

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.03.2017

CORAM

THE HON'BLE Dr.JUSTICE S.VIMALA

C.M.A.No.1910 of 2016

Mahaboob Basha @ Shaik Mahaboob Basha
... Appellant/Claimant

Vs

1.Y.Kumar

2.The New India Assurance Co. Ltd.,
No.45, Moore Street, 5th floor,
Chennai 600 001. ... Respondents/Respondents

Civil Miscellaneous Appeal preferred under Section 30 of the Workmen's Compensation Act against the Award dated 14.11.2014 made in W.C.No.44 of 2011 on the file of the Commissioner for Workmen's Compensation-2 Deputy Commissioner of Labour-II, Chennai.

For Appellant : Mr.K. Varadha Kamaraj

For Respondents : Mr.J.Michael Visuvasam for R2

J U D G M E N T

The appellant Mahaboob Basha @ Shaik Mahaboob Basha claiming that he was an employee under the 1st respondent and had suffered injuries during and in the course of employment, filed the claim petition No.44 of 2011 under Section 10[1] of the Employee's Compensation Act, 1923, before the Deputy Commissioner of Labour, Chennai.

2. The Commissioner awarded a sum of Rs.2,33,060/- as compensation to the applicant with a direction to the 2nd respondent/Insurance Company to deposit/pay that amount within a period of 30 days from the date of receipt of a copy of the order, [date of order being 14.11.2014] failing which, to pay interest at the rate of 12% p.a. after the expiry of 30 days from the date of accident, i.e., after the expiry of 30 days from 01.09.2010 till the date of deposit.

3. From which date, the interest falls due, i.e., on the quantum of compensation payable, which is the relevant date for

commencement of payment of interest i.e., whether it is from the date of accident or it is the date on which, there was determination/adjudication on the quantum of compensation payable, or it is after the expiry of 30 days from the date of accident date, is the issue raised in this appeal.

4. The legality of the order permitting the respondents to pay the award amount without interest, i.e., to pay the award amount within a period of 30 days from the date of receipt of a copy of the order, [date of order being 14.11.2014] failing which, to pay interest at the rate of 12% p.a. after the expiry of 30 days from the date of accident, i.e., after the expiry of 30 days from 01.09.2010, is under challenge in this appeal.

5. This appeal was heard on the substantial question of law and the only substantial question of law raised and argued was that, whether the Deputy Commissioner of Labour was justified, in not awarding interest at the rate of 12% p.a. after the expiry of 30 days from the date of accident.

6. The relationship between the appellant and the 1st respondent as employee and employer is admitted by the 1st respondent, though disputed by the 2nd respondent.

7. At this juncture, it is necessary to consider the provisions providing for appeal and the provision providing for payment of interest under the Employee's Compensation Act, 1923.

" Section 30 - Appeals

(1) An appeal shall lie to the High Court from the following orders of a Commissioner, namely:-

(a) an order awarding as compensation a lump sum whether by way of redemption of a half-monthly payment or otherwise or disallowing a claim in full or in part for a lump sum;

[(aa) an order awarding interest or penalty under section 4A;]

(b) an order refusing to allow redemption of a half-monthly payment;

(c) an order providing for the distribution of compensation among the dependants of a deceased [employee], or disallowing any claim of a person alleging himself to be such dependant;

(d) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of sub-section (2) of section 12; or

(e) an order refusing to register a memorandum of agreement or registering the same or providing for the registration of the same subject to conditions:

Provided that no appeal shall lie against any order unless a substantial question of law is involved in the appeal, and in the case of an order other than an order such as is referred to in clause (b), unless the amount in dispute in the appeal is not less than three hundred rupees:

Provided further that no appeal shall lie in any case in which the parties have agreed to abide by the decision of the Commissioner, or in which the order of the Commissioner gives effect to an agreement come to by the parties:

[Provided further that no appeal by an employer under clause (a) shall lie unless the memorandum of appeal is accompanied by a certificate by the Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against.]

(2) The period of limitation for an appeal under this section shall be sixty days.

(3) The provisions of section 5 of [the Limitation Act, 1963 (36 of 1963)], shall be applicable to appeals under this section.

Section 4A of the Employees Compensation Act, 1923 deals with time for payment of compensation as computed under Section 4, and Section 4A reads as under :

"Section 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 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 (2 of 1934).

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

Section 3 of the Act deals with the employer's liability for compensation. Sub-section (1) of that section provides that the employer shall be liable to pay compensation if "personal injury is caused to a workman by accident arising out of and in the course of his employment."

