IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.5632 of 2012
Date of decision: 09.03.2017

Rajesh ....Appellant

Versus

Jitender & others ...Respondents

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

Present: Mr.Kunal Dawar, Advocate, for the appellant.

Mr.Rajan Bhargava, Advocate, for
Mr.Vishal Aggarwal, Advocate, for respondent No.1.

Mr.Vivek Gupta, Advocate, for
Mr.G.S.Hooda, Advocate, for respondents No.2 & 3.

G.S. SANDHAWALIA, J.

The present appeal, filed by the employee, under Section 30 of the Employees Compensation Act, 1923, is directed against the order dated 18.06.2012, passed by the Commissioner, Sonepat.

By virtue of the said order, a sum of Rs.1,89,185/- has been assessed as compensation by taking the wages of the appellant at Rs.4000/- per month and by assessing his loss of earning capacity, to the extent of 35%. The liability has been fixed upon the respondent-Insurance Company. The interest element and the penalty have been denied, on account of the fact that the disability certificate had not been furnished and a temporary disability certificate was got issued only on 02.05.2012 and produced in Court only on 31.05.2012.

The claim petition was filed by the workman, claiming that he was 19 years of age and working with respondent No.1, the contractor, who had taken the contract from respondents No.2 & 3-Nigam, for erection of electric polls in the Gohana sub-divisions. On 11.07.2009, the claimant and his brother and the labourers were working for erection of electric line and for pulling down a span which was crossing the high tension line, request had been made to shut it down. An assurance had been given by the respondent that the application for shutting it down had been given and they could work without fear. The workers pulled the span by tying a rope at one end with full force and as a result of which, the span touched the high tension line and the appellant suffered burn injuries on his full body due to passing of the current. The claimant had been brought by his brother in serious condition to PGIMER, Rohtak where he was treated and remained admitted till 12.08.2009. The hands of the appellant had been crippled and one of the finger had been amputated. The male organ of the claimant had been burnt, for which, he was to live the remaining life with disgrace and remained dependent on others and resultantly, the claim petition was filed that respondent No.1 was an influential and powerful person and that even the MLR was not prepared on account of the influence of the respondent-Contractor.

The defence of respondent No.1 was that the appellant was never employee and the claim had been only filed to grab money from the answering respondent. The contract was under respondents No.2 & 3.

The defence of the Nigam was that there was no relationship with the appellant. It was denied that the said contract had been given to respondent No.1 for erection of lines. Respondent No.1 was not a contractor of respondents No.2 & 3. As per the terms and conditions of the contract, liability for the safety of the workers and compensation, if any, was to be paid by the contractor.

An application under Order 1 Rule 10 CPC was filed for impleading respondent No.4-Suresh Kumar, on the ground that he was in contract with the Nigam and that the said respondent was a proprietor of M/s Shivam Electric Company, Jind and respondent No.1 was only a sub-contractor, vide agreement dated 25.11.2008. In view of the changed circumstances, it was necessary to implead the above-said respondent as respondent No.4. On account of additional evidence, the application for adding the Insurance Company was allowed as respondent No.5 and the insurance policy came on record as RW5/A. Resultantly, written statement came to be filed by the said company also, taking the plea that relationship of employer-employee was not present and that no notice had been sent before filing the claim petition.

On the basis of the evidence which was led by the claimant, who also examined his brother-Satish as AW2 along with his father, Arjun as AW3 and the evidence of Prem Singh as RW1, the Commissioner came to the conclusion that there was an admission that the work had been allotted to Shivam Electronics, for erecting the work of lines from Mundlana to Siwanka. The same was on the basis that there was a criminal case also pending at the Court at Gohana and there was also an admission from RW2, Jitender, the Contractor that he had been sub-let the work from respondent No.4, proprietor concern, for the period from March, 2008 to March, 2009, but he could not verify whether the work had got completed or not. Similarly, an admission was also made by RW3 that the work had been sub-let to respondent No.1, as per

Ex.AW1/B, the copy of the agreement dated 25.11.2008 *inter se* respondents No.1 & No.4.

On account of an application being moved for assessing the disability and thereafter, tendering the disability certificate dated 02.05.2012 (Ex.AA), resultantly, the Commissioner came to the conclusion that the accident had taken place in the premises of the Nigam and the record showed that respondent No.1 was a contractor, who had employed the appellant along with his brother and the labourers. There was an admission by Prem Singh that the work had been allotted and a criminal case was also pending and that respondent No.4 had sub-let the work to respondent No.1 and this weighed with the Commissioner, by holding that there existed relationship of a employer-employee and respondent No.1 was a sub-contractor. The claim of wages was stated to be Rs.300/- per day with monthly wages of Rs.9000/- but the same was limited to Rs.4000/- per month, keeping in view the proviso of Section 4(1)(b), by taking into account 60% of the monthly wages, while multiplying by the relevant factor and limiting the liability to Rs.4000/-.

