

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 103 of 2014**

1. Smt. Minto Singh W/o Late Ram Singh
 2. Khushbu Singh D/o Late Ram Singh Aged About 6 Years
 3. Archita Singh D/o Late Ram Singh Aged About 5 Years Minor,
Through natural guardian-Mother Smt. Minto Devi.
 4. Jagdish Singh S/o Late Brij Bihari Singh
 5. Smt. Leelavati W/o Jagdish Singh
- All appellants are R/o Jute Mill, Labour Colony, Raigarh, Tah. and Distt. Raigarh C.G.

---- Appellants**Versus**

City Mall Developers Pvt. Ltd. S/o Thourhg- Managing Director,
Mahasamund Road, Near Chhokara Nala, N.H. No. 6, Raipur C.G.

---- Respondent

For Appellant : Shri SP Kale, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy**Order On Board****12/07/2017**

1. IA No.3, application for urgent hearing is allowed and the matter is heard finally.
2. Present is an appeal under Section 30 of the Workmen Compensation Act, 1923 (for short, the Act) assailing the order dated 19.12.2013 passed by the Commissioner, Employee's Compensation, Labour Court, Raipur, in case No.1/EC Act/2013/Misc.
3. The instant appeal was admitted for hearing on 24.02.2014. The substantial question of law which arises for consideration in the present appeal is, "whether the court below was justified in refusing

to grant penalty to the claimants under Section 4A read with Section 3(b) of the Employee's Compensation Act?"

4. Notice was issued to the respondent and who inspite of service of notice refused to accept the same, and therefore, it has to be presumed that the respondent is duly served.
5. The brief facts relevant for adjudication of the present case is that, the deceased Ram Singh, aged around 22 years, was working as Supervisor at City Mall at Raipur. On 26.04.2007 in the course of some construction work, he met with an accident when the chain attached to Hydra crane broke and penal attached to the crane fell on the deceased Ram Singh resulting grievous injuries to which he later succumbed.
6. A claim application was immediately filed by the widow, parents and daughter of the deceased before the Labour Court, Raipur, under the employees compensation. Initially when the claim case was filed, one M/s Saif Lifters was also made a respondent alleging that contract of construction work was given to Saif Lifters. Since the said Saif Lifters was proceeded ex parte, the Commissioner initially on 19.03.2008 allowed the claim application and ordered for payment of compensation of Rs.4,42,740/- to the claimants and also awarded an amount of Rs.40,000/- as penalty to be paid to the claimants. Immediately, the claimants had filed a writ petition i.e. Writ Petition (C)No.2434 of 2009 before this court. Meanwhile, the management of said Saif Lifters had also moved an application for setting aside ex parte order dated 19.03.2008 before the Commissioner at Raipur.

The said application was allowed on 13.04.2009 and the ex parte order was set aside and the matter was ordered to be adjudicated upon afresh.

7. Subsequently, the Labour Court after considering the evidence led by all the parties vide its order dated 22.12.2012 held that the claimants are entitled for compensation to the tune of Rs.4,42,740/- along with interest @ 12 percent per annum from the period immediately after 30 days from the date of accident. However, while deciding the case on merits on 22.12.2012 the Commissioner on the issue whether the claimants would be entitled for penalty or not, held that for grant of penalty, the claimants was at liberty to move separate application and on which opportunity of hearing would have to be given to the employer and only then can it be adjudicated upon.
8. Immediately after the said order was passed on 22.12.2012, the claimants filed an application under Section 4A read with Section 3(b) of the Act before the Commissioner's court at Raipur. The said case was registered as case No.1/EC Act/2013/Misc.
9. After considering the submissions put forth by the respective parties, the court below vide impugned order dated 19.12.2013 have ordered that since after passing of original award dated 19.03.2008, the employer had deposited the amount of Rs.4,42,470/- and vide subsequent order dated 22.12.2012 the employer has been further ordered to pay interest on the said amount @ 12 percent per annum, therefore, there was no necessity or justification for imposing penalty upon the employer and rejected the application, leading to filing of

present appeal.

