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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 910 of 2018

- Vivekanand Rai, aged about 46 years, S/o Rajnath Rai @ Rajaram Rai, Caste Bramhan Occupation Driver, R/o Premnagar, Surakachar, Police Station Kusmunda, District Korba (C.G.)

---- Appellant/Claimant

Versus

1. Bijendranath Rai, S/o Shri Sambhunath Rai, Caste Bramhan, R/o Ward No. 06, Delwadeeh, Tahsil Katghora, District Korba (C.G.)

   (Owner/Non-applicant No.1)

2. National Insurance Company Limited through Branch Manager, National Insurance Company Limited, Branch Office – 13 Minu Complex, Kosabadi, District Korba (C.G.)

   (Insurer/Non-applicant No.2)

---- Respondents

For Appellant	:	Shri Deepak Kumar Singh, Advocate
For Respondent No. 1	:	None
For Respondent No. 2	:	Shri Pravin Kumar Tulsyan, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

09.04.2019

1. This appeal is by the Claimant under Section 30 of the Workmen's Compensation Act, 1923 (in short "the Act") against the judgment dated 11.04.2018 passed by Commissioner, Workmen's Compensation Act-cum-Labour Court, Janjgir, District Janjgir-Champa (C.G.) in Case No. 01/ECA/COC.1.B/16 (NF) Claim, awarding compensation of Rs.3,25,325/- with interest @ 12% per annum from the date of accident till realization if the said amount is not deposited within 45 days from the judgment.

2. As per averments in the claim petition, Appellant/Claimant Vivekanand Rai was working under non-applicant No.1 Bijendranath Rai as driver of vehicle bearing registration No. CG-04/ZA/1573, non-applicant No.1 is registered owner of the said vehicle which was duly insured with non-applicant No.2/Insurance Company. On 09.12.2014, the Appellant was going from Raigarh to Raipur by driving the vehicle of non-applicant No.1, at that time one Capsule vehicle bearing registration No. CG-04/9643 which was coming towards Akaltara, dashed the vehicle which was being driven by Appellant near Janjgir-Champa Sharda Chowk. As a result thereof, the Appellant sustained grievous injury on his right leg, knee and waist and after the accident, he suffered 40% permanent disability. As the injury was sustained by the Appellant during the course of his employment and he also suffered 40% permanent disability, the Appellant filed a claim petition under Section 22 of the Act before the Commissioner seeking compensation.

3. The Commissioner considering the pleadings of the respective parties and the evidence adduced by them, vide impugned judgment granted compensation in favour of the Claimant/Appellant as mentioned above.

4. Learned counsel for the Appellant/Claimants has filed this appeal seeking enhancement of compensation on the following grounds:

(i) that the monthly income of the Appellant/Claimant has been wrongly considered by the Commissioner as Rs.8,000/- whereas as per evidence adduced by the Claimant, it should have been considered as Rs.15,000/-.

(ii) that the Commissioner has also committed illegality in awarding interest @ 12% per annum from the date of accident till realization if the amount of compensation is not deposited within 45 days from the date of judgment whereas it should have been from the date of accident till realization.

(iii) that the Commissioner has not imposed any penalty on non-applicant No.1 and as per provisions of the Act, 50% of the compensation amount should have been imposed as penalty on non-applicant No.1.

5. On the other hand, learned counsel for the Insurance Company/non-applicant No.2 submits that the Commissioner, Workmen's Compensation has rightly considered the income of the Claimant as Rs.8,000/- per month as per the Employee's Compensation Act, 1923, therefore, there is no scope for enhancement of income. Regarding interest part, he submits that the Commissioner Workmen's Compensation was justified in awarding the interest @ 12% per annum on the awarded amount from the date of accident on failure of the Insurance Company to deposit the compensation within 45 days from the date of judgment.

6. Heard learned counsel for the parties and perused the material available on record.

7. The appeal was admitted for hearing vide order dated 18.06.2018, but no substantial question of law was framed. Therefore, for deciding the appeal, this Court is framing following substantial questions of law:

1) "*Whether the learned Commissioner for Employees Compensation-Labour Court, Janjgir was justified in considering the income of Claimant as Rs.8,000/- per month?*"

2) "*Whether the Claimant is entitled for penalty and interest @ 12% from the date of accident under the provisions of Workmen's Compensation Act, 1923?* "

8. It is not disputed that the Claimant was aged about 45 years and was working as driver under the employment of non-applicant No.1. In the impugned judgment, the Commissioner has given finding regarding income in paras 7 & 10 and has considered the monthly income of the Claimant as 8,000/- per month and has deducted 60% of the maximum amount of Rs.8,000/- which comes to Rs.4,800/-. After deducting 40% towards loss of earning capacity of Claimant of Rs.4,800/-, the amount comes to Rs.1,920/-. Therefore, considering the age of the Claimant i.e. 45 years, the Commissioner has applied the multiplier of 169.44 as per Schedule IV under Section 4 of the Employee's Compensation Act, 1923. Accordingly, the total compensation comes to Rs.1,920/- x 169.44 = Rs.3,25,325/-. The Central Government has specified, for the purpose of sub-section (1), "Eight thousand rupees" as monthly wages, *vide* S.O.1258(E), by notification dated 31st May, 2010, therefore, the Commissioner has rightly considered the income of the Claimant as Rs.8,000/- per month which needs no interference by this Court.

