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Court : Mumbai Nagpur

Decided On : Jan-30-2014

Judge : S.B. Shukre

Appeal No. : First Appeal No. 751 of 2013

Appellant : Subhash and Another

Respondent : The National Insurance Co. Ltd. Through Its Divisiona Manager and Another

Advocate for Def. : Shri. Hitesh Verma, Shri. S.S. Ghate

Advocate for Pet/Ap. : Shri. Navkarkar

Judgement :

Oral Judgment:

Heard.

2. This appeal is directed against the judgment and order dated 2122013 passed by Labour Court, Wardha in WCA No. 1/2011. The appellants are the original applicants, who had filed an application under Section 22(2) of the Employees Compensation Act, 1923 for determination of amount of compensation payable to

them for the accidental death of their son, Suresh, during the course of the employment. Respondent no. 1, the insurance company is the original non-applicant no. 2 and respondent no. 2, the employer of deceased Suresh Tiwade is the original non-applicant no. 1.

3. The appellants claimed that death of Suresh Tiwade, who was the driver employed on the truck bearing registration no. MH-32-B-4685 owned by respondent no. 2 and insured with respondent no. 1, occurred on 17-11-2010 during the course and from out of the employment. Therefore, they filed an application before the Labour Court for determination of compensation payable to them.

4. Respondent no. 2 resisted the application by denying the fact that deceased Suresh Tiwade was an employed by him as a driver on the truck. However, it was admitted by him that the truck was insured with respondent no. 1.

5. Respondent no. 1 admitted the ownership and insurance of truck, but denied that the deceased was in the employment of respondent no. 2. He denied that the death occurred during the course of the employment and it arose out of the employment.

6. On these rival pleadings, several points were framed by the Labour Court and after considering evidence available on record, the learned Judge came to the conclusion that deceased Suresh died during the course of and from out of the employment with respondent no. 2 and that both the respondents were liable to pay compensation jointly and severally to the appellants. The compensation amount was fixed at Rs. 7,15,761/- and it was directed to be paid with interest at the rate of 12% per annum from the date of award till its realization.

7. Since the period of interest awarded on the compensation amount was not acceptable to the appellants, the appellants filed the present appeal. This is how the parties are before this Court in this appeal.

8. The appellants have challenged the impugned judgment and order only on a limited aspect relating to the period for which the interest ought to have been

granted by the learned Judge. Having heard the submissions made on this aspect by both the sides, I find that the appeal deserves to be admitted on a substantial question of law. Hence, admit on the following substantial question of law. What should be the point from which interest should be awarded on the amount of compensation under Section 4(A)(3)(a) of the Employees Compensation Act, 1923 ?

9. Finally heard by consent.

10. Shri Navkarkar, learned counsel for the appellants has submitted that the interest payable on the amount of compensation, which has not been paid within a period of one month from the time it has fallen due, must relate back to the date of accident and therefore, learned Judge ought to have granted interest not from the date of award or from the date of adjudication but from the date of accident. In support, he has placed reliance on following cases.

(i) Pratap Narain Singh Deo Vs. Shrinivas Sabata and anr. [AIR 1976 SC 222(1)],

(ii) Kerala State Electricity Board and anr. Vs. Valsala K. and anr. [AIR 1999 SC 3502(1)],

(iii) Oriental Insurance Co. Ltd. Vs. Siby George and ors. [AIR 2012 SC 3144],

(iv) Oriental Insurance Co. Ltd., through Regional Manager, Akola Vs. Sunita wd/o Gajanan Kale and ors. [2013 III CLR 362] and

(v) Udhav Rangnathrao Pawar Vs. Sheshrao Ramji Jogdand and anr. [2009 AC 33(Bom)(AB)]

11. Shri Hitesh Verma, learned counsel for respondent no. 1 as well as Shri S.S. Ghate, learned counsel for respondent no. 2, are in disagreement with the contention so raised by learned counsel for the appellants. They submit that although in **Pratap Narain Singh Deo** case (supra), Honble Supreme Court has held that the liability of the employer to pay compensation in the case of occurrence of personal injury caused by accident during the course of and arising out of employment starts from the date of the accident, the law laid down in this

