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Date of decision : 01.12.2025

National Insurance Company Ltd. Appellant

Krishan Kumar and others Respondents

Krishan Kumar Appellant

Ding Man Power and Securities Services and ors. Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. D.P.Gupta, Advocate
for the appellant in FAO-8274-2015.

Mr. Jarnail Singh Saneta, Advocate
for the appellant in FAO-2341-2016 and
for the respondent-claimants in FAO-8274-2015.

Mr. Dheeraj Narula, Advocate
for respondent No.1 in FAO-2341-2016
for respondent No.2 in FAO-8274-2015.

Ms. Nandini Gupta, Advocate for
Mr. Abhilaksh Grover, Advocate
for respondents No.3 to 6 in FAO-8274-2015 and
for respondents No.2 to 5 in FAO-2341-2016.

Mr. Ajay Kamboj, Advocate and
Mr. Amandeep Kamboj, Advocate
for respondent No.1 in FAO-8274-2015.

Mr. Sanjeev Kumar Arora, Advocate
for respondent No.6 in FAO-2341-2016



PANKAJ JAIN, J. (Oral)

1. These are two cross-appeals directed against order passed by Commissioner exercising powers under the Employee's Compensation Act 1923.

2. FAO No.8274 of 2015 is at the behest of the insurer of the contractor. Along with the appeal, an application has been filed under Order XLI Rule 27 CPC seeking permission to lead additional evidence in appeal to claim exclusion of liability qua interest, penalty and medical expenses. Admittedly, the insurance policy was in possession of the applicant and nothing prevented the applicant-appellant from producing the same before the Commissioner, yet the same was not produced. Mandate of provision as contained under Order XLI Rule 27 CPC is clear and unambiguous. The provision cannot be resorted to, to fill up the lacunas. The party claiming permission to lead additional evidence, is required to plead and prove that the evidence sought to be produced invoking Order XLI Rule 27 CPC could not have been produced despite exercising due diligence. The same being not the case, this Court finds no merit in the application, the same is ordered to be dismissed.

3. The other plea raised by Mr. Gupta is that the injured-claimant was employed with respondent No.1 to work for respondent No.2 to 5 and thus, employer-employee relationship, if any, existed between the claimant and respondent No.2 to 5 and not with respondent No.1. The plea raised is without any merit. The same is answered by Section 12 of 1923 Act which reads as under:-



“12. Contracting.- (1) Where any person (hereinafter in this section referred to as the principal) in the course of or for the purposes of his trade or business contracts with any other person (hereinafter in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or business of the principal, the principal shall be liable to pay to any *[employee] employed in the execution of the work any compensation which he would have been liable to pay if that *[employee] had been immediately employed by him; and where compensation is claimed from the principal, this Act shall apply as if references to the principal were substituted for references to the employer except that the amount of compensation shall be calculated with reference to the wages of the *[employee] under the employer by whom he is immediately employed.

(2) Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor, or any other person from whom the *[employee] could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this section he shall be entitled to be indemnified by any person standing to him in the relation of a contractor from whom the *[employee] could have recovered compensation] and all questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the Commissioner.

(3) Nothing in this section shall be construed as preventing a *[employee] from recovering compensation from the contractor instead of the principal.

(4) This section shall not apply in any case where the accident occurred elsewhere than on, in or about the premises on which the principal has undertaken or usually undertakes, as the case may be, to execute the work or which are otherwise under his control or management.”

4. Applying the parameters of the aforestated provision to the present case, evidently the claimant was employed by the



Contractor to work for respondent No.2 to 5. Even if respondent No.2 to 5 being principal employers, need to pay compensation, they need to be indemnified by the contractor. The appellant-insurance company having insured the Contractor are thus, the one who indeed need to indemnify the principal employer and are thus, liable to pay the compensation as well as the statutory interest in terms of Section 4A of 1923 Act.

5. Finding no merits in the appeal i.e. FAO No.8274 of 2015 preferred by the insurance company, the same is ordered to be dismissed.

6. FAO No.2341 of 2016 is at the behest of the claimant. Mr. Saneta brings to the notice of this Court observations made by Commissioner which reads as under:-

“The applicant has produced the medical expenses bills on record totalling for the sum of Rs. 95,899/-. The applicant has neither produced the prescription slips nor examined any witness from chemist shop. The counsel for respondent No. 6 could not rebut the bills/ cash memo as placed on record by the applicant. Keeping in view the long treatment as taken by the applicant, a lump sum amount of Rs. 45,000/- is awarded towards reimbursement of medical expenses. The respondent No. 6 is hereby held liable to pay the reimbursement towards medical expenses for Rs. 45,000/- only.

