IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
<u>Appellate Side</u>

Present:

The Hon'ble Justice Harish Tandon

And

The Hon'ble Justice Ajay Kumar Gupta

FMAT 157 of 2023
With
CAN 1 of 2023
Alloy Steels Plant
Vs.
Sri Pijush Majumdar

For the Appellant	:	Mrs. Lakshmi Kanta Pal, Adv.
Heard on	:	21.08.2023
Judgment on	:	14.09.2023

<u>Ajay Kumar Gupta, J:</u>

1. The instant First Miscellaneous Appeal has been filed under Section 30 of the Employee's Compensation Act, 1923 against the judgment and award dated 30th January, 2023 passed by the Commissioner, Employees' Compensation, Durgapur in Claim Case No. 3 of 2018, thereby the commissioner awarded a compensation to the tune of Rs. 2, 90,520/- to the respondent/employee together with simple interest at the rate of 12% per annum from the date of accident i.e. 04.11.2014 till the date of actual payment thereof. Appellant has deposited total awarded amount of Rs. 5,83,945/- comprising of the principal awarded amount of Rs. 2,90,520/- and amounting to Rs. 2,93,425/- towards interest @ 12% p.a. from the date of accident i.e. on 04.11.2014 till 03.04.2023 with the office of Commissioner, Employees' Compensation, Durgapur before filing this appeal.

2. Sans otiose details, the case of the appellant is that the respondent being the employee of the appellant had filed a compensation case under the Employee's Compensation Act, 1923 (hereinafter referred to as "the Said Act, 1923") to the effect that on 04.11.2014 at around 8.30 a.m. he met with an accident as a result, he sustained severe injures all over his body arising out of and in course of his employment. After the accident, he was removed to ASP Health Organisation but due to seriousness of his injuries, he was referred to DSP Main Hospital, Durgapur wherein he was treated on and from 04.11.2014 to 18.11.2014 as indoor patient. He was further referred to Peerless Hospital, Kolkata for his better treatment, wherein he was further treated as indoor patient till 23.12.2014.

3. The appellant/employer contested the case by filing written statement wherein it was admitted that the respondent was an employee of appellant's Alloy steels plant on the date of the accident. However, the appellant denied and disputed all other averments made by the respondent. Appellant had incurred a huge medical expense for his treatment. Apart from that, the appellant had paid wages for entire period of his absence caused due to the accident till his superannuation in the month of January 2015 without any deduction as such he did not suffer any loss of his earning. Accordingly, the appellant is not liable to pay any compensation under the Said Act, 1923.

4. It is further averred that the claim application was filed beyond the statutory period of limitation of two years from the date of accident as enshrined in the said Act, 1923. However, the Commissioner without applying his judicious and justifiable mind simply condoned the delay on the ground that the Act is beneficial piece of legislation. No sufficient cause/ reasons cited by the respondent in an application for condonation of delay that he was prevented by sufficient cause in preferring the claim application within statutory period of limitation. The issue of limitation has been decided by the Commissioner in favour of the respondent along with other issues at the time of final adjudication of claim application is not at all permissible in the eye of law.

5. Learned Counsel appearing on behalf of the appellant vehemently argued that all medical expenses for his treatment was borne by the appellant though there was no fault on the part of the appellant/employer but the Commissioner has imposed penalty of simple interest of 12% per annum on the awarded amount on and from the date of accident i.e. 04.11.2014 till the date of actual payment thereof.

6. It is further submitted that the respondent further failed to establish the accident which had occurred while performing his duty. Actually, he met with an accident due to his own fault while riding motor cycle at a place far away from his place of employment so it cannot be said that the accident arose out of and in course of employment. Appellant being the employer has paid all his wages till his superannuation including the period in which he was absent for his treatment in the hospitals so he is not entitled to get any further compensation. Judgment and Award passed by the Commissioner, Employees' Compensation, Durgapur is absolutely the result of non-application of mind. Accordingly, the impugned judgment and order passed on 30.01.2023 palpably illegal and perverse. Hence, it is liable to be set aside.

7. Having heard the argument made extensively on behalf of the appellant and on perusal of the record, it appears the respondent has examined himself as P.W. 1, an employee of S.D. Hospital, Durgapur, Mr. Sudipta Laha as P.W. 2 to establish his case for awarding compensation on the ground of injuries sustained in course of employment and finally suffered permanent partial disability to the extent of 50% and exhibited number of documents i.e. Exhibit Nos. 1 to 12. The details of the documents are reflected in the judgment and award dated 30th January, 2023. On the other hand, the appellant/employer examined its senior manager as O.P.W. 1 and produced documents marked as Exhibits A, B and C.

