

HIGH COURT OF CHHATTISGARH, BILASPUR

Order reserved on : 12.07.2018

Order delivered on : 31.07.2018

MAC No. 1232 of 2007

- South Eastern Coal Field Ltd., through its Sub Area Manager, SECL Katkona Colliery, Tahsil Katkona Distt Sarguja (CG)

---- Appellant

Versus

1. Smt. Ful Kunwar , widow of late Hira Lal, aged about 47, R/o Katkona Colliery, Quarter No.68, PS Patna, Tahsil Baikunthpur, Distt Sarguja
2. The Commissioner for Workmen Compensation Act 1923 Cum Labour Court Ambikapur C.G.

---- Respondents

For Appellant	: Shri Vinod Deshmukh, Advocate
For Respondent- 1	: Shri AK Prasad, Advocate
For Respondent- 2	: None appears

Hon'ble Shri Justice Parth Prateem Sahu

CAV Order

1. This appeal has been filed under Section 30 of the Workmen's Compensation Act, 1923 (for short, 'the Act of 1923') by the employer against the judgment dated 24.09.2007 by the Commissioner for Workmen's Compensation, Labour Court, Ambikapur (for short, 'the Commissioner') in case No.5/WCAct/1996/Fatal, whereby the Commissioner has awarded compensation of Rs.1,45,096/- along with simple interest @ 6% per annum from the date of accident and further

imposed penalty of 10% of the awarded amount on account of death of Hiralal, husband of respondent- 1.

2. Brief facts of the case are that late Hiralal was under employment with the appellant- Company since 16.11.1977 and posted as Watchman at Katkona colliery. On 06.09.1991, he went on his duty and during the course of employment, he became unconscious. Thereafter, he was taken to the Hospital at Charcha Baikunthpur, where, after examination Hiralal was declared dead.

3. Respondent- 1, wife of late Hiralal filed application under Section 22 of the Act, 1923 for compensation of Rs.1,50,000/- along with interest @ 18% mentioning therein that in the intervening night of 6 and 7 of September, 1991, Hiralal died during the course of his employment. Even after assurance by the employer, her request for compensation was not considered. The claim application has been filed only when respondent- 1 found that without taking recourse of law, the appellant will not disburse the amount of compensation. Then, she sent a letter to the Labour Officer. It is then respondent- 1 filed an application under Section 22 of the Act of 1923 and also filed an application under Section 5 of the Limitation Act along with the application on 25.03.1996. The Commissioner vide his order dated 06.11.1996 directed that the delay application will be decided after recording evidence at the time of passing final order.

4. The appellant submitted reply to the application filed under Section 22 of the Act of 1923 and stated that deceased Hiralal was under

employment since 16.11.1977 but his death did not occur due to any accident during the course of his employment; rather, it took place at village Dhamu Tikra and he died due to heart failure. Therefore, respondent- 1 is not entitled for any claim as prayed by her.

5. The Commissioner, on the basis of pleadings of the respective parties framed as many as six issues for consideration and after conclusion of the proceedings, passed an award of Rs.1,45,096/- by arriving at a finding that the death of late Hiralal might be on account of a snake bite during course of his employment.

6. Learned counsel appearing for the appellant challenging the findings arrived at by the Commissioner submits that though the death of late Hiralal took place during course of his employment, but it was not on account of any accident, but it was a normal death due to heart attack and therefore, respondent- 1 is not entitled for any compensation in view of the provisions of Section 3 of the Act of 1923. He further submitted that application under Section 22 of the Act of 1923 was filed after about five years of his death and therefore, it was barred by limitation. Further, the Commissioner committed illegality in imposing penalty without giving opportunity of hearing as provided under Section 4A of the Act of 1923.

7. Learned counsel appearing for the respondent would support the award passed by the Commissioner and submits that the Commissioner after considering all material and evidences available on record, awarded just and reasonable compensation in accordance with law.

