

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.10.2016

CORAM

THE HON'BLE MR.JUSTICE G.CHOCKALINGAM

C.M.A.No.689 of 2002

Pitchai Ammal

.. Appellant

.. Vs ..

1. The Management of
International Bakery Products Ltd.,
Tiruchittambalam,
Villupuram District.
Pin - 605 111.

2. The United Insurance Co. Ltd,
The Divisional Officer,
No.46, J.N. Street,
Pondicherry.

3. The Deputy Commissioner of Labour - II,
Chennai - 600 006.

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 30 of W.C. Act, 1923, against the order of the Deputy Commissioner for Workmen's Compensation - II, Chennai in W.C.No.254 of 1999, dated 6.6.2001 (copy received by the appellant on 4.8.2001) awarding a compensation of Rs.1,09,578/- in so far as he has rejected the claim of 50% of penalty and interest from the date of accident.

For appellant : Ms.D.Geetha
For R-1 : Mr.T.S.Gopalan and Co.,
For R-2 : Ms.R.Sreevidhya
- - - - -

JUDGMENT

This civil miscellaneous appeal is directed against the order passed by the Commissioner for Workmen's Compensation - II, Chennai in W.C.No.254 of 1999, dated 6.6.2001, awarding a compensation of Rs.1,09,578/- to the claimant.

2. The brief facts of the case are as follows:-

The deceased in this case viz., Kamaraj was employed as a casual labour in the management of the opposite party for four years. He worked as a helper performing the job of removing and putting the flour mixed by one machine into another machine. On 22.03.1999 when he was employed in the afternoon shift i.e., from 2.00 p.m. to 10.00 p.m., around 3.00 p.m. the deceased felt dizzy and complained of stomach pain to the co-employees who informed the manager of the factory and the manager had stated that there was

nothing to worry and asked the deceased to take rest. Around 4.30 p.m., the deceased was found lying unconscious by the co-worker and immediately taken to JIPMER hospital where he was declared dead. The appellant herein, who is the legal heir of the deceased Kamaraj, has filed a case in W.C.No.254 of 1999 before the Commissioner for Workmen's Compensation II, Chennai, under Section 10(1) of the Workmen's Compensation Act, 1923, claiming damages and the Commissioner for Workmen's Compensation II, after considering the entire evidence and the documents produced on either side, finally awarded compensation to the appellant herein/claimant. The operative portion of the order reads as follows:-

"Ex.R1-Insurance Policy marked by the first opposite party reveals that the workmen of the first opposite party were insured with the second opposite party, and as the deceased workman was covered by the said insurance on the date of incident I order the second opposite party to indemnify the first opposite party for this liability to pay compensation to the applicant.

I direct the second opposite party to deposit the said sum of Rs.1,09,578/- (Rupees One Lakh Nine thousand five hundred and seventy eight only) in this Court within 20 days from the date of receipt of this order failing which interest at the rate of 12% per annum shall be recovered from the date of application filed."

Being not satisfied with the order of the Commissioner, the present appeal is filed by the appellant before this Court.

3. The learned counsel for the appellant would mainly contend that according to Section 4-A of the Workmen's Compensation Act, 1923 (hereinafter referred to as the Act), the Commissioner for Workmen's Compensation II, ought to have allowed interest and ought to have directed the second respondent herein to pay interest for the damages fell due. But the Commissioner for Workmen's Compensation II, wrongly disallowed the interest. Hence, the order passed by the Commissioner for Workmen's Compensation II, Chennai, has to be set aside and the civil miscellaneous appeal has to be allowed.

4. The learned counsel appearing for the first respondent has also conceded that with regard to the claim of interest, the argument of the learned counsel for the appellant has to be sustainable and the learned counsel appearing for the second respondent also fairly admitted the legal position that according to Section 4-A of the Act and the principles laid down by a division bench of this Court in

C.M.A.Nos.823 of 2001 and etc., batch, (N.Ganesan Vs. Tmt. Thilagavathi and another), interest has to be allowed.

5. In this case, it is useful to refer Section 4-A of the Workmen's Compensation Act, 1923, which reads as follows:-

"4-A. 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 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 .

[(3-A) The interest and the penalty payable under sub-section (3) shall be paid to the workman or his dependant, as the case may be]]"

6. The Division Bench of this Court, in the case of N.Ganesan Vs. Tmt. Thilagavathi and another, in C.M.A.Nos.823 of 2001 and etc., batch referred to above, at paragraph No.27, has held as follows:-

"27. In the result, the reference is answered as follows:-

i.The word falls dueµ occurring under Section 4-A of the Workmen's Compensation Act, 1923 in the light of the ratio laid down in the Larger Bench decision of the Honble Supreme Court of India reported in 1976(1) SCC 289 in Pratapp Narain Singh Deo v. Srinivas Sabata and another and 2000 ACJ page 5(SC) Kerala State Electricity Board vs. Valsala.K. means that interest for compensation amount would accrue 30 days after the date of the accident and not from the date of quantification/ orders passed by the Commissioner for Workmens Compensation.

ii.The decisions rendered by the Single Bench of this Court in the decisions reported in (2007)5 MLJ 1059 : 2007 (2) TN MAC page 98 Marimuthammal @ Marimuthu and Another v- R.P.P.Construction (P) Ltd., Chennai and others, 2008 (1) TN MAC page 38 - A.Chairmen v- A.Thirumeni & Another, had laid down the correct proposition in

consonance with the ratio laid down by the Larger Bench of the Honble Supreme Court of India in the above cited decisions.

iii. The Registry is directed to list these appeals for final disposal before the concerned Portfolio Judge."

7. The learned counsel for the appellant would contend that even though so many points are raised in the appeal, he only contested on the ground of awarding of interest alone. As per the principles laid down by this Court in the above stated case, it is well settled law that interest for compensation amount would accrue a month after the date of accident and not from the date of quantification/orders passed by the Commissioner for Workmen's Compensation. In this case, the Commissioner for Workmen's Compensation II, Chennai, only directed the second opposite party to deposit a sum of Rs.1,09,578/- (Rupees One Lakh Nine thousand five hundred and seventy eight only) in the Court within 20 days from the date of receipt of copy of that order failing which interest at the rate of 12% per annum shall be recovered from the date of application filed.

8. Considering the facts and circumstances of the case, this Court is of the considered view that the Commissioner for Workmen's Compensation II, Chennai, mis considered the legal position and the principles laid down by this Court. Hence, this Court is of the considered view that the order passed by the Commissioner for Workmen's Compensation II, Chennai, has to be modified.

9. In the result, this Civil Miscellaneous Appeal is partly allowed and modified as follows:-

The second respondent herein is directed to pay interest at the rate of 12% per annum after the expiry of one month from the date of the accident i.e., from 22.04.1999 till the date of deposit. No costs.

26.10.2016

Internet : Yes
Jrl

To

1. The Deputy Commissioner for
Workmen's Compensation - II,
Chennai.
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G.CHOCKALINGAM, J.

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