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HIGH COURT OF CHHATTISGARH, BILASPUR

Order Reserved on 18.03.2021
Order delivered o 19.05.2021

MAC No. 934 of 2014

Updater Services Private Limited, No.2/302/A.U.D.S. Salai, Old Mahabalipuram Road, Thoraipakkam, Chennai 600097

---- Appellant

Versus

1. Legal representative of deceased (Humayu Kabir) Rehana Beebi, W/o Ashraf Ul, aged about 54 years.
2. Ashraf Ul, S/o Muslim, aged about 54 years.

   Both are resident of Village Post Maharajpur, P.S. Rauta, District Malda (West Bengal).

---- Respondents

For Appellant : Mrs. Renu Kochar, Advocate
For Respondents : Mr. G.R. Miri, Advocate

Hon'ble Shri P. R. Ramachandra Menon, CJ
Hon'ble Shri Parth Prateem Sahu, J

CAV Order

Per Parth Prateem Sahu, J

1. Challenge in this appeal filed under Section 30 of the Employees' Compensation Act, 1923 (for short 'the Act of 1923') is to the order dated 4.6.2014 passed by the Commissioner for Employees Compensation-cum-Labour Court, Balodabazar (for short 'the Commissioner') in Case No.05/E.C. Act, Fatal/2014 thereby imposing penalty to the extent of 50% of the amount of compensation and awarded interest at the rate of 12% p.a. on the amount of compensation payable from the date of accident.

2. Facts relevant for disposal of this appeal are that one Humayu Kabir (deceased), aged about 22 years, was under the employment of appellant herein. He was deployed by appellant at Power Grid Corporation of India, Bilaspur. On 18.6.2013 while working as Fitter on the site i.e. Near village Mopka, Police Station Bhatapara, District Baldoabazar, Humayu Kabir fell down from height due to electrocution and met with an accident. He was taken to the nearest hospital in Bhatapara where he died on account of accidental injuries. After the accident, appellant calculated the amount of compensation as Rs.8,85,480/-, got prepared a demand draft dated 30.8.2013 from Axis Bank and sent the same for its deposit with the Court of Commissioner, Employees Compensation-cum-Labour Court No.1, Raipur. The Commissioner, Employees Compensation-cum-Labour Court No.1, Raipur vide letter dated 7.10.2013 returned the demand draft mentioning therein that details of place of accident, legal heirs of deceased etc. have not been mentioned in the letter written by appellant and forwarded to the Commissioner along with demand draft. It was further mentioned that there are two Commissioners in Raipur under the Employees Compensation Act i.e. Court 1 & 2. Bank account of both the Commissioners are separate, unless & until specific details are mentioned, demand draft cannot be accepted.

3. Thereafter on 11.2.2014 appellant again got prepared a demand draft of the amount of compensation and deposited the same with the Commissioner. On receipt of the demand draft,

the Commissioner started proceedings with regard to disbursement of amount of compensation to the legal heirs of deceased; issued show-cause notice to appellant to explain as to why interest @ 12% p.a on the amount of compensation and penalty of 50% of the amount of compensation be not awarded. Appellant submitted reply to show cause notice pleading facts and events with regard to manner and date of accident, information of accident was given to the Commissioner, Employees Compensation, Raipur on 25.6.2013; preparation of demand draft on 30.8.2013, sending it to the Commissioner, Employees Compensation, Raipur by RPAD. The Commissioner, Workmen Compensation, Raipur returned it vide letter dated 7.10.2013 and thereafter submission of demand draft of the amount of compensation before the Commissioner.

4. The Commissioner on 4.6.2014 passed two separate orders, one for disbursement of amount of compensation deposited by appellant, other for payment of interest @12% p.a. from the date of accident till realization and penalty of 50% of the amount of compensation. It is the order of award of interest and imposition of penalty of the Commissioner which is put to challenge by the appellant in this appeal.