8. It was the specific case of the respondent/employee before the Commissioner that he met with an accident on the date on 04.11.2014 inside its plant near Nirman Bhavan while he was going to Forge Shop at around 8.30 a.m. in his motorcycle and at that point of time he was dashed by a car while overtaking from the left side as a result he sustained injuries. He suffered permanent partial disability to the extent of 50% arising out of and in the course of his employment but appellant did not pay any compensation under the said Act, 1923 despite of several oral and written requests.

9. The Commissioner, Employees' Compensation, Durgapur has finally decided the claim case in favour of the respondent after considering and assessing the evidence, both oral and documentary. However, learned advocate for the appellant raised the following substantial questions of law being seriously aggrieved and dissatisfied with the impugned judgment and award dated 30th January, 2023: -

1. Whether the Commissioner erred in law in holding that appellant is liable to pay compensation under Section 3(1) of the Said Act, 1923 though the alleged accident cannot be said to be an accident arising out of and in course of his employment?

2. Whether the Commissioner erred in law in deciding an application for condonation of delay without applying his mind along with other issues at the time of final adjudication of the claim application rather it should have rejected separately at the initial stage of proceedings as the respondent fails to satisfy sufficient cause for delay in filing appeal in time?

3. Whether the Commissioner, Employee's Compensation Act, 1923 erred in law in imposing penalty of simple interest of 12% on the awarded compensation

amount from the date of accident i.e. 04.11.2014 till the date of actual payment thereof even the appellant incurred a huge medical expense for his treatment and paid wages for the entire period of his absence till his superannuation in the month of January 2015 without any deduction?

10. We would like to indicate hereinbelow the relevant provisions as applicable in the instant appeal. Those Sections are 3, 4, 4A, 10 and 30 of the Said Act, 1923 for proper and effective adjudication.

11. Section 3 of the said act provides Employer's liability for compensation. — (1) If personal injury is caused to an [employee] by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter:

Provided that the employer shall not be so liable—

(a) in respect of any injury which does not result in the total or partial disablement of the [employee] for a period exceeding [three] days;

(b) in respect of any [injury, not resulting in death [or permanent total disablement], caused by] an accident which is directly attributable to—

(i) the [employee] having been at the time thereof under the influence of drink or drugs, or

(ii) the wilful disobedience of the [employee] to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of employees, or

(iii) the wilful removal or disregard by the [employee] of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of [employees].

(2) --.

(a) ---------------------------------.

(b) ---------------------------------.

(2A) ---.

(3) --.

(4) --.

(5) --.

(a) ------------------------------; or

(b) ----------------------------------.

12. From bare reading of aforesaid provision, it contemplates if personal injuries caused to an employee by an accident arising out of and in course of his employment, the employer shall not be liable to pay compensation only under the following conditions: -

> **Firstly**, injury does not cause the entire or partial disablement of an employee for a period exceeding three days;
>
> **Secondly,** employee should not under the influence or any sort of drugs or drink while accident.
>
> **Thirdly**, employee wilfully disagrees or disobeys an order framed for their safety purpose.
>
> **Fourthly**, the wilful denial or non-usage of any kind of safety measures equipment duly provided to them for securing safety during employment.

13. It is not disputed that the respondent/employee sustained injuries due to accident occurred on 04.11.2014 at 8.40 am inside its plant premises near Nirman Bhawan while respondent was going towards the Forge shop of the appellant. It is admitted fact that respondent had not violated the aforesaid conditions as mentioned in Section 3 of the said Act, 1923 but the appellant’s plea is that accident took place due to rash and negligent riding of the motorcycle on the part of the respondent/employee. However, respondent proved that the accident occurred in his morning shift duty hour and on the date of accident he was working as Supervisor II attached to Forge Shop of appellant's concern and he has no fault. In addition, the O.P.W. 1, a Sr. Manager of the appellant's Alloy steels plant, admitted during his cross-examination that the accident took place on 04.11.2014 at around 8.40 a.m. and the same was within his working hour. It was further admitted that accident took place in their plant premises. So, there is no scope to deny the accident which was occurred on 04.11.2014 out of or in course of his employment.

14. The Employee's Compensation Act, 1923 has been enacted for providing social security to the employees. It is imperative on the part of employer to compensate to the employees incapacitated by accident arising out of and in course of employment. Section 3 (1) of the Act provides employer's liability to pay compensation in case of personal injury to the employee caused by an accident arising out of and in course of employment. From the material on record, it reveals that the O.P.W. 1 has admitted during his cross-examination that the accident took place on 04.11.2014 at around 8.40 a.m. and the same was within his working hour. It was further admitted that accident took place in their plant premises. Furthermore, the respondent/employee does not fall within the exceptions of Section 3(1) (a) and (b) (i), (ii) and (iii). Therefore, the application filed by the respondent before the Commissioner of the Said

Act is maintainable and Section 3(1) is very much applicable as the accident occurred arising out of and in course of his employment without touching any of the exceptions of Section 3(1) of the Said Act, 1923. Thus, appellant is liable to pay compensation under the Said Act, 1923.

