

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 197 of 2018**

Smt. Chanda Bai Wd/o Late Radheshyam Verma Aged About 42 Years R/o Village Champa, Post Champa, Tahsil Raipur, Distt. Raipur (Chhattisgarh).

---- Appellant**Versus**

1. M/s Fonics Poultry Fonics Group Head Office / Corporation Office - 201/15, Ratan Colony, Gorakhpr, Jabalpur (MP) Through Chief Manager, District : Jabalpur, Madhya Pradesh.
 2. M/s Fonics Poultry, Unit - Tilda Poultry Farm Village Champa, P.S. Nevra, Tah. Raipur, Distt. Raipur (Chhattisgarh) Through The Manager Cum Incharge, District : Raipur.
 3. National Insurance Company Limited Divisional Office No.1, Mobin Mahal, GE Road, Raipur, Tahsil and Distt. Raipur (Chhattisgarh) Through The Divisional Manager, District : Raipur, Chhattisgarh.
 4. Jagdip Verma S/o Late Radheshyam Verma Aged About 23 Years
 5. Vinod Verma S/o Late Radheshyam Verma Aged About 18 Years
 6. Khubi Ram Verma S/o Late Rameshwar Verma Aged About 85 Years
- Respondents No. 4 to 6 are R/o Village Champa, Post Champa, Tahsil & Raipur (Chhattisgarh).

---- Respondents

For Appellant	:	Shri MK Bhaduri, Advocate.
---------------	---	----------------------------

SB: Hon'ble Shri Justice P. Sam Koshy**Judgment on Board****01.02.2018**

1. For the reasons assigned in the application, IA No.1 seeking condonation of delay is allowed and accordingly delay in filing the appeal stands condoned.
2. The present is an appeal under Section 30 of the Employees Compensation Act (in short, the EC Act). The challenge is to the award dated 12.05.2016 passed by the Commissioner for Workmen Compensation, Labour Court No.2, Raipur, in case No.2/EC Act/2014/Fatal.

3. The brief facts of the case is that, the deceased in the instant case Radheshyam Verma died because of snake bite on 12.06.2012. The legal representatives of the deceased filed a claim application on the ground that the death of the deceased of snake bite was arising out of and in the course of employment and therefore they are entitled for compensation under the EC Act. The claim application was filed before the Commissioner in the year, 2014 though the death took place in June, 2012. The Labour Court finally passed an award on 12.05.2016 awarding compensation to the claimants to the tune of Rs.3,10,568/- along with interest @ 12 percent per annum from the date of death.
4. Subsequent to the award being passed, the claimants filed a fresh application before the Labour Court claiming penalty under Section 4-A of the EC Act which was registered as MJC case No.08/EC Act/2017. The Labour court vide its order dated 08.12.2017 has finally rejected the application holding that the claimants are not entitled for penalty.
5. Learned counsel for the appellant submits that it is a case where the death of the deceased took place on 12.06.2012 and ultimately the claimants have contested the case and the award was passed on 12.05.2016 which was later on honoured by the respondents. There is intentional and deliberate non deposit of the compensation immediately after the death of the deceased, and therefore, under the provisions of Section 4-A of the EC Act the claimants would be entitled for penalty.

6. Section 4-A of the EC Act deals with the compensation to be paid when due and penalty for default. In the instant case indisputably the deceased died of snake bite on 12.06.2012. The claimants had filed claim application after two years from the date of death stating that it was a death arising out of and in the course of employment. The employer disputed the fact that it was an employment related accident nor was the accident arising out of employment which ultimately stood decided in favour of the claimants vide impugned order dated 12.05.2016.
7. The fact that there was a dispute to be ascertained before the Commissioner as to whether the accident was an accident arising out of and in the course of employment and which ultimately stood decided vide order dated 12.05.2016 and the respondents having honoured the award immediately, it cannot be presumed that there was a default on the part of the employer in not depositing the amount promptly.
8. Section 4-A(3)(b) of the EC Act is the provision which deals with default of penalty part. For ready reference, the same is reproduced herein as under:

“If, in his opinion there is no justification for the delay, direct that the employer shall, in addition to the amount of arrears and interest thereon, pay a further sum not exceeding fifty percent of such amount by way of penalty.”
9. A plain reading of aforesaid provision itself would clearly reflect that it is a discretionary power conferred upon the Commissioner and the Commissioner has to reach to the conclusion that there was no

justification for the delay and under said circumstances the employer can be imposed with the penalty not exceeding 50 percent of the amount awarded.

10. In the instant case since there was a dispute all as to along whether the accident did arise out of and in the course of employment and it was contested and finally adjudicated upon and hence the Commissioner has not awarded any penalty. It is also a case where the Commissioner did not find it to be a deliberate delay on the part of the employer. Under such circumstances if the Commissioner does not award penalty but at the same time considering the factual matrix of the case has awarded interest on the award amount invoking Section 4-A(3)(a) of EC Act, it has to be presumed that the Commissioner has compensated the claimant by awarding interest @ 12 percent per annum from the date of death, and in the process if the penalty has not been awarded, the same cannot be said to be either erroneous or perverse.
11. Given the aforesaid factual matrix of the case, this court does not find any substantial question of law raised by the claimant for admitting the appeal. The appeal thus fails and is dismissed in limine.

Sd/-
(P.Sam Koshy)
Judge