10. According to counsel for the appellant, the Commissioner was duty bound to have allowed the application as it is the mandatory requirement under the statute for grant of penalty in the event of any delay in payment of compensation. Thus, prayed for present appeal to be allowed accordingly.
11. It would be relevant at this juncture to refer sub-section 3(b) of Section 4A of the Act which reads as under:

“(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) xxxxx xxxxx xxxxx

(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.”

12. From the aforesaid statutory provision what is only to be seen now is whether there was any justification for the delay caused or whether there was any finding in respect of delay caused by the Labour court denying the penalty to the claimants. From the factual matrix which has come on record indisputably an accident did take place on 26.04.2007. The employment of the deceased with the respondent is not under challenge. The depositing of the principal amount by the employer is also an admitted fact. All that now has to be seen is that when was the principal amount deposited, whether there was any justification for the delay caused and whether the claimants would be entitled for penalty or not.

13. From a bare perusal of impugned award, it would reveal that an amount of Rs. 4,42,740/- was deposited only on 09.04.2008 i.e. exactly after about one year from the date of accident whereas, as per the Act, the amount of compensation ought to have been deposited within a period of 30 days from the date of accident. Further, what is also reflected is that inspite of claim application having been filed, the respondent had been contesting the case and were trying to get the claim application rejected or dismissed. The case was ultimately decided in favour of claimants only on 22.12.2012. Even on the date of depositing the award amount i.e. on 09.04.2008, the amount was deposited without any interest.
14. Further, from the pleadings which have come on record there does not seem to be any justification for the delay caused in depositing the compensation. On the contrary, the respondent has been contesting the case. What is all the more necessary to be considered at this juncture is that on 22.12.2012 when the claim application was originally decided by the Commissioner, he had given liberty to the claimants to move an appropriate application seeking for the relief of penalty and the application for penalty has been moved as per the liberty granted by the Labour Court in its order dated 22.12.2012.
15. Further, if we read the order dated 22.12.2012 it is an admitted position or finding of facts of the Labour Court that there was no justification for the delay caused on the part of the employer. Therefore, they were held liable to pay interest @ 12 percent per annum on the principal amount. This finding of the Labour Court itself

is sufficient for imposition of penalty as per provisions of Sub-section 3 (b) of Section 4-A of the Act. What is further to be taken note is the fact that the impugned order is the third order. First order was an ex parte order dated 19.03.2008. Second order was on merits after re-hearing all the parties on 22.12.2012 and this order claiming for penalty which has been rejected on 19.12.2013.

16. It is settled law that it is the duty of the employer to pay compensation under Section 4-A of the Workmen's Compensation Act, now Employee's Compensation Act, 1923 at the rate provided by Section 4 as soon as personal injury is caused to the workman. Where the employer fails to discharge liability and also makes no provisional payment under Section 4 (2) but challenges the jurisdiction of the Commissioner, the employer is liable to pay interest and penalty (Pratam Narain Sing Deo Vs. Shrinivas Sabata and another, AIR 1976 SC 222).
17. As per Section 4-A(2), it is the employer who has to first make provisional payment based on the extent of liability which the employer accepts. The provisional payment liability applies even if the employer does not accept his liability for the compensation to the extent claimed. The situation would have been different had the employer in accordance with provision i.e. 4-A(2), the Act stepped in and made provisional payment to the claimants, but this was not done. As per Pratap Narain Singh Deo's judgment (Supra), the interest and penalty is to paid by the employer, if the employer is found wanting in the discharge of his duties under Section 4-A(2) of

the Act.

18. The Employee's Compensation Act, 1923 being a beneficial piece of legislation, and fact that the claimants are not at fault, the ends of justice will be met if the provisions of law is construed in a liberal manner and the endeavor should be made to provide maximum relief to the claimants.
19. All these aforesaid reasons forces this court to accept the contention of the appellant. Accordingly, it is held that the claimants are also entitled for penalty in addition to the compensation interest which has been derived by the claimants. For quantifying the penalty, this court considering the entire facts and circumstances of the case held that the claimants would be entitled for penalty of Rs.1,00,000/-.
20. Let this amount of penalty be deposited within a period of 60 days from the date of receipt of certified copy of this order, failing which the amount shall carry interest @ 9 percent per annum.
21. The appeal is allowed to the above extent.

Sd/-
(P. Sam Koshy)
Judge

inder