IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2009 of 2014 (O&M)
Decided on : 09.03.2017

Binder Kaur and another

... Appellants

Versus

M/s Daya Ram Chaman Lal and another

... Respondents

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

Present : Mr. Rajbir Singh, Advocate
for the appellants.

Mr. Saurabh Kapoor, Advocate
for respondent No.1.

Mr. Satpal Dhamija, Advocate
for respondent No.2-Insurance Company.

G.S. Sandhawalia, J. (Oral)

CM-7239-CII-2014

The present application has been filed for condonation of delay of 114 days in filing the present appeal.

In view of the averments made in the application, duly supported by the affidavit, and on account of fact that the bread-winner had died, the same is allowed. The delay of 114 days in filing the appeal is condoned, on account of sufficient cause having been shown.

CM stands disposed of.

Main case

The present appeal has been filed under Section 30 of the Employee's Compensation Act, 1923 (for short 'the Act) against the order dated 30.07.2013 passed by the Commissioner, Sangrur.

The short substantial question of law that arises is whether respondent No.1 is liable for the initiation of penalty proceedings under Section 4-A (3) (b) of the Act against the employer, which has been denied by the Commissioner.

The ground for denial is that the employer had been asking the respondent No.2-Insurance Company to pay the amount of compensation and, therefore, the penalty was not liable to be paid. The appellants are legal heirs of Prem Singh who was employed as a Driver and died on 22.11.2009 when the car met with an accident. DDR No.6 dated 24.11.2009 was also recorded at Police Station Dirba and keeping in view the fact that he was 58 years old and was getting ₹5,000/- per month and the vehicle was insured with respondent No.2-Insurance Company, the claim was filed.

The factum of the employment was admitted by respondent No.1 and keeping in view the Cover Note of the Insurance Ex.R-1 and the driving license of the Prem Singh (deceased) which was exhibited as Mark-B, it was held that the employee had died in an accident arising out of and during the course of the employment.

Resultantly, the relevant factor of 124.70 was applied to the monthly wages, which was taken as ₹4,000/- by applying the prescribed proforma and interest was accordingly granted from the date of the accident. Compensation thus to the tune of ₹2,56,660/- was assessed payable by the Insurance Company.

Thus, as noticed, the penalty was liable to be paid by the owner has been denied on the ground that the company was liable to pay.

The said reasoning is not justified. Once the death had taken place, it was open to the owner to pay the amount of compensation and make provisional payment and, thereafter, claim indemnification as such from the Insurance Company.

From the bare perusal of Section 4-A of the Act, it would be apparent that the amount of penalty as such is payable by the employer and a separate show cause notice has been provided under the proviso and without giving reasonable opportunity, the same cannot imposed. In the absence of any provisional payment of compensation having been made within the prescribed time period, as per the law laid down in ***Pratap Narain Singh Deo Vs. Srinivas Sabata (1976) 1 SCC 289,*** wherein it has been held that compensation is payable from the date of accident, the Commissioner was not justified in not initiating the penalty proceedings.

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/-."*

Thus, in the absence of any valid conclusion as such, the Commissioner would not be justified and it would not be permissible for him not to initiate penalty proceedings until there is sufficient material on record to show that why the compensation was not paid to the claimants on time.

Thus, there is no justification for the non initiation of the said proceedings. The provisions are initiated to be beneficial to the employee and his dependents and therefore, the inaction on the part of the Commissioner held is not justified and the substantial question of law is answered in favour of the appellant.

Resultantly, the order dated 30.07.2013 passed by the Commissioner, Sangrur is set aside to that extent and direction is issued to the Commissioner, Sangur to initiate the penalty proceedings by issuing necessary show cause notice.

With the abovesaid observations, the present appeal stands disposed of.

(G.S. SANDHAWALIA)
JUDGE

MARCH 09, 2017
Naveen

Whether speaking/reasoned: *Yes/No*
Whether Reportable: *Yes/No*