8. This Court vide its order dated 12.09.2011 had formulated four questions of law for consideration and the fifth question of law was formulated by this Court on 18.10.2012.

9. Learned counsel for the appellant submitted that the application filed by respondent- 1 under Section 22 of the Act of 1923 does not bear any whisper about the nature of death of late Hiralal. He further submitted that in said application, it has not been pleaded that death occurred due to any accident or mishap during the course of employment, but it only reflects that death occurred in the intervening night of 6-7/09/1991 during the course of employment. He also submitted that mere occurrence of death during the course of employment would not be sufficient to take benefit of Section 22 of the Act of 1923, but the death should be an accidental death during the course of employment. For appreciating the submissions made by learned counsel for the appellant, perusal of Section 3 (1) of the Act, 1923 will be beneficial.

10. Section 3 (1) of the Act, 1923 is reproduced herein:

"3. Employer's liability for compensation — (1) If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter: Provided that the employer shall not be so liable —

(a) in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding three days;

(b) in respect of any injury, not resulting in death or permanent total disablement caused by an accident which is directly attributable to—

(i) the workman having been at the time thereof under the influence of drink or drugs, or

(ii) the wilful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen, or

(iii) the wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workman."

11. From bare perusal of Section 3(1) of the Act of 1961, it is clear that the Act provides that the employer will be liable for payment of compensation, only when the personal injuries caused to a workman by accident arising out of and in the course of his employment. The issue with regard to the employer's liability for compensation during the course of employment has been considered by Hon'ble Supreme Court in the matter of **Shakuntala Chandrakant Shreshti and Prabhakar Maruti Garveli and another** reported in **(2007) II SCC 668**, wherein Hon'ble Supreme Court held in paras- 25, 26, 29 and 38 as under :

"25. An accident may lead to death but that an accident had taken place must be proved. Only because a death has taken place in course of employment will not amount to accident. In other words, death must arise out of accident. There is no presumption that an accident had occurred.

26. In a case of this nature to prove that accident has taken place, factors which would have to be established, *inter alia* are:

- 1) stress and strain arising during the course of employment
- 2) nature of employment
- 3) injury aggravated due to stress and strain

29. Circumstances must exist to establish that death was caused by reason of failure of heart was because of stress and strain of work. Stress and strain resulting in a sudden heart failure in a case of the present nature would not be presumed. No legal fiction there for can be raised. As a person suffering from a heart disease may not be aware thereof, medical opinion therefore would be of relevance. Each case, therefore, has to be considered on its own fact and no hard and fast rule can be laid down therefore.

38. Unless evidence is brought on record to elaborate that the death by way of cardiac arrest has occurred because of stress or strain, the Commissioner would not have jurisdiction to grant damages. In other words, the claimant was bound to prove jurisdictional fact before the Commissioner. Unless such jurisdictional facts are found, the Commissioner will have no jurisdiction to pass an order. It is now well-settled that for arriving at a finding of a jurisdictional fact, reference to any precedent would not be helpful as a little deviation from the fact of a decided case or an additional fact may make a lot of difference by arriving at a correct conclusion. For the said purpose, the statutory authority is required to pose unto himself the right question."

12. Considering the facts of the case in hand in light of judgment rendered by the Hon'ble Apex Court in the matter of **Shakuntala Chandrakant** (*supra*), it is evident that respondent- 1 in her application has not pleaded specifically with regard to the reason of death of her husband, deceased Hiralal, either by accident or by some stress or strain due to the work performed by him during the course of his employment.

She simply mentioned that death occurred during the course of his employment in working place. Even the witnesses examined by respondent- 1 in their evidence have not specifically stated that the death took place due to some accident or mishap. Respondent- 1 was examined as AW- 1. She has produced and exhibited in her evidence one death certificate as Ex.P/5.

