IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 2997 of 1999
Date of decision: 12.01.2017

Smt. Bachan Kaur and another ....Appellant(s)

Versus

M/s. Narayan Enterprises and another ...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Harsh Garg, Advocate,
for Mr. Rakesh Gupta, Advocate,
for the appellants.

Mr. Harsh Aggarwal, Advocate,
for respondent no. 2.

G.S.SANDHAWALIA, J. (Oral)

The present appeal has been filed by the mother of the deceased workman challenging the order dated 30.11.1998 passed by the Commissioner under the Workmen's Compensation Act, 1923 (now, the Employee's Compensation Act, 1923) (in short 'the Act'). Vide the said order, respondent no. 2-the Insurance Company was directed to deposit a sum of ₹2,15,280/- within a period of 30 days failing which it was to be burdened with 6% simple interest per annum from the date of accident till the date of actual penalty on the amount of compensation. Respondent no. 1, the employer was burdened with penalty of ₹40,000/- on account of not performing his statutory duty by paying the compensation.

The appellant has accordingly claimed interest from the date of accident and also challenged the age of the deceased which had been fixed by the Commissioner as 26 years and submitted that the age should have been calculated as 24 years as deposed by the mother before the authorities.

Counsel for the respondent-Insurance Company has submitted that the amount was deposited on 23.12.1998 within a period of one month from the date of adjudication and, therefore, the interest is not liable to be paid as per the directions of the Commissioner.

Counsel for the appellant, however, has rightly argued that as per the provisions of the Act, the amount was to be paid within one month from the date if fell due and the interest was to be granted @12% per annum on the amount due. It is accordingly submitted that the due date would be the date of accident i.e. 27.05.1997 and, therefore, since the payment was made beyond the period of one month and after almost an year and a half after the adjudication on 30.11.1998, the appellant is entitled for the interest @ 12% per annum as statutorily provided.

The matter is no longer *res integra* and stands settled by the Apex Court in ***Pratap Narain Singh Deo vs. Shrinivas Sabata and another, 1976 (1) SCC 289*** whereby, four Judges of the Apex Court held to the said effect. This Court in ***New India Assurance Company Ltd. vs. Manphool Singh and others, 2009 ACJ 458*** followed the said view and clarified that where there is a conflict between the judgment of a Constitutional Bench and a Division Bench delivered later, the opinion of the larger Bench is to be followed. Thereafter, the matter also arose before the Apex Court in ***Oriental Insurance Co. Ltd. vs. Siby George, 2012 (6) SCR 1079.*** It was held by the Apex Court that the interest is to be levied on default per se and accordingly, the appeal filed by the insurance company was dismissed. Thereafter, in ***Saberabibi Yakubbhai Shaikh and others vs. National Insurance Co. Ltd. and others, 2014 (2) SCC 298,*** the said view was followed and it was held that the interest @ 12% per annum from the date of accident is to be paid.

However, the argument of the counsel that the age should be 24 years and not 26 years is without any basis. The Commissioner has fixed date on account of the fact that AW-2 Surjit Singh, who was working as a Cleaner on the truck, had deposed that the deceased Kulwant Singh was aged about 25-26 years. It is also to be noticed that the mother had shown her ignorance about the date of birth of the deceased when she had appeared in cross examination and keeping in view the fact that the driving license could not be traced because of the accident, the assessment as such of the age of the deceased was rightly done. Thus, it would not lie in the mouth of the appellant now to submit that the age was liable to be treated as 24 years merely on the ground that in the post mortem report, it was mentioned as such, as has been argued by the counsel.

Keeping in view the above, the present appeal is partly allowed. The Insurance Company shall pay the interest amount @ 12% from 27.05.1997 to 23.12.1998, as held above, within a period of two months from the date of receipt of certified copy. In case the amount is not paid within the said period, the appellant will also be entitled to interest on the same amount from the date of order dated 30.11.1998 till the date of payment.

12.01.2017 (G.S. SANDHAWALIA)
shivani JUDGE

Whether reasoned/speaking Yes/No

Whether reportable Yes/No