15. Now, the question arises what would be the actual compensation.

In this regard Section 4 provides the manner of calculation of the Amount of compensation. — (1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely: —

(a) Where death results from the injury	an amount equal to [fifty per cent.] of the monthly wages of the deceased [employee] multiplied by the relevant factor; or an amount of [one lakh and twenty thousand rupees], whichever is more;

(b) Where permanent total disablement results from the injury	an amount equal to [sixty per cent.] of the monthly wages of the injured [employee] multiplied by the relevant factor; or an amount of [one lakh and forty thousand rupees], whichever is more:

Provided that the Central Government may, by notification in the Official Gazette, from time to time, enhance the amount of compensation mentioned in clauses (a) and (b);

Explanation I.—For the purposes of clause (a) and clause (b), "relevant factor", in relation to a [employee] means the factor specified in the second column of Schedule IV against the entry in the first column of that Schedule specifying the number of years which are the same as the completed years of the age of the [employee] on his last birthday immediately preceding the date on which the compensation fell due.

(c) where permanent partial disablement results from the injury.	(i) in the case of an injury specified in Part II of Schedule I, such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury, and (ii) in the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified

	medical practitioner) permanently caused by the injury.

Explanation I.—Where more injuries than one are caused by the same accident, the amount of compensation payable under this head shall be aggregated but not so in any case as to exceed the amount which would have been payable if permanent total disablement had resulted from the injuries.

Explanation II. —In assessing the loss of earning capacity for the purposes of sub-clause (ii), the qualified medical practitioner shall have due regard to the percentages of loss of earning capacity in relation to different injuries specified in Schedule I;

(d) where temporary disablement, whether total or partial results from the injury	a half-monthly payment of the sum equivalent to twenty-five per cent. of monthly wages of the 1 [employee], to be paid in accordance with the provisions of sub-section (2).

(1A) -------------------------------.

(1B) -------------------------------.

(2) ----------------------------------.

(i) ----------------------------.

(ii) ---------------------------.

Provided that—

(a) --------------------------; and

(b) -------------------------.

Explanation. —Any payment or allowance which the [employee] has received from the employer towards his medical treatment shall not be deemed to be a payment or allowance received by him by way of compensation within the meaning of clause (a) of the proviso.

(2A) The employee shall be reimbursed the actual medical expenditure incurred by him for treatment of injuries caused during the course of employment.]

(3) ----------------------------------.

(4) ---------------------------------.

16. Section 4 (1) (c) is applicable in this case, the Commissioner awarded a sum of Rs 2,90,520/- as a compensation after specifically considering the age 58-59 at the time of accident, ceiling of monthly wages of an employee @ Rs. 8,000/- per month for the purpose of the said Act, 1923 in view of the Central Government Notification dated 31st May, 2010, multiplier 121.05 as per the Schedule IV of the said Act, 1923, permanent partial disability to the extent of 50% on the basis of certificate issued by Medical Board after examining the respondent and component 60% in case where permanent partial disablement results from the injury. So, there is no infirmity or error found in calculation of compensation amount by the Ld. Commissioner.

17. Now, another question arises before this Court that what would be the penalty in the event of default of payment of compensation by the employer. We would like to refer Section 4A of the said Act, 1923 to arrive in a correct conclusion.

Section 4A of the said act provides that 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 [employee], as the case may be, without prejudice to the right of the [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.

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

18. Here, the Commissioner imposed simple interest @ 12% on an awarded amount of Rs. 2,90,520/- as the appellant did not pay whole or provisional payment of compensation based on the extent of liability rather appellant defaulted in paying the compensation under this Act within one month from the date it fell due. Thus, such power is vested upon the Commissioner to direct to pay interest under the provision of Section 4A (3) (a) of the said Act, 1923. Thus, allowing simple interest on an awarded compensation is well within the statute deserves no interference.

19. Section 10 of the said Act, 1923 provides Notice and claim. —

(1) **No claim for compensation shall be entertained by a Commissioner unless notice of the accident has been given in the manner hereinafter provided as soon as practicable after the happening thereof and unless the claim is preferred before him within [two years] of the occurrence of the accident or, in case of death, within [two years] from the date of death:]**

Provided that---------------------------:

Provided further that-----------------:

Provided further that------------------

[Provided further that the want of or any defect or irregularity in a notice shall not be a bar to the [entertainment of a claim]—

(a) -------------------------------------, or

(b) --------------------------------------:

