IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2567 of 2012
Date of decision: 21.03.2017

Kulwinder Kaur & others ....Appellants

Versus

Shree Mahadev Trailor Service & another ...Respondents

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

Present: Ms.Puja Chopra, Advocate, for the appellants.

None for respondent No.1.

Mr.Rajesh Bansal, Advocate, for respondent No.2.

G.S. SANDHAWALIA, J.

The present appeal has been filed by the appellants, under Section 30 of the Employee's Compensation Act, 1923 who are legal representatives of Salinder Singh, who was working as a Driver of a trailer owned by respondent No.1 and died on 07.05.2010. On account of the claim application having been filed, the appellants have been held entitled for a sum of Rs.3,94,120/-, by taking the salary at Rs.4000/- per month and applying the required cut and the relevant factor, vide order dated 23.01.2012. The Commissioner did not initiate the penalty proceedings and only granted 8% interest w.e.f. 07.06.2010, one month after the date of the accident. Resultantly, the present appeal has been filed, claiming enhancement.

Counsel for the appellants vehemently submitted that the monthly salary had been taken wrongly at Rs.4000/- as the deceased was entitled for Rs.8000/- per month on account of the fact that vide notification dated 31.05.2010 issued by the Central Government, the amount had been enhanced to Rs.8000/- and therefore, at the time of passing the order on

23.01.2012, the benefit of the said notification should have been granted, rather than pegging down the wages at Rs.4000/-. Reliance was, accordingly, placed upon the judgment of the Apex Court in ***N.Parameshwaran Pillai & another Vs. Union of India & another 2002 ACJ 841*** which followed the view in ***Rathi Menon Vs. Union of India 2001 ACJ 721 (SC)***. It is also pertinent to notice that similarly, before the Commissioner also, same argument was being raised and reliance was also placed upon the Division Bench of the Allahabad High Court in ***New India Assurance Co. Ltd. Vs. Abdul Sattar Khan & others 2011 ACJ 403***. In contrast, the Commissioner had relied upon the judgment of the Himachal High Court in ***Divisional Forest Officer Karsog Vs. Budhi Singh 2006 ACJ 1851***, to come to the conclusion that as per the Employee's Compensation Act, 1923, the date of accident is to be taken into consideration.

None has put in appearance on behalf of respondent No.1-employer, despite service, to contest the present proceedings.

Counsel for the appellant has also raised the second substantial question of law that penalty proceedings should have been initiated against the owner and interest @ 12% should have been given from the date of accident.

The first substantial question of law, which counsel for the appellants has raised is that the amount of wages should have been assessed at Rs.8000/-, as per the notification dated 31.05.2010, which was in force at the time of adjudication, is without any basis and cannot be taken into consideration. A Four Judges Bench of the Apex Court in

Pratap Narain Singh Deo Vs. Srinivas Sabata (1976) 1 SCC 289 held that compensation is payable from the date of accident and not from the date of the award and the relevant date under the Act would be the date of accident. In ***Ved Prakash Garg Vs. Premi Devi (1997) 8 SCC 1***, the liability of interest element, apart from the compensation, was also held to be that of the Insurance Company in cases of insurance contracts being in force. The said view was followed by the Apex Court in ***Oriental Insurance Company Ltd. Vs. Siby George (2012) 12 SCC 540*** and in ***Saberbibi Yakubhai Shaikh Vs. National Insurance Co. Ltd. (2014) 2 SCC 298***.

In ***Jaya Biswal Vs. Branch Manager, IFFCO Tokio General Insurance Company Ltd. & another 2016 (11) SCC 201***, the said view has further been reiterated, that the interest is liable to be paid from the date of the accident. Relevant portion reads as under:

> "26. Further, an interest at the rate of 12% per annum from the date of accident, that is 19.07.2011, is also payable to the appellants over the above awarded amount. In light of the unnecessary litigation and the hardship of the appellants in spending litigation to get the compensation which was rightly due to them under the Act, we deem it fit to award the appellants costs as L 25,000/-."

In ***New India Assurance Co. Ltd. Vs. Harshadbhai Amrutbhai Modhiya 2006 (5) SCC 192*** it was clarified that in view of Section 12 of the Act, if there was a clause, as such, to contract out, the insurer, as such, could move out of the reimbursement liability, which was not prohibited by the statute.

The said argument, though attractive on the ground that it is a beneficial piece of legislation, cannot be accepted, in view of the fact that a Three Judges Bench of the Apex Court in ***Kerala State Electricity Board & another Vs. Valsala K. & another 1999 SCR 657*** has held that the relevant date would be the date of accident when the personal injury, as such, had been caused to the workman, for determining the rate of compensation and not the date of adjudication of the claim. The argument that enhanced amount of compensation is payable on account of the amendment made in the year 1995, was rejected. The Full Bench of the Kerala High Court in ***United India Insurance Co. Ltd. Vs. Alavi 1998 (1) Ker LT 951 (FB)*** was approved as laying down the correct law. It is pertinent to mention that the judgment in **Alavi's case** (supra) had set aside the earlier view of the Division Bench of the Kerala High Court in ***Oriental Insurance Company Ltd. Vs. Asokan 1998 ACJ 33***, taking a contrary view, which was overruled, wherein the date of adjudication was taken to be the date whereby the amount was to be quantified and would be the relevant date.