13. In Ex.P/5 it is only mentioned that Hiralal died of Pulmonary Edema. It is not mentioned in Ex.P/5 cause/reason of suffering attack of Pulmonary Edema. Pulmonary Edema in medical terminology means excess collection of watery fluid in lungs. It often causes because of congestive heart failure. Ramdhani (AW- 2) in his cross-examination stated that he has been informed by persons present there that the death of Hiralal may be due to snake bite. He was not an eyewitness of the incident or was not present at the place where the deceased was working. Undisputedly, the Commissioner in the impugned award also mentioned that there is no direct evidence on record as to how the death of Hiralal took place and further it was noted that there is only circumstantial evidence. The Commissioner only on the basis of presumption has come to the conclusion that the cause of death as mentioned in Ex.P/5 might be due to biting of snake or some other poisonous creature ignoring that doctor did not find any symptoms of biting of poisonous snake.

14. The provisions of Section 3 (1) of the Act, 1923 are clear that the death should have taken place by accident arising out of and in the course of employment and the said fact has to be proved by producing cogent and reliable piece of evidence. Normal death without any problem or

casual connection to nature of work could not be presumed as accidental death.

15. The submission of learned counsel for respondent that the application was filed by respondent- 1 for producing additional evidence to prove her case, but proper opportunity was not granted to her to produce witness and other evidence is not acceptable in view of the fact that the Commissioner had allowed the application filed by respondent- 1 to produce witnesses and documents for bringing the doctor who had conducted postmortem of the deceased as witness. But subsequently, she failed to prove. She even also not complied the directions issued by the Commissioner and did not take the benefit of an opportunity to lead further evidence in support of her case. The objection with regard to maintainability of claim application was within her knowledge but even after coming to know by way of reply of the appellant that the death of late Hiralal has to be proved by leading evidence to come within the purview of Section 3(1) of the Act, 1923. She did not produce any witness or any other material.

16. The findings recorded by the Commissioner are only on the basis of presumptions and surmises which are not sustainable in the facts and circumstances of the present case. In fact, the findings recorded by the Commissioner are without any pleading and reliable piece of evidence, but only on the basis of presumption and surmises. Even during examination of dead-body, the doctor did not find any symptom of snake bite otherwise, it must have been mentioned in Ex.P/5.

17. For the reasons stated above, I answer the question- 1 in negative. The Commissioner was not justified in holding that the death of late Hiralal took place on account of accident arising out of and in the course of employment. Substantial Question of law- 1 is answered accordingly.

18. Respondent- 1 filed claim application on 25.03.1996 mentioning therein the date of death in the intervening night of 6-7/09/1991 and claim was filed on 25.03.1996 therefore, the learned counsel for the appellant submits that under the provisions of Section 10(1) of the Act 1923, the claim is barred by limitation. He further submits that the period prescribed for filing the application is within two years from the occurrence of the accident or two years from the date of death and in the instant case, claim application has been filed after more than 4½ years from the date of death and therefore, the said application ought not to have been considered and entertained by the Commissioner, it being barred by limitation.

19. From perusal of the record would show that along with the application filed under Section 22 of the Act of 1923, an application under Section 5 of the Limitation Act was also submitted before the Commissioner and the Commissioner after considering the reasons assigned in the application for condonation of delay, has condoned the delay by exercising the jurisdiction vested on him as provided under 5th proviso to Section 10 of the Act of 1923, which reads as under:

"Provided further that the Commissioner may entertain and decide any claim to compensation in any case notwithstanding that the notice has not been given, or the claim has not been preferred, in due time as provided in this

sub-section, if he is satisfied that the failure so to give the notice or prefer the claim, as the case may be, was due to sufficient cause."

