



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

110

FAO-803-2004 (O&M)

Date of decision : 10.02.2025

Daya and another

..... Appellants

versus

Dharminder and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Ms. Geetanjali Bhatia, Advocate
Mr. Kulvir Narwal, Advocate
Mr. Amit Sheoran, Advocate and
Mr. Abhisar Chaudhary, Advocate
for the appellants.

None for respondent No.1.

Mr. Vinod Chaudhri, Advocate
for respondent No.2.

PANKAJ JAIN, J. (Oral)

1. Counsel for the appellants has drawn attention of this Court to the following observations made by the Commissioner while passing the impugned order under Workmen's Compensation Act, 1923:-

“Under section 4-A of the Act, Compensation has to be paid as soon as it falls due, where the employee does not pay the same within one month from the date it falls due, the commissioner is empowered to direct under sub section (a) of section 4-A3, interest at the rate provided therein and also penalty as contemplated by sub section (b) thereof. The Hon'ble Supreme Court of India in the case of 'Ved Parkash Garg Versus Prem Devi and others 1998 (1) JR (Labour and Service)-6' has held that while imposing interest on the default of payment of the principal amount of compensation on the part of



the employer as per section 4-A(3), no show cause notice is contemplated and employer needs not be heard in this connection. A simplicitor default in payment of compensation the time limit of one month from the date it falls due would automatically attract the provision for simple rate of interest under section 4-A(3)(A) of the Act as per the rate prescribed therein for such imposition of interest, no question of justification is countenances by the legislature. I, therefore direct that besides payment of compensation awarded above, the respondent no. 2 Insurance company shall also pay a simple rate of interest of twelve percent per annum on it from the date of 31.1.1998 of accident to the date of this order meet the claim for compensation along with interest as imposed on its by the Work-men's compensation under the Act.”

2. She further refers to the relief granted wherein though interest @ 12% has been ordered to be paid, however, there is no order with respect to penalty.

3. *Per contra*, Mr. Chaudhri does not dispute that penultimate paragraph and the relief clause of the award seem to be not in sync with each other. However, he submits that the finding recorded by the Commissioner with respect to no requirement of show cause notice before imposing penalty cannot be sustained.

4. I have heard counsel for the parties and have carefully gone through the records of the case.

5. Since the issue raised is with respect to penalty only, I need not go into the factual aspect.



6. Section 4A of 1923 Act deals with compensation to be paid when due and penalty for default. The same reads as under:-

“[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 the¹[employee], as the case may be, without prejudice to the right of the ¹[employee] to make any further claim.

³[(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.”

7. In the considered opinion of this Court, Commissioner has totally misread the bare provision. Statutory interest as contemplated under Section 4A(3)(a) and 4A(3)(b) explicitly provides statutory interest of 12% per annum, apart from the penalty prescribed under sub-clause (b). Commissioner read the provision as awarding of simple interest @ 12% itself would be a penalty.



8. Mr. Chaudhri is right to the extend that wherever Section 4A(3)(b) is to be invoked, the same has to be preceded by a show cause notice asking the employer to furnish justification for the delay in making payment of the compensation to the injured/deceased employee. Proviso appended to Section 4A(3)(b) further makes it clear that the show cause notice is mandatory.

9. In view of above, while maintaining the award with respect to compensation and interest, the matter is remanded back vis-a-vis penalty to which the workman claims his entitlement, the Commissioner shall issue show cause notice to the employer and the insured and decide the issue with respect to penalty. The parties shall appear before the Commissioner on **17.03.2025**.

10. Keeping in view that the accident is of the year 1998 and the award was passed by the Commissioner on 29.09.2003, this Court is sanguine that the Commissioner shall adjudicate the issue with respect to penalty within a period of three months from the date the parties appear.

11. Disposed off, accordingly.

12. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

10.02.2025

Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No