Commissioner, Workmens Compensation and another, Respondents reported in 1998 LAB I.C. 34,*** ambit and scope of review has been considered, and held as follows:-

> *"**8.** The Commissioner has no power of review. In re, Karim Dad, AIR 1930 Lahore 657, Shadi Lal, C.J., (as his Lordship then was) held that the Commissioner exercises power of a Court only under certain provisions of the Code and does*

not possess inherent power under Section 151 C.P.C. In that case compensation was paid by mistake to the deceased's son Fazl Karim. It was subsequently discovered that Fazl Karim was not entitled to compensation. The employer accordingly moved the Commissioner to call upon Fazl Karim to refund the money. His Lordship held that Fazl Karim was not entitled for compensation. Learned C.J. next considered the question whether the Commissioner could modify his previous order granting compensation to Fazl Karim. Learned C.J. decided this question as follows:-

"…………..In this connection our attention has been invited to sub-section (6), S. 8, which provides that where the Commissioner is satisfied that, on account of neglect of children on the part of a parent or on account of the variation of the circumstances of any dependent or for any other sufficient cause, an order of the Commissioner as to the distribution of any sum paid as Compensation or as to the manner in which any sum payable to any such dependent is to be invested, applied or otherwise dealt with, ought to be varied, the Commissioner may make such orders for the variation of the former order as he thinks just in the circumstances of the case. It will

be observed that this sub-section provides for two cases: (1) the variation of an order as to the distribution of any sum paid as compensation; and (2) the variation of an order as to the manner in which any sum payable to a dependant is to be invested, applied or otherwise dealt with. Now, the order, with which we are concerned in the present case, did not make any distribution of the compensation among the dependants, but directed the payment of the whole of the money to one person, who was wrongly supposed to be, but was not, a dependant. Nor is this a case of the variation of a previous order. The Commissioner is asked to quash an order which was wrongly made by him and to direct the refund of the money for payment to the employer. The language of the sub-section does not confer any such power upon him. My answer to the second question submitted by the Commissioner is that he has no power to set aside the previous order made by him under a mistake."

It was lastly held that the Commissioner has no power to review and he could not exercise power under Section 151 C.P.C. as well because the Commissioner has power of the Civil Court only under certain provisions of the Code but Section 151 C.P.C. is not one of them.

9. *The fact of Lahore case fits in with the facts of the present case. As stated earlier, the amount of compensation had wrongly been paid to the dependants. If the application for refund was allowed, the dependants, who had received the compensation, would have been directed to refund the amount. This will clearly amount to review of the earlier order granting compensation. The Commissioner, therefore, was right in rejecting the application of the appellant.*

10. *Mr. Gupta, learned counsel for the appellant has relied on the decisions of this Court in Mostt. Chhatiya Devi Gowalin v. Rup Lal Sao reported in 1978 Lab IC 1368 and K.P. Kurian v. Hindustan Shipping Co. reported in 1975 Lab IC 130 and submitted that the direction to refund on the basis of calculation made under Section 5 of the Act could be made by the Commissioner. It was next submitted that even if it is held that the application for refund was not maintainable, the appellant has right to challenge the original order of the Commissioner.*

11. *In my opinion, we are only concerned with the order under challenge in this appeal. The validity of first order granting compensation cannot be decided in this appeal. Therefore, this* *appeal has no merit and it is accordingly dismissed. However, there shall be no order as to cost."*

13. In ***Selvi J. Jayalalithaa & Ors….Petitioners vs. State of Karnataka & Ors….Respondents reported in 2014(1) P.L.J.R. SC 531,*** it has been held:-

> ***"28.*** *The learned Attorney General, however, submitted that this Court could not exercise its powers under Article 142 of the Constitution in the present case since such an exercise would be contrary to laws under which each Judge must retire on reaching the age of superannuation. In order to fortify his submission, learned Attorney General placed reliance on the judgment of this court in* ***A.B. Bhaskara Rao v. Inspector of Police, CBI Vishakapatnam****, (2011) 10 SCC 259, wherein this court held that the powers under Article 142 of the Constitution cannot be exercised by this court in contravention of any statutory provisions, though such powers remain unfettered and create an independent jurisdiction to pass any order in pubic interest to do complete justice. However, such exercise of jurisdiction should not be contrary to any express provision of law.*
>
> *The powers under Article 142 of the Constitution stand on a wider footing than*

ordinary inherent powers of the court to prevent injustice. The constitutional provision has been couched in a very wide compass that it prevents "clogging or obstruction of the stream of justice." However, such powers are used in consonance with the statutory provisions.

(See also: ***Teri Oat Estates (P) Ltd. v. UT, Chandigarh & Ors.,*** *(2004) 2 SCC 130;* ***Manish Goel v. Rohini Goel****, AIR 2010 SC 1099; and* ***State of Uttar Pradesh v. Sanjay Kumar****, (2012) 8 SCC 537).*

29. *We find force in the submissions advanced by the learned Attorney General that this Court generally should not pass any order in exercise of its extraordinary power under Article 142 of the Constitution to do complete justice if such order violates any statutory provisions. We do not intend to say that it would be illegal to extend the term of the special judge, but that it is a matter within the jurisdiction of the State in accordance with the relevant law.*

There is yet an uncontroverted legal principle that when the statute provides for a particular procedure, the authority has to follow the same and cannot be permitted to act in contravention of the same. In other words, where a statute *requires to do a certain thing in a certain way, the thing must be done in that way and not contrary to it at all. Other methods or mode of performance are impliedly and necessarily forbidden. The aforesaid settled legal proposition is based on a legal maxim "Expressio unius est exclusio alterius", meaning thereby that if a statute provides for a thing to be done in a particular way, then it has to be done in that manner and in no other manner and following any other course is not permissible.*

*In **State of Uttar Pradesh v. Singhara Singh & Ors**., AIR 1964 SC 358, this court held as under:*

*"8. The rule adopted in Taylor v. Taylor (1876) 1 Ch D 426 is well recognized and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted." (See also: **Accountant General, State of Madhya Pradesh v. S.K. Dubey & Anr.,** (2012) 4 SCC*

578).”

14. That being so, it is found and held that whatever been enumerated under Section 6 of the Act whereunder review is permissible to be limited in nature that too, with regard to temporary disablement, consequent thereupon, the action of the learned Commissioner in reviewing the judgment and order dated 05.04.2014 has transgressed its limit whereupon the order impugned is set aside. Appeal is allowed. However, in the facts and circumstances of the case, parties will bear their own costs.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	A.F.R.
CAV DATE	27.06.2016
Uploading Date	30.07.2016
Transmission Date	N.A.