20. The Commissioner in the impugned order has discussed in detail and after recording his satisfaction, had allowed the application for condonation of delay and the delay occurred in filing the application under Section 22 of the Act of 1923 was condoned. The Hon'ble Supreme Court in its judgment rendered in case of **Bhagmal Vs MP Cooperative Marketing & Consumer Federation Limited and others** reported in **(2003) 11 SCC 727** while considering the delay of six years held as under:

"3. Normally the High Courts would be wary in interfering with an order passed in the exercise of a discretion conferred by law particularly when such discretion was exercised to enable a party to pursue his statutory remedy or appeal. No doubt the discretion has to be exercised judicially. There is again no doubt that the delay in filing the appeal was apparently very long. Nonetheless the High Court in exercising writ jurisdiction should have been slow to upset a benefit granted to a party in having his statutory remedy to be pursued by condoning the delay albeit its length."

5. Whether those events were sufficient for condoning the delay or not was considered by the Appellate Authority in exercise of its discretion and it showed inclination to accept them for condoning the delay. As the Appellate Authority had done so in its discretion it is well within the jurisdiction vested under law. In such a situation it was not proper that the High Court in exercise of its extraordinary jurisdiction under Article 226 or 227 of the Constitution upset such a finding granted to the appellant which only enabled him to have the statutory remedy of appeal pursued further."

21. The power of considering the application for condonation of delay is a discretionary jurisdiction of the authority. In the case in hand, the Commissioner has exercised his jurisdiction as provided in 5th proviso to Section 10 of the Act of 1923 and allowed the application for condonation of delay and when the jurisdiction was exercised by assigning reasons, then it will not be proper to interfere with the order condoning the delay in filing application. It is not a case that the Act of 1923 does not provide jurisdiction to authority trying claim to condone the delay in filing claim application. In view of the above, the Commissioner has rightly entertained the application by exercising the jurisdiction as provided in 5th proviso to Section 10(1) of the Act of 1923. The substantial question of law No.2 is answered accordingly.

22. In view of the answer to substantial question- 1, without there being a death on account of accident, the Commissioner for Workmen Compensation has committed an error in awarding the amount of compensation without any evidence, only on the basis of presumption. The Commissioner ought not to have awarded an amount of Rs.1,45,096/- as compensation to respondent- 1. The Commissioner further committed an error by taking the wages as Rs.2,000/- per month and applying multiplier on 40% of the wages. The accident took place on 07.09.1991. By that time, as per Explanation 2 of Section 4 of the Act, 1923, mentions that when the wages of workmen exceeds Rs.1,000/- and subsequently by way of amendment which came into effect on 16.09.1995, the amount of wages Rs.1,000/- has been substituted by Rs.2,000/-. As the accident took place prior to coming into force of the amendment in Explanation 2 of

Section 4 of the Act of 1923 and therefore, the Commissioner ought to have taken wages as Rs.1,000/-, as applicable on the date of accident and not Rs.2,000/- as wages which the Commissioner had taken into consideration for calculating the compensation and arrived at a conclusion that respondent- 1 was entitled for compensation of Rs.1,45,096/-.

23. For the foregoing reasons, the Commissioner was not justified in assessing wage as Rs.2,000/- per month and awarding Rs.1,45,096/- to respondent- 1 as compensation. The third substantial question of law is answered accordingly.

24. The Commissioner in the impugned award has awarded interest @ 6% simple interest from the date of accident for not making payment of compensation within a month from the date of death as provided under Section 4 A(1) of the Act of 1923. It provides that "compensation under Section 4 shall be paid as soon as it falls due". The question for consideration as to when the compensation falls due particularly when the death under the provision of Section 3(1) of the Act of 1923 is itself in dispute. From reading the provision of Section 4 A(1), the intention of the legislature was that the claimants should be paid compensation immediately wherein the injury or death are not required to be proved that it being occurred due to accident and during the course of employment. But in the case in hand, death of the deceased was not accidental and further it could be said that the death due to some mishap on account of accident during course of employment itself comes within the purview of Section 4 A and not all the deaths which occurred at place of work.

