

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO No. 6288 of 2013(O&M)

Date of decision: 8.1.2019

Sukhwinder Kaur and others

.....Appellants

VERSUS

Kamaljit Singh and another

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Manpreet Singh Longia, Advocate for the appellants.

Service of respondent No.1 is dispensed with vide order dated 14.05.2015.

Mr. D.P. Gupta, Advocate for respondent No.2- insurance company.

REKHA MITTAL, J.

The claimants are in appeal seeking enhancement of compensation on account of death of Sukhwinder Singh in an accident that took place on 30.07.2008 but Sukhwinder Singh succumbed to injuries on 31.07.2008.

The Commissioner under the Employees' Compensation Act, 1923 (in short 'the Act') has awarded compensation of Rs.4,33,820/- but interest at the rate of 12% per annum from the date of accident till actual payment is to be made only if compensation is not paid within 30 days of receipt of order.

Counsel for the appellant would argue that the claimants have not been awarded funeral expenses to the tune of Rs.5,000/-. The claimants are entitle to interest at the rate of 12% per annum from the date

of accident till realization as the employer failed to pay compensation in compliance with the provisions of Section 4 of the Employees Compensation Act, 1923 (in short 'the Act') within a period of 30 days from the date of incident.

Counsel representing the insurance company, on the contrary, would argue that funeral expenses at the time of incident were Rs.2000/- but enhanced to Rs.5,000/- later. It is argued that in view of provisions of Section 30 of the Act, providing for statutory appeal, the claimants cannot file appeal with regard to non-payment of interest from the date of accident till actual realization. It is argued that clause (a) of sub-section (1) of Section 30 of the Act provides for an appeal against order awarding as compensation a lump sum whether by way of redemption of a half-monthly payment or otherwise or disallowing a claim in full or in part for a lump sum. Clause (aa) of Section 30(1) of the Act deals with an appeal against order awarding interest or penalty under Section 4A of the Act. It is argued with vehemence that in absence of any provision in Section 30 of the Act permitting an appeal to be filed against disallowing interest or payment of conditional interest, appellants cannot press their claim for modification of the impugned order so far as interest part is concerned.

Counsel for the appellant, in reply would argue that Hon'ble the Supreme Court in **Ved Parkash Garg Vs. Premi Devi, 1997(8) SCC 1** has held that liability to pay interest on the principal amount under Section 4A (3) (a) remains a part and parcel of the statutory liability which is legal liability to be discharged by the insured – employer. It is argued that since interest becomes a part of claim preferred by the victim family, the appellants can file an appeal against non-payment of interest with effect

from the date of accident by invoking clause (a) of Section 30(1) of the Act. In addition, it is argued that as the Act is a measure of social welfare to secure compensation for the injured victim or family of a deceased, provisions of the Act are required to be construed liberally that would subserve the purpose of legislative intent and avowed object, to be achieved by the Act.

I have heard counsel for the parties and perused the paper-book.

Be that as it may, there is no dispute that the claimants are entitle to compensation with regard to funeral expenses. Counsel for the appellants has not disputed that at the time of accident an amount of Rs.2000/- towards funeral expenses is statutorily provided which was later enhanced to Rs.5000/-. There is no denial that compensation is to be assessed as is found due on the date of accident. Accordingly, the claimants shall be entitle to Rs.2000/- towards funeral expenses.

This brings the Court to plea of the claimants for payment of interest from the date of accident till realization. Before advertng to this question, it is necessary to address the question of maintainability of the appeal qua claim of interest from the date of accident. As has been rightly argued by counsel for the insurance company, there is no specific provision under Section 30 of the Act providing for an appeal to the High Court from an order disallowing interest or allowing conditional interest. As such, it has to be examined if the claimants can file an appeal for grant of interest at a particular rate or from a particular date by invoking clause (a) of Section 30(1) of the Act.