Counsel for the appellant has raised the following questions of law and apart from that submitted that he was also liable to be paid interest. Penalty proceedings also should have been initiated, keeping in view the fact that no provisional payment had been made. Thus, the following substantial questions of law arise:

> "(i) Whether the Commissioner has erred in restricting the salary of the appellant @ Rs.4000/- per month while calculating the amount of compensation which restriction

> has been omitted by the amendment w.e.f. 18.01.2010?
> (ii) Accordingly, whether the amount of compensation awarded is on the lower side and is bound to be enhanced?
> (iii) Whether the disability suffered by the appellant has been wrongly taken as 35% and the same was held to be 70% in the disability certificate?
> (iv) Whether the Court below has erred in not awarding interest from the date of accident but from the date of order and whether penalty proceedings were liable to be initiated?"

Mr.Dawar has, accordingly, argued that by restricting the salary to Rs.4000/- and thereafter, applying the relevant factor, the Commissioner erred, as such, and the benefit of the salary is to be given at Rs.8000/- per month, then the amount of compensation would, accordingly, go up and resultantly, questions (i) & (ii) were to be answered in his favour. Argument raised is that after the amendment on 18.01.2010, a sum of Rs.8000/- had been notified under Section 4(1-B), by the Central Government on 31.05.2010 and therefore, the same should have prevailed with the Commissioner while passing the order dated 18.06.2012, irrespective of the fact that the date of accident was 11.07.2009, when the unamended provisions were in force, limiting the maximum claim to Rs.4000/- as wages, as per the unamended clause.

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 to be laying down 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. Therefore, questions No. (i) & (ii) are not liable to be answered in favour of the claimant.

Question No.(iii), whereby 35% of the disability has been assessed, keeping in view the nature of the injuries sustained, for the purpose of calculation, in the opinion of this Court, are liable to be answered in favour of the appellant. A perusal of the disability certificate, as such, would go on to show that the percentage of disability was assessed at 70% by the Board including the Orthopedic Surgeons of the General Hospital, Sonepat along with the Civil Surgeons. A perusal of the certificate would go on to show that there were post burn contractions and amputation of the left index finger had taken place. The said condition of amputation, thus, is to be treated as permanent disability and should not have been reduced to 35%, as has been done on the ground that the same was not permanent and that it was likely to improve Therefore, the Commissioner shall re-assess the amount of compensation by applying the relevant factor and taking the percentage of disability at 70%. Resultantly, question No.(iii) is answered in favour of the appellant, as there was no justifiable reason, as such, to reduce the percentage of disability.

Question at Sr.No.(iv) which arises is as to whether the interest is liable from the date of the certificate, i.e., order or whether it would be from the date of the accident. The said finding, as such, is also not justifiable that the interest is only from the date of the adjudication. A Four Judges Bench of the Apex Court in ***Pratap Narain Singh Deo Vs. Srinivas Sabata (1976) 1 SCC 289***, while dismissing the appeal in case where there was an amputation of left arm and above the elbow of a carpenter, held that it would not be appropriate that compensation due would fall after the order of the Commissioner, on the ground that that would be the date of adjudication. It was noticed that provisional payment was never made and in such circumstances, the Commissioner was justified in making order of payment and compensation and penalty. Relevant portion of the judgment reads as under:

> "6. It has next been argued that the Commissioner committed a serious error of law in imposing a penalty on the appellant under Section 4-A (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.

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 at 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 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 respondents 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 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."

Keeping in view the above, as noticed that there was an amputation of the index finger also, question of law at Sr.No.(iv) is, accordingly, answered in favour of the employee, by holding that he is entitled for the interest element, which shall also be paid by the Insurance Company, from the date of the accident, i.e., 11.07.2009.

Resultantly, keeping in view the above, the substantial question that also arises that the penalty provisions should have been invoked against the contractor and the sub-contractor, keeping in view the provisions of Section 4-A, which provide that penalty, as such, is payable by the employer and as noticed by the Apex Court 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 same has to be then necessarily adjudicated upon and show cause notice necessarily would have to be issued, as admittedly, no provisional payment was ever made, keeping in view the observations of the Apex Court in **Pratap Narain Singh Deo** (supra). Thus, there seems to be no justifiable reason for the delay in payment. In such circumstances, the question of law is also answered in favour of the employee that the Commissioner shall also initiate penalty proceedings against the contractor and the sub-contractor.

Resultantly, the Commissioner shall recalculate the principal amount since the amount of disability has been assessed at 70% and also calculate the interest element which will be from the date of the accident, i.e., 11.07.2009 and the Insurance Company shall, thereafter, pay the said 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 allowed, in the above-said terms.

09.03.2017 **(G.S. SANDHAWALIA)**
Sailesh **JUDGE**

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*