

Before G.S. Sandhwalia, J.

HARVIR KAUR @ SIMRAN KAUR—*Petitioner*

versus

RAMESH KUMAR AND OTHERS—*Respondents*

FAO No.1502 of 2013

May 12, 2017

Employee's Compensation Act, 1923—S.30—Workmen's Compensation Act, 1923—S.4A—Provisional Payment—Mandatory to be paid immediately after accident—Failure to pay in prescribed period—Commissioner to initiate penalty proceedings.

Held that, the amount of penalty, as such, is payable by the employer and for that, a separate show cause notice has been provided under the Proviso and without giving reasonable opportunity, the same cannot be imposed. The Commissioner would have to come to a categorical conclusion that there was no justification for the delay, since the provisional payment had to be given immediately after the accident. In the absence of provisional payment, within the prescribed period, the Commissioner could not come to a conclusion, as such, that there was any justification for the delay in the absence of any material. By the issuance of the show cause notice, the Commissioner would categorically, as such, deal with the said issue whether there was any justifiable ground for delay or not. Only where the provisional payment, as such, has been made, the Commissioner could come to a conclusion that there was some justification and in the absence of any provisional payment having been made, it would not be permissible, as such, for the Commissioner to come to such a conclusion and not to issue the show cause notice for payment of penalty proceedings, until there was sufficient material on record. The purpose of the said provision is that compensation must be paid as soon as it falls due, in order to ensure that the victim gets immediate relief and succor. The same is couched in a mandatory manner and cannot be held to be directory, as such. The wordings used are that the employer is bound to make the provisional payment and the said provision has been incorporated, being a beneficial piece of legislation in favour of the employee and it is to deter the employer from not making such payment and in such circumstances, keeping in view the above, the Commissioner shall initiate penalty proceedings against respondent No.1-employer. (Para 14)

Monika Jalota, Advocate
for the appellant.

P.S. Saini, Advocate
for respondent No.2.

Respondents No.3 & 4 ex parte.

G.S. SANDHAWALIA, J.

CM-8304-CII-2013

(1) The application for condonation of delay of 51 days in filing the present appeal has been filed. In view of the averments made, duly supported by the affidavit of Harvir Kaur @ Simran Kaur-appellant, the application is allowed. The delay of 51 days in filing the appeal is condoned.

(2) CM stands disposed of.

Main case

(3) The present appeal has been filed under Section 30 of the Employee's Compensation Act, 1923 (hereinafter referred to as 'the Act') by the wife of the deceased employee against the order dated 16.11.2012 passed by the Commissioner, Patiala under the Act.

(4) Counsel for the appellant has contended that the statutory interest @ 12% was liable to be paid, instead of 9% granted from the date of the accident and funeral expenses to the tune of Rs.5,000/- under Section 4 (4) of the Act were liable to be paid by the Insurance Company apart from the penalty proceedings which should have been initiated against the respondent No.1-employer.

(5) The deceased was aged around 26 years while driving the Jeep of the respondent No.1 and on account of the rear tyre bursting, he lost control of the vehicle and it went off the road and hit a tree, due to which he received injuries and was taken to the hospital in Fatehgarh Sahib but died on the way. The DDR No.14 dated 14.01.2010 was lodged at P.S. Mullepur, District Fatehgarh Sahib and, accordingly, a postmortem was also conducted.

(6) A legal notice dated 13.02.2010 was served upon respondents No.1 and 2 and on account of the non-payment, the claim petition was filed along with respondents No.3 and 4, who were father and mother of the deceased.

(7) The employer admitted the monthly salary of Rs.5,000/, but denied any extra charges. The dependency of the parents was also objected to. It was averred that the employer as such had paid Rs.55,000/- to the claimants in the presence of Kamal Kumar and Mohinder Singh and on account of the insurance, the insurance company was liable to pay.

(8) The insurance company-respondent No.2 took the usual defences of the validity of the driving licence and the vehicle having not any fitness certificate and also denied any legal notice having been received or even the lodging of the DDR.

(9) Keeping in view the postmortem report Ex.C-2 and the DDR Ex.C-3 and the legal notice dated 13.02.2010 Ex.C-4 alongwith the postal receipts Ex.C-5 and Ex.C-6 and the statement of the claimant-wife, it was held that the accident had occurred during the course of the employment and the employee had died in the said accident while performing his duties and resultantly, the issue No.1 was decided in favour of the claimants.