5. This appeal was admitted for consideration on 14.3.2016 and on the same date, the effect and operation of the impugned order so far as it relates to imposition of penalty, has been

stayed. Appellant has framed following substantial question of law for consideration:-

> "Whether the Commissioner was justified in not appreciating the justifiable reason given by the appellant for not depositing compensation within time, and committed error by awarding 50% of compensation amount as penalty and 12% interest on it from the date of accident?"

6. Mrs. Renu Kochar, learned counsel for appellant submits that after getting knowledge of accident, appellant, being employer of deceased, informed the same to the Commissioner, Employees Compensation-cum-Labour Court -1, Raipur presuming that place of accident falls within its jurisdiction because prior to 2012 Balodabazar was also part of District Raipur. She further pointed out that after completion of procedure and calculating the amount of compensation, appellant got prepared a demand draft of Rs.8,85,480/- on 30.8.2013 and immediately forwarded the same to the Court of Commissioner-cum-Labour Court-1, Raipur bona fidely, which was returned to appellant vide covering letter dated 7.10.2013. Upon gathering information with regard to the jurisdiction of the Commissioner based on the place of accident, appellant again got prepared a demand draft and sent it to the Commissioner, which was received by the Commissioner on 11.2.2014. She submits that there is no delay in calculating the amount of compensation and depositing of the same. Error which crept in with regard to deposit of demand draft before the Commissioner-cum-Labour Court-1, Raipur is a bona fide error

and it was not intentional. She further submits that it is not the case where after the accident, appellant had deliberately not calculated or deposited the amount of compensation and the same was deposited only after filing of an application by the legal heirs of deceased employee under the Act of 1923 and passing of the award of compensation by the Court of jurisdictional Commissioner. She submits that the Commissioner has not considered the facts and circumstances of the case, particularly the fact that appellant had voluntarily calculated and deposited the amount of compensation. She submits that in the given facts and circumstances of the case, award of penalty of 50% of the amount of compensation and interest @ 12% from the date of accident is not warranted and liable to be set aside.

7. Per contra, Mr. Govind Ram Miri, learned counsel for respondents submits that from the facts available on record it is apparent that date of accident is 18.6.2013 and amount of compensation was deposited before the competent Court of Commissioner-cum-Labour Court, Balodabazar only on 14.2.2014. There is delay on the part of appellant in depositing the amount of compensation. As per Section 4-A of the Act of 1923, an employer has to deposit the amount of compensation, within 30 days from the date of accident, for which the victim or legal heirs of victim are entitled for. The appellant calculated the amount of compensation and deposited it with delay without interest. The Commissioner is well justified in awarding interest @ 12% p.a. from the date of accident and imposing penalty of

50% of the amount of compensation, which does not call for any interference.

8. We have heard learned counsel for the parties and perused the record.

9. It is undisputed fact that after the accident, appellant being employer of deceased had calculated the amount of compensation and deposited the same with the Commissioner without institution of legal proceeding by legal heirs of deceased employee. The Commissioner accepted the calculation of amount of compensation done by appellant of its own, but considering the fact that appellant had not added any amount towards interest on the amount of compensation, delay in depositing the amount of compensation, awarded 50% penalty on the amount of compensation so calculated and interest @ 12% p.a. from the date of accident till actual realization.

10. The question arising for consideration of this Court based on the substantial questions of law formulated and arguments advanced by learned counsel for respective parties is two fold; (i) whether the Commissioner justified in awarding interest @ 12 % p.a. from the date of accident; and (ii) whether the Commissioner justified in awarding 50% penalty on the amount of compensation calculated?

11. To appreciate rival submissions made by learned counsel for the parties, we deem it appropriate to extract provisions of Section 4A of the Act of 1923 herein below for ready reference:-

" **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[1][employee], as the case may be, without prejudice to the right of the [1][employee] 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 Gazette, 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.

[4][(3A) The interest and the penalty payable under sub-section *(3)* shall be paid to the [1][employee] or his dependant, as the case may be.]"

