

IN HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	20.09.2019
Pronounced On	04.10.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.55 of 2006

1.K.Kamalaveni
2.Minor Murchika
Minor rep. by mother and natural guardian
3.K.Rajammal
4.C.Karuppaiah Naidu ...Appellants

vs

1.Managing Director,
Subbathal Spining Mills (P) Ltd.,
128, Bhavani Main Road,
Ashokapuram, Eroade - 4.
2.P.O.John
3.The Official Liquidator,
Kuralagam, Chennai.
4.Maruthamalai Murugan Industries (P) Ltd.,
Rangur, Perundurai Taluk.
Erode.
5.N.Chinnasamy

6.P.Sathiamurthy
7.C.Duraisamy ...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, against the order of the Commissioner of Workmen's Compensation, Salem in W.C.No.164 of 1993 dated 20.06.2005 in so far not awarding interest and penalty in accordance with the provisions of the Workmen's Compensation Act.

For appellants : Mr.V.Ajoy Khose

For R1 : No appearance

For R4 to R7 : V.Sanjeevi

J U D G M E N T

The appellants/claimants are aggrieved by the impugned order dated 20.06.2005 passed by the Commissioner of Workmen's Compensation, Salem in W.C.No.164 of 1993 under the Provisions of the Employee's Compensation Act, 1923.

2.By the impugned order, the Commissioner of Workmen's Compensation, Salem has awarded a sum of Rs.85,428/- as compensation to the appellants herein.

3.However, till date, the amounts have not been paid and therefore, it is the contention of the appellant that since the said amount was not paid within one month from the date of the order and therefore, penalty is to be imposed under Section 4A (3) (b) of the Workmen's Compensation Act, 1923.

4.Earlier, C.M.A.(NPD).No.396 of 1996 was disposed on 06.07.2004 by this Court with the following observations:-

"32.In view of the above , the first respondent / management mills are liable to pay the compensation to the appellants/claimants as fixed by the Deputy Commissioner, as no argument was advanced by the learned counsel for the first respondent disputing the quantum. In view of liquidation of the first respondent management mills, the third respondent/Official Liquidator is liable to pay the compensation to the appellants/claimants and the third respondent is entitled to recover the same from the second respondent/contractor as the second respondent/contractor has to indemnify the liability under Section 12(2) of the Act.

33.For the reasons stated above, the order dated 06.10.1994 passed by the Deputy Commissioner of Labour is set aside and this appeal is allowed on the above terms. No Costs."

5.The appellants have raised the following substantial questions of law:

(i) Whether the Commissioner is right in not passing any order as to interest when the compensation payable under the Act is not paid within one month. When Section 4A (3) (a) of the Act, mandates that the Commissioner shall direct that the employer shall pay interest at the rate of twelve percent per annum of the employer is in default in paying the Compensation within one month.

(ii) Whether the Commissioner can abdicate his statutory duty cast upon him under Section 4A (3) (a) and (b) by passing no order as to interest and penalty admittedly when the compensation was not paid within one month.

(iii) Where the Commissioner can deprive interest and penalty contrary to law?

6.The 1st appellant's husband was employed with the 1st respondent which has been since liquidated and thereafter, the assets of the 1st respondent Subbathal Spinning Mills (P) Ltd., were sold to the 4th respondent Maruthamalai Murugan Industries (P) Ltd.

7.As mentioned, earlier by an order dated 06.07.2004 in C.M.A.(NPD).No.396 of 1996, the order dated 06.10.1994 passed by the Deputy Commissioner of Labour was set aside by this Court and the case was remitted back.

8.Thereafter, a fresh proceedings came to be initiated, wherein the 4th to 7th respondents were impleaded. The 4th respondent company has taken over the assets of the 1st respondent company in a liquidation proceedings, while 5th to 7th respondents are its directors. No orders have been passed against the 4th to 7th respondents. The Official Liquidator has to be paid the amounts that is due to the claimants on account of the compensation awarded.

9.I have considered the submissions of the learned counsel for the appellants. As far as interest is concerned, the issue is no longer res-integra and squarely is covered by the decision of this Court in N.Ganesan vs Tmt.Thilagavathi and Another, 2010

SCC OnLine Mad 3268, wherein in paragraph No.27 it was held as follows:-

27. In the result, the reference is answered as follows:-

i. The word "falls due" occurring under Section 4-A of the Workmen's Compensation Act, 1923 in the light of the ratio laid down in the Larger Bench decision of the Hon'ble Supreme Court of India reported in 1976 (1) SCC 289 – in Pratap Narain Singh Deo v. Srinivas Sabata and another and 2000 ACJ page 5 (SC) – Kerala State Electricity Board v. Kerala State Electricity Board means that interest for compensation amount would accrue 30 days after the date of the accident and not from the date of quantification/orders passed by the Commissioner for Workmen's Compensation.

ii. The decisions rendered by the Single Bench of this Court in the decisions reported in (2007) 5 MLJ 1059 : 2007 (2) TN MAC page 98 – Marimuthammal @ Marimuthu and Another v. R.P.P. Construction (P) Ltd., Chennai and others, 2008 (1) TN MAC page 38 -A. Chairmen v. A. Thirumeni & Another, had laid down the correct proposition in consonance with the ratio laid down by the Larger Bench of the Hon'ble Supreme Court of India in the above cited decisions.

iii. The Registry is directed to list these appeals for final disposal before the concerned Portfolio Judge.

10. In view of the above discussion, the substantial questions of law raised by the appellants regarding interest are answered in their favour. Accordingly, the compensation and interest has to be paid and ought to have been paid by the 3rd respondent, the Official Liquidator out of the sale proceeds of the assets of the 1st respondent company.

11. Since, the details of the liquidation proceedings are not available, the liberty is given to the appellants to approach the 3rd respondent namely Official Liquidator to enforce the liability arising out of the order dated 20.06.2005 passed by the Commissioner for Workmen's Compensation in W.C.No.164 of 1993 under the Workmen's Compensation Act, 1923.

12. Section 4A (3) (b) applies only where, in the opinion of the authority there was no justification for the delay the employer can be directed to pay penalty for a sum not exceeding 50% of the amount.

13. As far as, the payment of penalty is concerned, it is noticed that the employment injury is said to have been taken place on 19.01.1993. It is not clear from the facts as to when the 1st respondent Company was liquidated and when the assets were sold to the 4th respondent Company.

14. It is only pursuant to remand proceedings, the 4th to 7th respondents were impleaded by which time the 1st respondent had been wound up and liquidated.

15. Therefore, it cannot be said that there was delay in payment of the compensation by the 1st respondent employer as the impugned order was passed only on 20.06.2005. The 3rd respondent namely the Official Liquidator cannot be penalized again for the same reason. Consequently, the 2nd substantial question of law is answered against the appellants.

16. In fine, the 1st substantial question of law raised by the appellants is answered in favour of the appellants and the 2nd substantial question of law is answered against the appellant. In view of the above, there is no necessity to answer the 3rd substantial question of law raised by the appellants. Accordingly, the present Civil Miscellaneous Appeal stands partly allowed. No cost.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jen

To

1. The Official Liquidator,
Corporate Bhavan, No.29,
Rajaji Salai, Chennai-001.,

2.The Commissioner of Workmen's Compensation,
Salem.

3.The Section Officer,
V.R.Section. High Court,
Madras.

+lcc to Mr.V.Ajoy Khose, Advocate Sr.84910

C.M.A.No.55 of 2006

sv[co]
srg 31/01/2020