(10) Similarly, on the issue No.2, it was held the claimants were dependent upon the income of the deceased and in view of the valid driving licence, which was not rebutted, the insurance company cannot escape from his liability to pay the compensation. The age of the deceased was taken 26 years as per the driving licence as 22.11.1983 and keeping in view the the admission of the amount of wages of Rs.4,000/- and Explanation II to Section 4 (1) of the Act and by applying the relevant factor of 215.28 a sum of Rs.4,38,560/- was awarded as compensation. However, the interest was only granted @ 9% from the date of the accident, in spite of the fact Section 4-A (3) (a) was taken into consideration. The said demand of interest from the date of accident is, thus, in consequence with the settled principles laid down by a Four Judges Bench of the Apex Court in *Pratap Narain Singh Deo* versus *Srinivas Sabata*¹ wherein it was held that compensation is payable from the date of accident and not from the date of the award. In *Ved Prakash* versus *Premi Devi*², the liability of interest element, apart from the compensation, was also held to be that of the Insurance Company in cases of insurance contracts being in force. The said view was followed by the Apex Court in *Oriental*

¹ (1976) 1 SCC 289

² (1997) 8 SCC 1

Insurance Company Ltd. versus Siby George³ and in ***Saberbibi Yakubhai Shaikh versus National Insurance Co. Ltd.***⁴.

(11) In ***New India Assurance Co. Ltd. versus Harshadbhai Amrutbhai Modhiya***⁵ it was clarified that in view of Section 12 of the Act, if there was a clause, as such, to contract out, the insurer, as such, could move out of the reimbursement liability, which was not prohibited by the statute.

(12) In ***Jaya Biswal versus Branch Manager, IFFCO Tokio General Insurance Company Ltd. & another***⁶, the said view has further been reiterated, that the interest is liable to be paid from the date of the accident. Relevant portion reads as under:

“26. Further, an interest at the rate of 12% per annum from the date of accident, that is 19.07.2011, is also payable to the appellants over the above awarded amount. In light of the unnecessary litigation and the hardship of the appellants in spending litigation to get the compensation which was rightly due to them under the Act, we deem it fit to award the appellants costs as Rs.25,000/-.”

(13) The order is also silent regarding the penalty for which mandatory show cause notice should have been issued. Section 4A of the Workmen's Compensation Act, 1923 provides that provisional payment is to be made by the employer to the extent of the liability which he accepts, which is to be deposited with the Commissioner, without prejudice to the right of the employee to make further claim. Where the employer is in default in paying the compensation within one month, from the date it fell due under Sub-section 3(a), the entitlement of payment of interest would be @ 12% or at such higher rate, not exceeding the maximum of the lending rate of any scheduled bank, on the amount due. Similarly, under Sub-section 3(b), even there is no justification given for the delay, the employer has to also, in addition to the amount of arrears of interest, pay a further sum not exceeding 50% of such amount by way of penalty. The Proviso further provides that order for payment of penalty shall not be passed without given reasonable opportunity to the employer as to why it should not

³(2012) 12 SCC 540

⁴(2014) 2 SCC 298.

⁵ 2006 (5) SCC 192

⁶ 2016 (11) SCC 201

be passed. Section 4A 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 the workman, as the case may be, without prejudice to the right of the workman 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— 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 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 (2 of 1934).

3A. The interest and the penalty payable under sub-section

(3) shall be paid to the workman or his dependent, as the case may be.]]”

(14) Thus, it is apparent from the above provisions that the amount of penalty, as such, is payable by the employer and for that, a separate show cause notice has been provided under the Proviso and without giving reasonable opportunity, the same cannot be imposed. The Commissioner would have to come to a categorical conclusion that there was no justification for the delay, since the provisional payment had to be given immediately after the accident. In the absence of provisional payment, within the prescribed period, the Commissioner could not come to a conclusion, as such, that there was any justification for the delay in the absence of any material. By the issuance of the show cause notice, the Commissioner would categorically, as such, deal with the said issue whether there was any justifiable ground for delay or not. Only where the provisional payment, as such, has been made, the Commissioner could come to a conclusion that there was some justification and in the absence of any provisional payment having been made, it would not be permissible, as such, for the Commissioner to come to such a conclusion and not to issue the show cause notice for payment of penalty proceedings, until there was sufficient material on record. The purpose of the said provision is that compensation must be paid as soon as it falls due, in order to ensure that the victim gets immediate relief and succor. The same is couched in a mandatory manner and cannot be held to be directory, as such. The wordings used are that the employer is bound to make the provisional payment and the said provision has been incorporated, being a beneficial piece of legislation in favour of the employee and it is to deter the employer from not making such payment and in such circumstances, keeping in view the above, the Commissioner shall initiate penalty proceedings against respondent No.1-employer.

(15) Accordingly, appeal stands partly allowed to the extent of interest element, which will go up to 12% and Rs.5,000/- as funeral expenses and both will be paid by the insurance company and penalty proceedings be initiated against the employer.

Shubreet Kaur