12. Sub-section (1) of Section 4A of the Act of 1923 very clearly prescribes liability upon the employer to pay/deposit amount of compensation "**as soon as it falls due".** The outer time limit for depositing / paying the amount of compensation is prescribed under sub-section 3 i.e. "one month from the date it fell due". If the amount of compensation is not paid/deposited within the prescribed time then the consequences of award of

interest and imposition of penalty is prescribed under sub-section (3) of Section 4A of the Act of 1923. Under sub-section (3) (a) of Section 4A of the Act of 1923, the award of interest in case of default in making payment of amount of compensation within 30 days has been made mandatory.

13. In case of **Pratap Narayan Deo vs. Sriniwas Sabata** reported in **(1976) 1 SCC 289** the Hon'ble Supreme Court has considered the words used under Section 4A (1) and (3) i.e. "falls due" and "fell due" and held as under:-

> "7.....The employer therefore became liable to pay the compensation as soon as the aforesaid personal injury was caused to the workman by the accident which admittedly arose out of and in the course of the employment. It is therefore futile to contend that the compensation did not fall due until after the Commissioner's order dated May 6, 1969 under Section 19. What the section provides is that if any question arises in any proceeding under the Act as to the ability of any person to pay compensation or as to the amount or duration of the compensation it shall, in default of agreement, be settled [292]by the Commissioner. There is therefore nothing to justify the argument that the employer's liability to pay compensation under Section 3, in respect of the injury, was suspended until after the settlement contemplated by Section 19. The appellant was thus liable to pay compensation as soon as the aforesaid personal injury was caused to the appellant, and there is no justification for the argument to the contrary.

14. In **Ved Prakash Garg vs. Premi Devi & ors** reported in **(1997) 8 SCC 1** the Hon'ble Supreme Court has held that once default in payment is made by the employer beyond prescribed limit, award of interest is automatic. In case of **Oriental Insurance Co. Ltd. Vs Siby George** reported in **(2012) 12 SCC 540** the Hon'ble Supreme Court has considered the issue with regard to

award of interest and while taking into consideration its earlier decisions, has held thus:-

> "**8.** It is, thus, to be seen that sub-section (3) of Section 4-A is in two parts, separately dealing with interest and penalty in clauses (*a*) and (*b*) respectively. Clause (*a*) makes the levy of interest, with no option, in case of default in payment of compensation, without going into the question regarding the reasons for the default. Clause (*b*) provides for imposition of penalty in case, in the opinion of the Commissioner, there was no justification for the delay. Before imposing penalty, however, the Commissioner is required to give the employer a reasonable opportunity to show cause. On a plain reading of the provisions of sub-section (3) it becomes clear that payment of interest is a consequence of default in payment without going into the reasons for the delay and it is only in case where the delay is without justification, the employer might also be held liable to penalty after giving him a show cause. Therefore, a finding to the effect that the delay in payment of the amount due was unjustified is required to be recorded only in case of imposition of penalty and no such finding is required in case of interest which is to be levied on default per se.
> **13.** In the light of the decisions in *Pratap Narain Singh Deo*[4] and *Valsala K.*[5], it is not open to contend that the payment of compensation would fall due only after the Commissioner's order or with reference to the date on which the claim application is made. The decisions in *Mubasir Ahmed*[2] and *Mohd. Nasir*[3] insofar as they took a contrary view to the earlier decisions in *Pratap Narain Singh Deo*[4] and *Valsala K.*[5] do not express the correct view and do not make binding precedents."