A relevant extract from clause (a) of Section 30(1) of the Act reads as follows:-

“(a) an order awarding as compensation a lump sum whether by way of redemption of a half-monthly payment or otherwise or disallowing a claim in full or in part for a lump sum”

In Ved Parkash Garg's case (supra), Hon'ble the Supreme Court answered the question reproduced in opening part of the judgment that runs as under:-

"Where an employee receives a personal injury in a motor accident arising out of and in the course of his employment while working on the motor vehicle of the employer, whether the insurance company, which has insured the employer-owner of the vehicle against third party accident claims under Motor Vehicles Act, 1988 (hereinafter referred to as 'the Motor Vehicles Act') and against claims for compensation arising out of proceedings under the Workmen's Compensation Act, 1923 (hereinafter referred to as 'the Compensation Act') in connection with such motor accidents, is liable to meet the awards of Workmen's Commissioner imposing penalty and interest against the insured employer under Section 4A(3) of the Compensation Act."

The Court in sub-para 2 (un-numbered) of para 14 of the judgment has held to the following effect:-

“As we have seen earlier while discussing the scheme of Section 4A of the Compensation Act the legislative intent is clearly discernible that once compensation falls due and within one month it is not paid by the employer then as per Section 4A(3)(a) interest at the permissible rate gets added to the said principal amount of compensation as the claimants would stand deprived of their legally due compensation for a period beyond one month which is statutorily granted to the employer concerned to make good his liability for the benefit of the claimants whose bread-winner might have lost his life. Thus so far as interest is concerned it is almost automatic once default, on the part of the employer in paying the compensation due, takes place beyond the permissible limit of one month. No element of penalty is involved therein. It is a statutory elongation of the liability of the employer to make good the principal amount of compensation within permissible time limit during which interest may not run but otherwise liability of paying interest on delayed compensation will ipso facto follow. Even though the Commissioner under these circumstances can impose a further liability on the employer under circumstances and within limits contemplated by Section 4A(3)(a) still the liability to pay interest on the principal amount under the said provision remains a part and parcel of the statutory liability which is legally liable to be discharged by the insured employer. Consequently such imposition of interest on the principal amount would certainly

partake the character of the legal liability of the insured employer to pay the compensation amount with due interest as imposed upon him under the Compensation Act. Thus the principal amount as well as the interest made payable thereon would remain part and parcel of the legal liability of the insured to be discharged under the Compensation Act and not de hors it. It, therefore, cannot be said by the insurance company that when it is statutorily and even contractually liable to reimburse the employer qua his statutory liability to pay compensation to the claimants in case of such motor accidents to his workmen, the interest on the principal amount which almost automatically gets foisted upon him once the compensation amount is not paid within one month from the date it fell due, would not be a part of the insured liability of the employer.”

A perusal of the aforesaid extract makes it evident that once compensation was due and it is not paid by the employer within one month, then as per Section 4-A (3)(a) interest at the permissible rate gets added to the said principal amount of compensation as the claimants would stand deprived of their legally due compensation. Since the interest gets added to the principal amount of compensation, it becomes part of lump-sum to be awarded by the Commissioner either by way of redemption of a half monthly payment or otherwise. As the Commissioner has not allowed interest from the date of incident and rather allowed interest only in the eventuality of respondents failing to pay compensation within 30 days

from the date of receipt of order, the appellants can maintain an appeal to express their grievance with regard to non-payment of interest from a particular date, by invoking clause (a) of Section 30(1) of the Act. In this view of the matter, contention raised by counsel for the insurance company is not tenable and accordingly rejected. I would hasten to add that provisions of the Act were enacted with a clear intent and avowed object to secure due compensation for the victim or victim family. The Act is a piece of social welfare legislation and the provisions thereof are to be construed liberally with an intent to achieve object for which the same has been enacted. In this view of the matter, the insurance company cannot escape its liability to pay interest from the date of accident as has been statutorily provided under Section 4-A of the Act.

The Commissioner has not assigned any reason to deny interest from the date of accident. As the employer failed to pay compensation within one month from the date of accident, the claimants are entitle to interest at the rate of 12% per annum on the compensation amount from the date of accident till its actual realization.

In view of what has been discussed hereinbefore, the appeal is partly allowed. The claimants shall be entitle to additional compensation of Rs.2000/-. The compensation awarded by the Commissioner and additional amount allowed by this Court shall carry interest at the rate of 12% per annum from the date of accident till actual realization.

JANUARY 8, 2019

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no