25. Learned counsel for the appellant placed reliance on a judgement rendered by Hon'ble Supreme Court in matter of **National Insurance Company Limited Vs Mubasir Ahmed and another** reported in **(2007) 2 SCC 349**, wherein the Hon'ble Supreme Court has held that the expression 'falls due' will be not from the date of accident, but from the date of adjudication of the case.

26. Similar issue was considered by Larger Bench of the Hon'ble Supreme Court in the matter of **Pratap Narain Singh Deo. Vs. Srinivas Sabata and Another** reported in **(1976) 1 SCC 289** wherein the Hon'ble Supreme Court held as under:-

“8. It was the duty of the appellant, under Section 4A(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 respondent's personal approach for obtaining the compensation. It will be recalled that the respondent was driven to the necessity of making and application to the Commissioner for settling the claim, and even there the appellant raised a frivolous objection as to the jurisdiction of the Commissioner and prevailed on the respondent to file a memorandum of agreement setting 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.”

27. Further, this issue was considered by the Hon'ble Supreme Court in the matter of **Kerala State Electricity Board and Another v. Valsala K. and Another** reported in **(1999) 8 SCC 254** wherein three Judges Bench of the Hon'ble Supreme Court considered the issue with regard to the date for determining the liabilities and rights of the parties and held as under:-

“5. Our attention has also been drawn to a judgement of the Full Bench of the Kerala High Court in *United India Insurance Co. Ltd. v. Alavi*, (1998) 1 KLT 951 (FB) wherein the Full Bench precisely considered the same question and examined both the above noted judgements. It took the view that the injured workmen becomes entitled to get compensation the moment he suffers personal injuries of the types contemplated by the provisions of the Workmen's Compensation Act and it is the amount of compensation payable *on the date of the accident and not the amount of compensation payable on account of the amendment made in 1995*, which is relevant. The decision of the Full Bench of the Kerala High Court, to the extent it is in accord with the judgement of the larger bench of this Court in *Pratap Singh Narain Singh Deo v. Srinivas Sabata* (*supra*) lays down the correct law and we approve it.”

28. In judgment referred by learned counsel appearing for appellant the judgment rendered by larger Bench in case of **Pratap Singh Narain** (*supra*) the three judges Bench judgment in the case of **Kerala State Electricity Board** (*supra*) was not considered where their Lordships have held that the workman entitles to get compensation the moment he/she

suffers personal injury. For the reasons as mentioned above, the law laid down by larger Bench is to be followed.

29. From bare perusal of the aforementioned dictum of the Hon'ble Supreme Court rendered by larger Bench, the injured will be entitled for amount of compensation as soon as personal injury is caused to him, therefore, the Commissioner rightly awarded interest from the date of his death. But, in the instant case, as held in above paragraphs that respondent is not entitled for compensation, therefore, she will also not be entitled for interest thereon under the provisions of Section 4A of the Act of 1923.

30. From perusal of the order sheets of the claim case before the Commissioner, it reveals that the Commissioner not issued notices under Section 4 A(3)(b) of the Act of 1923 while awarding penalty as per the provisions as mentioned above. He failed to comply with the mandatory provision of issuing show cause notice to the non-applicant/appellant to show cause as to why the penalty as provided under Section 4A(3)(b) should not be imposed on him. The provisions mentioned above itself are clear that the Commissioner is required to issue show cause notice but he failed to do so and at the time of passing of the award, along with interest, penalty was also imposed as provided under Section 4 A(3)(b) of the Act of 1923. In view of the non-compliance of the mandatory provision as required under the provisions of the Act of 1923, the Commissioner was not justified in awarding penalty along with the compensation. Hence, substantial question of law No.5 is answered accordingly.

31. In view of the aforementioned discussions, the award passed by Commissioner for Workmen's Compensation being contrary to law is liable to be and is hereby set aside. The appeal filed by the appellant-SECL is allowed.

32. No order as to costs.

Sd/-
(Parth Prateem Sahu)
JUDGE

padma