

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No.249 of 2015****Reserved on 24.08.2020**
Pronounced on 16.09.2020S.E.W. Infrastructure Limited, Address House No. 20, Subhash Nagar
Kotra Road, Raigarh, Tehsil And District Raigarh Chhattisgarh,**---- Appellant/Employer****Versus**

1. Mohd. Sirajuddin, S/o Abdul Hanan Aged About 43 Years R/o Village Sukdevpur, Post Office Chak Sukdevpur, Police Station Tapan, District Dinajpur, West Bengal, (Applicant No.1)
2. Smt. Galnur Bibi W/o Mohd. Sirajuddin Aged About 38 Years R/o Village Sukdevpur, Post Office Chak Sukdevpur, Police Station Tapan, District Dinajpur, West Bengal, (Applicant No.2)

---- Respondents/Claimants

For Appellant	:	Shri Arvind Shrivastava, Advocate
For Respondents	:	Shri Abhishek Saraf, Advocate

Hon'ble Shri Justice Sanjay S. Agrawal**C.A.V.Order / Award**

1. The Employer – S.E.W Infrastructure Limited has preferred this appeal under Section 30 of the Employee's Compensation Act, 1923 (for short, the Act of 1923) questioning the legality and propriety of the order dated 07.02.2015 passed by the Commissioner for Employee's Compensation, Labour Court, Raigarh (hereinafter referred to as the Commissioner) in Case No. 43/E.C.Act/2014/Fatal, whereby the penalty of Rs.3,40,190/-, i.e., 50% of the compensation amount of Rs.6,80,379/-, has been imposed on the Employer while directing to deposit the same within the period of 30 days. The parties to this appeal shall be referred hereinafter as per their description in the Court below.

2. Briefly stated the facts of the case are that on 04.09.2014 at about 5:00 pm, the deceased Farukh Ali while dismantling the tower fell down from above 55 meter height and got injured badly. He was taken to the Government Hospital at Raigarh, but he succumbed to the injuries at about 6:30 pm. Report of the said fatal accident was made by the Employer before the Commissioner on 05.09.2014 and after considering the said Report, amount of compensation was determined, which was required to be made within the period of one month under Section 4-A of the Act of 1923. It was, however, made beyond the said statutory period on 17.11.2014. A show-cause notice was, therefore, issued to the Employer on 08.01.2015, calling upon as to why the penalty should not be imposed for non-compliance of the said mandatory provision.

3. In response to the aforesaid notice, it was stated by the Employer that the insurance of the deceased/employee and others' were made with the Bajaj Allianz Insurance Company Ltd. and, it was the responsibility of the said company to deposit the amount as the information regarding the alleged fatal accident was communicated immediately to it. It is stated further in the said reply that despite several requests being made for its payment, a sum of Rs.6,58,108/- was paid by the said insurance company through cheque in their Office at Hyderabad on 15.11.2014, and immediately thereafter, i.e., on 17.11.2014, the requisite amount of compensation of Rs.6,80,379/- was paid. It was, therefore, stated that there was no deliberate delay in making the payment of compensation amount accrued on account of the alleged accident and in support thereof, examined its witness, namely, Y. Rambabu, the Deputy Manager of its company.

4. The Commissioner, after considering the said reply and the evidence led in this regard by the Employer, arrived at a conclusion that the Employer

has failed to place the materials on record in order to show that the insurance company was duly informed regarding the alleged accident. It observed further that neither the amount of compensation was paid within the statutory period of one month nor any explanation to this effect was furnished and instead availed the benefit of it.. In consequence, the alleged penalty of Rs.3,40,190/- has been imposed. This is the order which has been assailed by way of this appeal, which has been admitted on the following substantial question of law:-

“Whether the learned Tribunal has failed to appreciate the fact that the appellant has sufficiently accounted for the delay caused and hence the penalty prescribed under Section 4A of the Act was not attracted?”