9. So far as liability under the insurance policy Ex.-P/7 is concerned, from perusal of the same, it is seen that on the date of accident i.e. 09.12.2014 the offending vehicle was duly insured with the Insurance Company/non-applicant No.2 which was valid from 04.04.2014 to 03.04.2015. Therefore, this Court finds no illegality in the finding recorded by the Commissioner fastening liability on the Insurance Company/non-applicant No.2.

10. With regard to penalty and interest part, having considered the rival contentions put forth by the counsel appearing for the parties and on perusal of the record what is necessary at this juncture is to take note of the provision of the Employee's Compensation Act,1923. Section 4A of the Act, 1923 reads as under:

"**4A. Compensation to be paid when due and penalty for default.** –

(1) Compensation under Section 4 shall be paid as soon as it falls due.

(2) In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts, and, such payment shall be deposited with the Commissioner or made to the workman, as the case may be, without prejudice to the right of the workman to make any further claim.

(3) Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner shall: –

(a) direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve per cent per annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government, by notification in the Official Gazettee, on the amount due; and

(b) if, in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears, and interest thereon pay a further sum not exceeding fifty per cent of such amount by way of penalty:

Provided that an order for the payment of penalty shall not be passed under clause (b) without giving a reasonable opportunity to the employer to show cause why it should not be passed.

Explanation. – For the purposes of this sub-section "scheduled bank" means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934).

(3A) The interest and the penalty payable under sub-section (3) shall be paid to the workman or his dependant, as the case may be."

A plain reading of the aforesaid statutory provisions itself clearly reflects that if the employer or the Insurance Company committed a default in making the payment of compensation to the Claimant employee, the said amount shall carry interest @ 12% per annum. In the present case, the Claimant was under the employment of non-applicant No.1 as driver and the Claimant suffered 40% permanent disability in an accident occurred during the course of his employment. Therefore, in these circumstances, it was the duty of the employer so also the Insurance Company to have hounoured the policy under which the Claimant was covered. However, the Respondents/non-applicants failed to discharge their responsibility, of timely depositing compensation rather when the claim application was filed, they contested the matter and therefore, the provision of Clause (a) of Sub-Section (3) of Section 4A of the Employee's Compensation Act clearly attracts.

11. In ***Ved Prakash Garg*** Vs. ***Premi Devi and others, (1997) 8 SCC 1***, the Hon'ble Supreme Court held that Insurance Company will not only be liable to pay the principal amount of compensation but also interest thereon, if any, imposed by the Commissioner on the insured employer under Sections 3 and 4A (3)(a) of the Compensation Act. But, the insurance company will not be liable to reimburse the additional amount of compensation by way of penalty imposed by the Commissioner on the insured employer under Section 4-A (3) (b) of the Workmen's Compensation Act.

12. In the matter of ***Pratap Narain Singh Deo vs Srinivas Sabata & another, 1976 AIR 222,*** the Hon'ble Supreme Court held that employer becomes liable to pay compensation as soon as the personal injury is caused to the workman in the accident which arises out of and in the course of employment and therefore the relevant date for payment of the compensation and for payment of interest upon it, if the compensation is not paid within one month from the date of accident, would be the date of accident and not the date of award of Commissioner. It is ruled that liability to pay interest at the rate of 12% on the sum in terms of the Section 4A(3) of the Act would accrue from the date of accident itself if the sum is not paid by the employer within one month from the date of accident.

13. In view of the aforesaid factual matrix of the case, it is held that the Claimant shall be entitled for interest @ 12% per annum from the date of accident till the date of payment is made. However, in the facts and circumstances of the case, keeping in view of proviso of Section 4A of the Act regarding imposition of penalty and the fact that no notice in this regard has been issued to non-applicant No.1/employer and that he is also not represented before this Court, there shall be no order in respect of penalty.

14. In the result, the appeal filed by the Claimant is allowed in part. The impugned judgment is hereby modified to the extent that the Claimant shall be entitled for interest on the awarded amount @ 12% per annum from the date of accident till realization. The Insurance Company/non-applicant No.2 shall deposit the amount of interest within a period of two months from the date of receipt of certified copy of this judgment. The substantial question of law No.1 framed in this appeal is decided in positive and substantial question of law No. 2 framed, so far as it relates to interest part, is decided in positive.

Sd/-

(Gautam Chourdiya)
Judge

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