15. Recently, in the case of **North East Karnataka Road Transport Corporation vs. Sujatha** reported in **(2019) 11 SCC 541** the Hon'ble Supreme Court has held as under:-

> "**26.** Now coming to the facts of this case, we find that the Commissioner awarded the interest to the respondents @ 12% p.a. on the awarded sum but it was awarded from the expiry of 45 days from the date of order and that too, if the appellant failed to deposit the awarded sum within 45 days.
> **27.** In other words, if the appellant had deposited the awarded sum within 45 days from the date of the order then the respondent was not entitled to claim

> any interest on the awarded sum, but if the appellant had failed to deposit the awarded amount within 45 days, then the respondent was entitled to claim interest @ 12% p.a. from the date of the order.
> **28.** In our opinion, the aforementioned direction of the Commissioner in awarding the interest on the awarded sum is contrary to law laid down by this Court in *Pratap Narain case*[2] and hence not legally sustainable.
> **30.** Accordingly and in view of the foregoing discussion, the order of the Commissioner dated 23-4-2002 is modified in favour of the respondent to the extent that the awarded sum of Rs 3,79,120 shall carry interest @ 12% p.a. from the date of accident i.e. 6-4-1999."

16. Upon considering the facts and circumstances of case at hand in the light of aforementioned rulings of Hon'ble Supreme Court, it is clear that present is the case where appellant has not deposited the amount of compensation within the time prescribed under sub-section (3) of Section 4A of the Act of 1923 i.e. within 30 days when it fell due. The legal heirs of the deceased became entitled for the amount of compensation on the date of accident itself i.e. on 18.6.2013, but the amount of compensation was deposited by appellant-employer for the first time only after August, 2013 that too before the wrong forum. The amount of compensation was deposited by appellant before the Court of competent Commissioner under the Employees' Compensation only on 11.2.2014. From the aforementioned facts it is apparent that appellant has not deposited the amount of compensation within the prescribed period of 30 days when it fell due. In the given facts and circumstances of the case and in the light of aforementioned rulings of Hon'ble Supreme Court, it is liability of appellant employer to pay the interest @ 12% p.a. on the calculated

amount of compensation. Submission made by learned counsel for appellant that award of interest @ 12% p.a. by the Commissioner is erroneous, is not sustainable and it is hereby repelled. We affirm the award of interest @12% p.a. from the date of accident.

17. Second part of the impugned order is award of penalty of 50% on the amount of compensation calculated. Award of penalty is provided under Section 4A(3) (b) of the Act of 1923. From bare reading of provision of sub-section (3) (b), it is clear that award of penalty has been left to the discretion of the Commissioner. Award of penalty is only when the Commissioner arrives at a satisfaction that the employer failed to offer proper justification for delay. It is further apparent that percentage of penalty on the awarded amount of compensation is also not fixed. The words used under the provision are “sum not exceeding 50%”. The Law Makers by using the aforementioned words “sum not exceeding 50%” have intended that award of penalty of 50% not to be automatic in all cases where there is default in payment of compensation. The Commissioner while considering the question of award of penalty, which shall not exceed 50%, has an obligation to consider the explanation offered in facts and circumstances of each case.

18. In case at hand, after the accident, appellant being the employer had voluntarily calculated the amount of compensation to be paid to the legal heirs of deceased, got prepared a demand draft of the said amount on 30.8.2013

without there being any legal proceeding drawn by legal heirs of deceased employee. Aforementioned act on the part of appellant clearly shows that since inception the appellant intended to pay the amount of compensation to the legal heirs of deceased employee in discharge of its legal obligation. Error occurred in depositing the demand draft prepared before the wrong forum appears to be a bona fide one in the given facts and circumstances of the case. It is also not the case that appellant has forwarded a cheque in lieu of deposit of the amount of compensation, infact it was demand draft which was prepared only after deposit of cash amount with the bank. After return of demand draft by the Commissioner-cum-Labour Court-1, Raipur, the appellant sent a new demand draft to the Commissioner with details as required. The proceedings drawn for award of interest and penalty by the Commissioner are only after voluntary deposit of amount of compensation by the appellant. In the reply to show-cause the appellant has narrated the facts in detail, which are also appearing from the documents available on record. The documents are not exhibited but the same are available on record and perusal of the same would show that a demand draft was issued by Axis Bank on 30.8.2013, the same was forwarded vide letter dated 27.9.2013 to the Commissioner for Workmen Compensation, Anand Nagar, Raipur and it was returned by the Commissioner, Raipur on 7.10.2013. Notice dated 4.3.2014 was issued to the appellant to show-cause as to why amount of penalty of 50% and interest @12% be not imposed, mentioning therein that the amount of compensation of Rs.8,85,480/- was deposited before the Commissioner on 11.2.2014 for accident dated 18.6.2013.

