

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 232 OF 2010

1. Smt. Asha B, W/o Late Salim Khan, aged about 61 years
2. Ismail Khan, S/o Late Salim Khan, aged about 31 years
3. Ku. Shakila, D/o Late Salim Khan, aged about 29 years
All R/o Road No.15, Qtr. No.5, Sector-1, Bhilai Nagar, Tahsil and District Durg (C.G.)

... Appellants

Versus

1. M/s S.K. Build Works Pvt. Ltd., Prop. Ajay Agrawal, Nehru Nagar, Bhilai, Tahsil and District Durg (C.G.)
2. National Insurance Company Limited, Branch-1, Bhutani Complex, G.E. Road, Bhilai, District Durg (C.G.)

... Respondents

For Appellants	:	Mr. Harish Khuntia, Advocate.
For Respondent No.2	:	Mr. Goutam Khetrapal, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

04/10/2017

1. The present appeal is one under Section 30 of the Workmen's Compensation Act, 1923, filed by the claimants assailing the award dated 13.11.2009 passed by the Commissioner, Workmen's Compensation-cum-Labour Court, Durg, in Case No. 116/W.C.Act.Fatal/2008.
2. Vide the said impugned award, the learned Commissioner has awarded a compensation of Rs.2,91,960/- to the claimants.
3. However, the learned Commissioner has not awarded interest and penalty, which gave rise to the present appeal.
4. The present appeal was admitted on 29.8.2012 on the following substantial question of law:

“Whether the Commissioner for Workmen's Compensation, Labour Court, Durg, was justified in not awarding interest and penalty in violation of Section 4A of the Workmen's Compensation Act, 1923?”

5. The undisputed facts of the case are that the deceased-Jamaal Khan while working under the respondent no.1-M/s S.K. Build Works Pvt. Ltd., in the process of laying and erecting the electricity posts and lines for the railway department, came under a running railway train and sustained grievous injuries to which he later on succumbed. The appellants-claimants being the legal heirs of the deceased filed a claim application which was decided by the learned Commissioner vide the impugned award dated 13.11.2009.

6. Contention of the learned counsel for the appellants-claimants is that the learned Commissioner has erred in not granting interest on the compensation awarded as well as penalty, which they are otherwise statutorily entitled for under Section 4A of the Workmen's Compensation Act.

7. In the instant case, the date of accident is 22.7.2008. The employer i.e. respondent no.1 had not taken any steps for depositing the compensation awarded within 30 days from the date of accident. The claimants had to contest for getting the compensation. The award was finally passed on 13.11.2009. Thus, the provision of Section 4A of the Workmen's Compensation Act would automatically get attracted in the given facts and circumstances of the present case.

8. The opinion of this Court stands fortified from the decisions of the Hon'ble Supreme Court, referred to herein under.

9. The Hon'ble Supreme Court in the case of **Ved Prakash Vs. Premi Devi, 1997 (8) SCS 1**, dealing with the issue of payment of interest under Section 4A (3)(a) has held that so far as interest under this provision is concerned, it is almost automatic, once default in payment of compensation is committed by an employer beyond permissible limit of one month, the amount payable would automatically attract interest and

the Commissioner shall have to pass an order granting interest in such circumstances. The Hon'ble Supreme Court as early as in the case of **Pratap Narayan Singh Deo Vs. Srinivas Sabata, 1976 (1) SCC 289**, held that the compensation becomes payable on the date of accident and not on the date of determination of amount by the Commissioner. Again, the Hon'ble Supreme Court in case of **Oriental Insurance Co. Ltd. Vs. Khajuni Devi, 2002 (10) SCC 567**, while dealing with the issue of relevant date from which the interest and penalty would be payable, has held that the relevant date for determining the rights and liability of parties is concerned, is the date of accident and not the date of adjudication of the claim. Similar was the view of the Hon'ble Supreme Court in one of its earlier decision in **Kerala SEB Vs. Valsala K, 1999 (8) SCS 254**.

10. As per Section 4A of the Workmen's Compensation Act in the event of non-depositing of the compensation due to the claimant(s) within 30 days from the date of death of the employee, the employer is liable to pay interest on the amount of compensation. The rate of interest also as fixed by the Act itself, is 12%.

11. Given the aforesaid factual matrix of the case and the judicial pronouncements, this Court is of the opinion that the claimants are entitled for the interest at the rate of 12% from the date of accident as per Section 4A of the Workmen's Compensation Act, which the respondent no.2- insurance company shall be liable to deposit. It is ordered accordingly.

12. So far as the non-granting of penalty is concerned, Section 4A of the Workmen's Compensation Act makes it evidently clear that before deciding the case, the learned Commissioner has to issue specific show cause to the employer as to why penalty should not be imposed upon them for not depositing the dues within a stipulated period.

13. The payment of penalty is always imposed upon the employer which in the instant case is respondent no.1-M/s S.K. Build Works Pvt. Ltd.

14. For the consideration of the penalty part, this Court is of the opinion that ends of justice would meet if the matter is remitted back to the Court below for issuing fresh notice to respondent no.1-employer and thereafter proceed to decide the case whether under the given facts and circumstances the claimants would be entitled for penalty under Section 4A of the Workmen's Compensation Act or not.

15. With the aforesaid observations, the appeal of the claimants stands allowed in part. The substantial question of law is decided in favour of the claimants and the matter is remitted back to the Commissioner, Workmen's Compensation-cum-Labour Court, Durg, only to decide the issue whether the claimants are entitled for penalty or not. Meanwhile, the respondent no.2-insurance company is directed to deposit the interest part which has been assessed by this Court in the preceding paragraph.

Sd/-
(P. Sam Koshy)
Judge