5. Shri Arvind Shrivastava, learned counsel appearing for the appellant submits that since the insurance of the deceased and others' were made with the Bajaj Allianz Insurance Company Limited, therefore, it was the duty of the said company to deposit the same. It is contended further that despite several requests being made, a sum of Rs.6,58,108/- was paid by the said company through cheque on 15.11.2014 and that too in their Office at Hyderabad and immediately thereafter, the requisite amount of compensation, as required to be paid under Section 4 of the Act of 1923 was made on 17.11.2014. However, without considering the said fact in its proper manner, the order impugned has been passed, which is, therefore, liable to be set aside.

6. Shri Abhishek Saraf, learned counsel appearing for the respondents has supported the order under appeal, as passed by the Commissioner.

7. I have heard learned counsel appearing for the parties and perused the entire record carefully.

8. From perusal of the record, it appears that the Report with regard to the alleged fatal accident, occurred on 04.09.2014, was made by the Employer on 05.09.2014, as required under Section 10-B of the Act of 1923 before the Commissioner for Employee's Compensation in the prescribed "Form – EE" appended to the Rules, known as the "Employees' Compensation Rules, 1924" framed under the said provision. According to the said Report, the deceased Farukh Ali was employed at the time of the accident as skilled (Daily wage) worker at the wages of Rs.235/- per day. After considering the said information, as furnished through the said Report by the Employer in the said prescribed "Form", the Deputy Director, Industrial Health and Safety Division, Raigarh has taken into consideration the minimum monthly wages of the deceased as Rs.7,050/- (Rs.235 x 30) and that by applying the relevant factor of 222.71, assessed the total amount of compensation of Rs.7,85,053/-, as provided mandatorily under Section 4 of the Act of 1923, vide order dated 12.09.2014 and directed the Employer to deposit the same with the Labour Court, Raigarh.

9. It is, however, to be noted at this juncture that instead of depositing the aforesaid amount of compensation, the said order was questioned by the Employer after two months from it, i.e., 15.11.2014 before the Commissioner by submitting, inter alia, that if the said minimum wages, i.e., Rs.235/- of the deceased, would have been multiplied by 26 while calculating days in a month instead of 30, the actual amount of compensation would have been determined as Rs.6,80,379/- (Rs.235 x 26 x 222.71 x 50%). It is to be noted here further that the order as passed by the said authority was neither modified nor altered, yet the Employer, on its own, while calculating the

amount of compensation as Rs.6,80,379/-, deposited the same on 17.11.2014.

10. What is, therefore, reflected from the above that a sum of Rs.7,85,053/- was, in fact, determined by the said authority vide order dated 15.09.2014 as amount of compensation under Section 4 of the Act of 1923, based upon the information furnished by the Employer through the said prescribed "Form – EE", appended to the said Rules, 1924. However, in absence of any modification or alteration in the said order, the Employer has deposited only a sum of Rs.6,80,379/- while calculating the same of its own and that too much beyond the statutory period of one month, as provided mandatorily under Section 4-A of the Act of 1923.

11. It is surprising enough to observe further that instead of disclosing all those materials, what is pleaded by the Employer in its reply to the said show-cause notice was that the responsibility to deposit the amount of compensation was upon the Bajaj Allianz Insurance Company Limited and who deposited a sum of Rs.6,58,108/- only on 15.11.2014 upon several requests being made. However, contrarily, it was found, as observed herein above, that the Employer was, in fact, found to be dissatisfied with the said amount of compensation of Rs.7,85,053/- as determined by the said Authority vide order dated 12.09.2014 and that was the reason why instead of depositing the same within the stipulated period of one month, it was assailed before the Commissioner on 15.11.2014. The entire approach of the Employer, thus, appears to be highly unreasonable and unjustified and appears to have been made while suppressing the aforesaid material facts. However, the Employer, in order to show its genuine concern, ought to have approached the Commissioner with clean hands by offering the genuine explanations for delaying in payment of amount of compensation, as required

to be payable to the parents of their unmarried deceased son.

12. Consequently, the substantial question of law framed is thus answered in negative by holding that the appellant / Employer has failed to offer any justifiable reasons for the delay in paying the compensation amount due under the Act of 1923 within one month from the date it fell due.

13. The appeal is accordingly dismissed. No order as to costs.

Sd/-

(Sanjay S. Agrawal)
Judge