8. Section 4 of the Employee's Compensation Act, 1923, deals with 'amount of compensation'. Section 4-A of the Employee's Compensation Act, 1923, deals with the time for payment of compensation as computed under Section 4. Sub-Section 1 thereof mandates that compensation shall be paid as soon as it falls due. Sub-Section 2 contemplates a situation, wherein the employer though accepts his liability to pay compensation to his workman, disputes the extent of claim of compensation and in such case, Sub-Section 2 enjoins him to make provisional payment, based on the extent of accepted liability by depositing it with the Commissioner, Employee's Compensation or paying it directly to the workman. In case, where provisional payment has to be made by the insured employer as per Section 4-A(2) of the Employee's Compensation Act, then the one month period contemplated under Section 4-A(3) would start running from the date from which such provisional payment becomes due.

9. But, in cases where,

[a] the employer totally disputes his liability to pay on the grounds like the injured person being not his employee;

[b] or that the accident was caused to him at a time when he was not in the course of employment;

[c] or that the accident caused to him did not arise out of his employment;

then Section 4-A(2) would not get attracted and one month's period would start running from the date on which due compensation payable by the employer is adjudicated upon by the Commissioner, Employee's Compensation.

Therefore, a discretion has been vested in Commissioner, Employee's Compensation, with regard to the date of payment of the interest which he has to exercise judiciously keeping in mind the nature of the dispute raised by the employer.

10. If a bona fide dispute is raised by the employer, then Commissioner, Employee's Compensation, should award interest from the date of adjudication of the claim. But, where a wholly frivolous dispute was raised by the employer, then Commissioner, Employee's Compensation, should award interest from the date of the accident.

11. It is relevant and appropriate to consider the decision of the Hon'ble Supreme Court, in the case of Pratap Narain Singh Deo. Vs. Shrinivas Sabata and Anr. [AIR 1976 SC 222], in which this issue has been directly answered. Paragraph Nos.7 and 8 are quoted herein below:-

"7. Section 3 of the Act deals with the employer's liability for compensation.

Sub-section (1) of that section provides that the employer shall be liable to pay compensation if "personal injury is caused to a workman by accident arising out of and in the course of his employment." It was not the case of the employer that the right to compensation was taken away under sub-section (5) of Section 3 because of the institution of a suit in a civil court for damages, in respect of the injury, against the employer or any other person. The employer therefore became liable to pay the compensation as soon as the aforesaid personal injury was caused to the workman by the accident which admittedly arose out of and in the course of the employment. It is therefore futile to contend that the compensation did

not fall due until after the Commissioner's order dated May 6, 1969 under Section 19. What the section provides is that if any question arises in any proceeding under the Act as to the liability of any person to pay compensation or as to the amount or duration of the compensation it shall, in default of agreement, be settled by the Commissioner. There is therefore nothing to justify the argument that the employer's liability to pay compensation under Section 3, in respect of the injury, was suspended until after the settlement contemplated by Section 19. The appellant was thus liable to pay compensation as soon as the aforesaid personal injury was caused to the appellant, and there is no justification for the argument to the contrary.

8. It was the duty of the appellant, under Section 4- A(1) of the Act, to pay the compensation at the rate provided by Section 4 as soon as the personal injury was caused to the respondent. He failed to do so. What is worse, he did not even make a provisional payment under sub-section (2) of Section 4 for, as has been stated, he went to the extent of taking the false pleas that the respondent was a casual contractor and that the accident occurred solely because of his negligence. Then there is the further fact that he paid no heed to the respondent's personal approach for obtaining the compensation. It will be recalled that the respondent was driven to the necessity of making an application to the Commissioner for settling the claim, and even there the appellant raised a frivolous objection as to the jurisdiction of the Commissioner and prevailed on the respondent to file a memorandum of agreement settling the claim for a sum which was so grossly inadequate that it was rejected by the Commissioner. In these facts and circumstances, we have no doubt that the Commissioner was fully justified in making an order for the payment of interest and the penalty."

12. The learned counsel appearing for the respondents relied upon the following decisions :

[i] In the case of Oriental Insurance Company Limited Vs. Mohd. Nasir and Anr. [(2009) 6 SCC 280], it has been held that, the rate of interest provided under sub-section (3) of section 4-A would apply only in case the "finding of fact as envisaged therein" is arrived at by the Commissioner.

[ii] In the case of National Insurance Co. Ltd. Vs. Mubasir Ahmed and Anr. [(2007) 2 SCC 349], it was held that the compensation becomes due on the basis of the adjudication of the claim and hence, no interest can be levied prior to the date of passing of the order determining the amount of compensation.

