IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.522 of 2012
Decided on : 28.03.2017

Savitri Devi and others

... Appellants

Versus

Spring Fields Public School and another

... Respondents

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

Present : Mr. R.S. Mamli, Advocate for the appellants.

None for respondent No.1.

G.S. Sandhawalia, J. (Oral)

The present appeal has been filed by the legal representatives of the deceased Ram Dharup who seek enhancement to the extent of rate of interest to the tune of 12% per annum instead of 9% per annum from 22.12.2007, which is after the one month of date of accident. Further penalty due to the Commissioner having not initiated penalty proceedings is, thus, the substantial question of law which has been raised on the ground that it is not justified on the part of employer, since notice under Section 10 of Employee's Compensation Act, 1923 had also been issued on 22.02.2008.

A perusal of the award in question passed by the Commissioner, Yamuna Nagar-I under the Employee's Compensation Act, 1923 (for short 'the Act) on 08.11.2011 would go on to show that a sum of ₹3,11970/- was awarded and interest rate of only 9% was awarded, whereas as per the provisions of the Act under Section 4-A 12% is liability of the interest from the date it fell due under sub-Section 3 (a).

Similarly, under sub-Section 3 (b) there has to be justification for the delay for the payment and under sub-Section 2 provisional payment has to be made by the employer, which has not been done.

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. In ***Ved Prakash 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 ₹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.

Thus, it is 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 justificable ground for delay or not. Only where the provisional payment, as such, has been made, the Commissioner would come to a conclusion that there was some justification and 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 fell 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.

In such circumstances, the action of the Commissioner for not initiating the penalty proceedings is not justified.

Accordingly, the present appeal is allowed. The claimants will be entitled for the interest @ 12% per annum instead of @ 9% per annum and the Commissioner shall also initiate penalty proceedings against the employer.

It is also pertinent to mention that the employer had filed **FAO No.509 of 2012** against the impugned order, which was dismissed on 01.02.2012. Therefore, the findings as such recorded had already been affirmed by this Court qua the liability on payment.

Accordingly, the present appeal is partly allowed.

(G.S. SANDHAWALIA)
JUDGE

MARCH 28, 2017
Naveen

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*