19. Upon considering the aforementioned facts available on record, it cannot be said that there was no delay in depositing the amount of compensation. Even if the submission made by learned counsel for the appellant is accepted that the employer got prepared the first demand draft on 30.8.2013 , then also it was after about 2½ months when it fell due. Hence, it cannot be said that appellant is not liable for imposition of any penalty when the amount of compensation is to be deposited within 30 days when it fell due.

20. The question for consideration is whether the Commissioner was justified in awarding 50% penalty on the awarded amount of compensation and whether this Court can interfere with the award of penalty while entertaining an appeal under Section 30 of the Act of 1923 wherein the interference can be made only when some substantial question of law is involved.

21. The words “substantial question of law” used under Section 30 of the Act of 1923 have to be understood as it is commonly known. While considering an appeal under Section 30 of the Act of 1923 only the question of law, if any, will not suffice to interfere with the order/judgment passed by the Commissioner unless it comes within the purview of substantial question of law. The appellate Court can also interfere with the order of the Commissioner while exercising jurisdiction of appeal under Section 30 of the Act of 1923 if the findings recorded by the

Commissioner are perverse or the Commissioner had failed to take into consideration relevant facts, as observed by the Hon'ble Supreme Court in case of **Om Prakash Batish vs. Ranjit alias Ranbir Kaur & ors** reported in **(2008) 12 SCC 212** for determining the question of pervesity, which reads thus;-

> "20........Entering into the realm of appreciation of evidence adduced by the parties per se is out of bound of an appellate court which is concerned with determination of a substantial question of law. It is one thing to say that the findings of the Workmen's Compensation Commissioner were perverse and in arriving at its findings it failed to take into consideration relevant facts or took into consideration irrelevant factors which were not germane for the purpose of determining the issue, but whether a witness is trustworthy or not, has nothing to do with determining into the question of perversity."

22. Coming back to the facts of present case. Perusal of the impugned order would show that the Commissioner had not considered the facts pleaded by appellant in reply to the show cause notice but only considered that there is default in payment of amount of compensation as the same was not paid/ deposited within 30 days of the accident. The Act of 1923 provides for award of penalty of any amount upto 50% of the amount of compensation, then it was obligatory upon the Commissioner to record a finding that he is not satisfied with the explanation offered by the employer and further that in the facts and circumstances of the case maximum penalty of 50% provided under the Act of 1923 is to be imposed. No such discussion is made nor any such finding is recorded by the Commissioner in the impugned order. From the facts available on record and also appearing from the show cause notice and

the order of disbursement of compensation available on record, it is apparent that appellant voluntarily calculated and deposited the amount of compensation but beyond the prescribed period of 30 days. The employer himself has complied with the provision of law by depositing the amount of compensation, hence the act of appellant is also required to be borne in mind while imposing penalty which is not fixed under the statute and it can be awarded upto 50%.

23. Taking into consideration the entire facts and circumstances of the case as well as contents of the order impugned where the Commissioner has not considered the relevant facts nor discussed the same in the impugned order, but straightaway imposed penalty of 50% only considering default in payment of amount of compensation, we are of the opinion that the order impugned so far as it relates to imposition of penalty to the tune of 50% is not sustainable and the same is hereby set aside. Considering that there is delay on the part of employer in voluntarily depositing the amount of compensation, we find it appropriate to impose penalty to the tune of 25% of the amount of compensation. Question of law is answered accordingly.

24. In the result, appeal is allowed in part. Award of interest by the Commissioner is upheld. Penalty to the extent of 25% of the amount of compensation is imposed instead of 50%.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-