In paragraph No.9 of the decision, the Court held and observed as follows:-

"9. ... In the instant case, the accident took place after the amendment and, therefore, the rate of 12% as fixed by the High Court cannot be faulted. But the period as fixed by it is wrong. The starting point is on completion of one month from the date on which it fell due. Obviously it cannot be the date of accident. Since no indication is there as to when it becomes due, it has to be taken to be the date of adjudication of the claim. This appears to be so because Section 4-A (1) prescribes that compensation under Section 4 shall be paid as soon as it falls due. The compensation becomes due on the basis of adjudication of the claim made. The adjudication under Section 4 in some cases involves the assessment of loss of earning capacity by a qualified medical practitioner. Unless adjudication is done, question of compensation becoming due does not arise. The position becomes clearer on a reading of subsection (2) of Section 4-A. It provides that provisional payment to the extent of admitted liability has to be made when employer does not accept the liability for compensation to the extent claimed. The crucial expression is "falls due". Significantly, legislature has not used the expression "from the date of accident". Unless there is an adjudication, the question of an amount falling due does not arise."

(emphasis added)

13. The non-applicability of these two decisions has been upheld by the decision of the Hon'ble Supreme Court, in the case of The Oriental Insurance Co. Ltd. Vs. Siby George & Ors. [(2012)12 SCC 540] and the observations which reads as follows:

"Now, coming back to the question when does the payment of compensation fall due and what would be the point for the commencement of interest, it may be noted that neither the decision in Mubasir Ahmed nor the one in Mohd. Nasir can be said to provide any valid guidelines because both the decisions were rendered in ignorance of earlier larger Bench decisions of this Court by which the issue was concluded. As early as in 1975, a four Judge Bench of this Court in Pratap Narain Singh Deo. Vs. Shrinivas

Sabata and Anr., AIR 1976 SC 222 directly answered the question.

It was specifically held that the judgments relied upon by the learned counsel for the respondents is of no help to the respondents as the judgments relied upon by them does not referred to the decision of Pratap Narain which has been delivered by the four Judge bench of the Hon'ble Supreme Court."

14. Negating the contention that the compensation had not fallen due until it was 'settled' by the Commissioner under section 19, it was held in the case of Pratap Narain Singh Deo. Vs. Shrinivas Sabata and Anr., [AIR 1976 SC 222] that the employer became liable to pay the compensation as soon as the aforesaid personal injury was caused to the workman by the accident .

The relevant observation reads as under :

"It has next been argued that the Commissioner committed serious error of law in imposing a penalty on the appellant under section 4A(3) of the Act as the compensation had not fallen due until it was 'settled' by the Commissioner under section 19 by his impugned order dated May 6, 1969. There is however no force in this argument.

Section 3 of the Act deals with the employer's liability for compensation. Sub-section (1) of that section provides that the employer shall be liable to pay compensation if "personal injury is caused to a workman by accident arising out of and in the course of his employment." It was not the case of the employer that the right to compensation was taken away under sub-section (5) of section 3 because of the institution of a suit in a civil court for damages, in respect of the injury, against the employer or any other person. The employer therefore, became liable to pay the compensation as soon as the aforesaid personal injury was caused to the workman by the accident, which admittedly arose out of and in the course of the employment. It is therefore futile to contend that the compensation did not fall due with after the Commissioner's order dated May 6, 1969 under section 19. What the section provides is that, if any question arises in any proceeding under the Act as to the liability of any person to pay compensation or as to the amount or duration of the compensation it shall, in default of a agreement, be settled by the Commissioner. There is therefore, nothing to justify the argument that the employer's liability to pay compensation under section 3, in respect of the injury, was suspended until after the settlement

contemplated by section 19. The appellant was thus liable to pay compensation as soon as the aforesaid personal injury was caused to the appellant, and there is no justification for the argument to the contrary."

15. The decision of the Hon'ble Supreme Court in Pratap Narain, referred to supra, which has been delivered by the four Judge bench of the Hon'ble Supreme Court, has not been overruled so far. Thus, the legal position is clear that the liability to pay compensation arises on the date of accident and when it is not paid within the statutory period of 30 days, then the liability to pay interest commences, after the expiry of 30 days from the date of accident.

16. Permitting the employer to pay interest only after adjudication of the claim would pre-empt the employer to avoid/delay the payment, which would include the payment of provisional interest. The liability to pay interest at the earliest point of time would make the employer prompt enough to settle the claim for compensation, in order to avoid unnecessary payment of interest.

17. In the result, the appeal is allowed, directing grant of interest on the amount of compensation ordered from the expiry of 30 days from the date of accident. Substantial question of law is answered on the above terms.

Sd/-

Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

To

1.The Commissioner for Workmen's Compensation-2, Chennai.

2.The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.K.Varadha kamaraj,Advocate sr.13728

+1cc to Mr.J.Michael Viswasam,Advocate sr.14105

C.M.A.No.1910 of 2016

kgk(co)
ss(30/6/2017)