The counsel for the applicant has also argued for interest and penalty but the counsel for the respondents has opposed and submitted that the respondents are not liable to pay any interest and penalty. The amount of compensation was due to the applicant but the respondents have not cared about the payment of compensation even after filing of the present claim petition and the respondents have made default in paying compensation due under the Act. The



respondents have the due knowledge of the claim from the date of notices served upon them. The applicant has also consumed more than one year in concluding his evidence. The applicant is held entitled for the simple interest at the rate of 12% per annum on the amount awarded above Rs. 2,62,967/- only for a fixed period of four years which comes to Rs. 1,26,224/- and the same is awarded in favour of the applicant. The liability to pay the interest is also fastened upon the respondent No. 6, for the purpose of penalty respondent No. 1 to 5 are directed to appear before this court on 12.08.2015 at 10.00 AM and show cause as to why they should not be held responsible for the payment of penalty in accordance with Section 4-A of the W.C. Act, 1923.”

7. It has been further contended that even the minimum wages have been wrongly taken to be Rs.4,348/- relying upon the minimum wages notified by State Government, whereas the same should have been based upon minimum wages notified by Central Government under Section 4(1B) of 1923 Act.

8. After hearing the counsel for the parties, this Court finds that the Commissioner erred in computing the compensation by relying upon the notification by State Government under Minimum Wages Act. The compensation payable to the victim under Section 4 of 1923 Act has to abide by the notification issued by Central Government under Section 4(1B) of 1923 Act not the notification issued by State Government under the Minimum Wages Act.

9. Keeping in view the date of accident i.e. 27.09.2010 and the notification issued by Central Government in vogue on the given date, the minimum wages are taken to be Rs.8000/- The claimant lost his shoulder and hand on account of electrocution. The disability



B

STANDERD FORMAT OF THE CERTIFICATE

Name & address of the Institute/Hospital issuing the Certificate _____
Certificate No. _____ Date 19-7-12

CERTIFICATE FOR THE PERSONS WITH DISABILITIES

This is to certify that Sh./Smt./Kumr. Krishnan Kumar
Son/Wife/Daughter of Sh. Rathnamal Age 22
No. Rattihona
Old Male/Female Registration No. not case old cany electric burns case of
breast - certificate furnished to loss of ulnar nerve distal
Hd/Sng is physica Disabled/Visual Disabled/Speech & Hearing Disabled and has loss of
part of mobility to flex hand @ thumb & fingers
fingers & thumb, with deformed @ forearm & wrist
Percent (Permanent Physical Impairment)/Visual impairment/Speech & Hearing impairment)
in Relation to his/her
Note: This Condition is Progressive/Non Progressive Likely to improve/not likely to improve.
2. His assessment is not recommended/recommended after a period of _____ months/years.
*Strike out which not applicable

(Doctor)
Seal

(Doctor)
Signature
P.M.C. S. H. KARNAL
(Member Med. Board)

(Doctor)
Signature
Surgeon,
General Hospital, Karnal

Signature/Thumb
impression of
Patient



Witnessed by the
Medical Superintendent
P.M.C. Karnal
(with Seal)

$$224 \times 8000 \times 60/100 = 10,75,200/-$$



11. Medical expenses of Rs.95,899/- were proved on record.
The same are awarded accordingly.

12. The claimant is also entitled for interest @ of 12% per annum in terms of mandate of Section 4A of 1923 Act for the period commencing from 30 days after the accident, i.e. 30 days after 27.09.2010 till the date of realization.

13. Claimant is also entitled for penalty, i.e. 50% of the awarded compensation which will be first payable by respondent No.3 to 6, who will be entitled to recover the same from respondent No.2.

14. Any amount already paid shall be set off. Further interest be granted @ 9% per annum on the penalty awarded.

15. With the aforesaid modification in the impugned award, the appeal, i.e. FAO No.2341 of 2016 is disposed off.

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

17. A photocopy of this order be placed on the file of other connected case.

(PANKAJ JAIN)
JUDGE

01.12.2025

Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No