Provided further, ----------------------

(2) ---------------------------------------

(3) ---------------------------------------

(4) ---------------------------------------

20. The appellant/employer preferred this appeal under Section 30 of the Said Act, 1923 challenging the award of compensation awarded by the Commissioner on the ground that the application for compensation was filed beyond the statutory period of limitation of two years from the date of accident as contemplated under Section 10 of the said Act, 1923. So far as the ground raised by the appellant regarding delay in filing the application is concerned, admittedly, the claim application has been filed beyond the period of limitation i.e. one year and three months later but the fact remains that the claim application filed along with application for condonation of delay praying for condonation of delay on the ground that in spite of several requests made by way of oral and written communications, appellant did not pay any heed to pay compensation though it was admitted that the accident was arising in course of the employment. The Commissioner condoned the delay as the employee should not be suffered only on technical ground. No fault can be attributed to the respondent for delay in approaching to the Commissioner, since he has taken all possible steps on his part. In such a situation, the poor or economically backward employee, who suffered permanent partial disability, should not have been allowed to suffer further on the ground of delay. He has explained sufficiently the ground of delay. The Commissioner should have decided the issue of limitation at initial stage. However, dealt with at the time of final adjudication of the claim application along with other issues would definitely not fatal the claim application as the case falls under the said Act, 1923 is enacted for the benefits of the employees. The Said Act is a social and beneficial piece of legislation and its provisions and amendments thereto must be interpreted in a manner so as to no one deprives the employees from the benefits of the legislation. The object of enacting the Act was ameliorated the hardship of economically poor employees, who are exposed to risk while working, for compensating them with pecuniary benefits. The Commissioner has empowered to condone the delay in not preferring the claim application beyond the statutory period of limitation when he satisfies that the delay is due to prevent by sufficient cause. There cannot be any straight jacket formula for allowing condonation of delay. Keeping in mind the beneficial nature of legislation same should be dealt with liberal approach and sympathetically view and required to be focused on the merit and substantial justice. The same thing has been done by the Commissioner for condonation of delay for the interest of justice at the time of final disposal of the claim application, which is also not at all in our view perverse from any corner.

21. Section 30 provides for provision of appeals. — (1) An appeal shall lie to the High Court from the following orders of a Commissioner, namely: —

(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;

(aa) an order awarding interest or penalty under section 4A;]

(b) an order refusing to allow redemption of a half-monthly payment;

(c) an order providing for the distribution of compensation among the dependants of a deceased 6 [employee], or disallowing any claim of a person alleging himself to be such dependant;

(d) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of sub-section (2) of section 12; or

(e) an order refusing to register a memorandum of agreement or registering the same or providing for the registration of the same subject to conditions:

Provided that no appeal shall lie against any order unless a substantial question of law is involved in the appeal and, in the case of an order other than an order such as is referred to in clause (b),

unless the amount in dispute in the appeal is not less than [ten thousand rupees or such higher amount as the Central Government may, by notification in the Official Gazette, specify]:

Provided, further, that no appeal shall lie in any case in which the parties have agreed to abide by the decision of the Commissioner, or in which the order of the Commissioner gives effect to an agreement come to by the parties:

Provided further that no appeal by an employer under clause (a) shall lie unless the memorandum of appeal is accompanied by a certificate by the Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against.

(2) The period of limitation for an appeal under this section shall be sixty days.

(3) The provisions of section 5 of [the Indian Limitation Act, 1963 (36 of 1963)] shall be applicable to appeals under this section.

22. Therefore, it is crystal clear that no appeal shall lie against any order unless a substantial question of law is involved. Appellant/employer has tried his level best to convince this appellate Court to come to conclusion that there are substantial questions of law involved but we are unable to persuade ourselves with the argument of the Ld. Advocate of the appellant.

In the light of aforesaid discussion, the appellant miserably fails to prove the substantial question of law as raised. Accordingly, judgment and award passed by the Commissioner does not deserve any interference by this appellate Court. Therefore, appeal is liable to be dismissed. Judgment and Award dated 30th January, 2023 is hereby affirmed.

23. Under the above circumstances, the instant appeal stands dismissed. No order as to costs.

24. Consequentially, application, being **CAN 1 of 2023** is also stand disposed of.

25. The Commissioner, Employees' Compensation, Durgapur shall release the amount in favour of the respondent/employee upon proper identification and subject to verification of the payment of deficit Court fees, if any, in the mode and manner stipulated in the Judgment and Award of Commissioner, Employees' Compensation, Durgapur within one month from the date of communication of the Judgment and Order.

26. Department is directed to send down a copy of this judgment and award at once to the commissioner Employee's compensation, Durgapur for information and necessary compliance.

27. All parties shall act on a server copy of the judgment and order uploaded from the official website of High Court at Calcutta.

28. Photostat certified copy of this judgment and award, if applied for, be given to the parties on priority basis on compliance of all formalities.

I Agree.

(Harish Tandon, J.) **(Ajay Kumar Gupta, J.)**

P. Adak (P.A.)