Reliance, which has now been placed upon **N.Parameshwaran Pillai** (supra) would also be of not much value, since the judgment was based upon **Rathi Menon** (supra) wherein also, the Apex Court examined the judgment in **Pratap Narain Singh Deo** (supra) and came to the conclusion that the dispute, as such, was under the Railways Act, 1989 and thus, distinguished the judgment of the Larger Bench, which was under the Workmen's Compensation Act, 1923, on the ground that the date of accident, as per the 1923 Act, was the relevant consideration. The scheme of the Act was materially different from the Railways Act and could not be equated and different principles were involved. The relevant portion of **Rathi Menon** (supra) reads as under:

> "33. The scheme of the provision under the W.C. Act is materially different from the scheme indicated in Chapter XIII of the Railways Act. In the former, compensation payable is fixed in the Act itself through the schedule incorporated thereto. Section 4 of the W.C. Act shows that such compensation is to be linked with the monthly wages of the workman concerned. It also provides that the liability to pay compensation on the employer would arise not when the Commissioner passes the order but on the date of sustaining the injury itself. A provision is made in Section 4A of W.C. Act that where any employer is in default of paying the compensation due within one month the Commissioner shall direct the employer to pay not only interest but in appropriate cases a penalty ranging up to 50% of the amount payable. The said scheme cannot be equated with the scheme in Chapter XIII of the Railways Act, as the principles involved have differences."

Resultantly, keeping in view the fact that the issue stands already decided by the Apex Court, the argument, as such, raised, in view of the judgment in **Pratap Narain Singh Deo** (supra) is to be followed. Resultantly, there is no merit in the contention raised, that the date of adjudication is the relevant date.

On the entitlement of 12% interest and initiation of penalty proceedings, the relevant Section 4-A reads as under:

> "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 (2 of 1934).

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

Thus, it is also apparent from the above provisions that the amount of penalty, as such, is payable by the employer and for that, a separate show cause notice has been provided under the Proviso and without giving reasonable opportunity, the same cannot be imposed. The Commissioner would have to come to a categorical conclusion that there was no justification for the delay, since the provisional payment had to be given immediately after the accident. In the absence of provisional payment, within the prescribed period, the Commissioner could not come to a conclusion, as such, that there was any justification for the delay in the absence of any material. By the issuance of the show cause notice, the Commissioner would categorically, as such, deal with the said issue whether there was any justifiable ground for delay or not. Only where the provisional payment, as such, has been made, the Commissioner could come to a conclusion that there was some justification. In the absence of any provisional payment having been made, it would not be permissible, as such, for the Commissioner to come to such a conclusion and not to issue the show cause notice for payment of penalty proceedings, until there was sufficient material on record. The purpose of the said provision is that compensation must be paid as soon as it falls due, in order to ensure that the victim gets immediate relief and succor. The same is couched in a mandatory manner and cannot be held to be directory, as such. The wordings used are that the employer is bound to make the provisional payment and the said provision has been incorporated, being a beneficial piece of legislation in favour of the employee and it is to deter the employer from not making such payment.

Under Section 4-A, once the amount was not paid and the employer refused to pay the compensation and it had been proceeded against *ex parte* before the Commissioner, the Commissioner was not justified, as such, to drop the proceedings, at that stage and not to issue the penalty notice. It has been held in **Ved Prakash Garg** (supra) that payment of the penalty is the liability of the employer and in such circumstances, on account of no reasoning, as such, having been given for the employer in not paying and not showing reasons as to why provisional payment was not made, the Commissioner was not justified in not initiating the penalty proceedings against the employer.

Similarly, the fact remains that the claim for statutory rate of 12% interest from the date of the accident, as has been laid down by the Apex Court in **Pratap Narain Singh Deo** (supra), **Siby George** (supra), **Saberbibi Yakubhai Shaikh** (supra) and in **Jaya Biswal** (supra) is justified and therefore, the second question of law is allowed in favour of the appellants and they are held entitled for the rate of interest @ 12% instead of 8%, the difference of which the Insurance Company will pay, within a period of 2 months from the date of receipt of a copy of this order.

Accordingly, directions are issued to the Commissioner to initiate the penalty proceedings against the employer and also calculate the interest element @ 12% which will be from the date of the accident, i.e., 07.05.2010 and the Insurance Company shall, thereafter, pay the differential amount, within a period of 2 months, from the date of the communication of the said order, to be passed by the Commissioner.

The present appeal, accordingly, stands partly allowed, in the above-said terms.

21.03.2017 **(G.S. SANDHAWALIA)**
Sailesh **JUDGE**

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*