case is distinguishable on facts. They have invited my attention to one of the most striking features of this case by referring to the observations of Honble Apex Court appearing in paragraph 7 of this judgment. From these observations, they submit that one can say that the Honble Apex Court has laid down a principle that the liability to pay compensation starts from the date of accident only in those cases, where there is absolutely no dispute raised by the employer about his liability to pay the compensation and the question is only about the quantum of compensation. They further submit that this law has been followed in rest of the cases relied upon by the appellants and therefore, even the principles of law stated in the other cases would not be applicable on facts to the instant case. According to them, in the present case, the death of Suresh had occurred in suspicious circumstances in the sense that he was found to be murdered when his dead body was discovered lying on the road. They submit that at that point of time, it was not known to the employer or insurer as to whether or not deceased Suresh had died due to some accident, which had any connection with his performance as an employee of respondent no. 2. Therefore, they further submit, it was natural for the employer as well as the insurer to wait for adjudication from the competent authority and as soon as the adjudication came, the respondent no. 1 accepted the adjudication and deposited the amount. Therefore, in such a case, they further submit, interest that would be payable on the compensation amount would be not from the date of accident but from the date of adjudication.

12. So far as the facts of **Pratap Narain Singh Deo** case are concerned, learned counsel for respondent nos. 1 and 2 are right when they submit that in that case, the employer had not disputed at all his liability to pay the compensation and against the background of this admission, the Honble Apex Court has held that the liability to pay compensation by the employer would arise soon after the occurrence of personal injury in the accident. In other words, the Honble Apex Court has laid down a principle that the liability to pay the compensation would relate back to the date of accident and then it goes without saying that even the interest that would be liable to be paid thereon, would start accruing from the date of the accident and not from the date of the adjudication. This is what has been interpreted in the subsequent decisions rendered by the Honble Supreme Court. These decisions are in the cases of **Valsala K. and Siby George** (cited supra). In

the case of **Siby George**, which is a case of recent origin, the Honble Apex Court has also considered the law laid down by Honble Apex Court in the case of **National Insurance Co. Ltd. Vs. Mubasir Ahmed and anr. (2007 I CLR 683)**. In this case, the Honble Apex Court took a different view with regard to the period of interest payable on the amount of compensation adjudicated by the court. The Honble Supreme Court held that the starting point for payment of interest has to be taken as the date of adjudication of the claim and not the date of the accident. It would be useful to refer to the observations of the Honble Apex Court as they appear in paragraph 8. The relevant observations are reproduced thus,

œIn the instant case, the accident took place after the amendment and, therefore, the rate of 12% as fixed by the High Court cannot be faulted. But the period as fixed by it is wrong. The starting point is on completion of one month from the date on which it fell due. Obviously it cannot be the date of accident. Since no indication is there as when it becomes due, it has to be taken to be the date of adjudication of the claim. This appears to be so because Section 4-A(1) prescribes that compensation under Section 4 shall be paid as soon as it falls due. The compensation becomes due on the basis of adjudication of the claim made. The adjudication under Section 4 in some cases involves the assessment of loss of earning capacity by a qualified medical practitioner. Unless adjudication is done, question of compensation becoming due does not arise. The position becomes clearer on a reading of sub-section (2) of Section 4-A. It provides that provisional payment to the extent of admitted liability has to be made when employer does not accept the liability for compensation to the extent claimed. The crucial expression is œfalls due?. Significantly, legislature has not used the expression œfrom the date of accident?. Unless there is an adjudication, the question of an amount falling due does not arise.?

After considering these observations in **Siby George**, the Honble Supreme Court found that decision in **Mubasir Ahmed** cannot be said to provide any valid guidelines as it was rendered in ignorance of earlier larger bench decisions of the Honble Supreme Court by which the issue was concluded (see para 8). The Honble Supreme Court, therefore, further held that this decision does not express correct view and does not make any binding precedent. Observations of Honble

Supreme Court in this regard appear in para 12, which are reproduced thus:

12. In light of the decisions in **Pratap Narain Singh Deo** and **Valsala**, it is not open to contend that the payment of compensation would fall due only after the Commissioners order or with reference to the date on which the claim application is made. The decisions in **Mubasir Ahmed** and **Mohd. Nasir** insofar as they took a contrary view to the earlier decisions in **Pratap Narain Singh Deo** and **Valsala** do not express the correct view and do not make binding precedents.?

13. In the instant case, the facts are distinguishable from the facts of the said case of **Pratap Narain Singh Deo** (supra) in the sense that in this case, the employer as well as the insurer never knew as to whether or not they were liable to pay compensation to the appellants until it was found on facts after appreciation of evidence by the Labour Court that the death was accidental and it had occurred during the course and from out of the employment. But, once the Honble Apex Court has held in **Siby George** (supra) that the law laid down in the case of **Mubasir Ahmed** (supra) does not express the correct view of the issue involved, it would not be open for this court to entertain any other argument or view on this issue by advertng to the facts of the instant case. I, therefore, find that the interest granted by the Labour Court is not in accordance with the law as laid down by the Honble Supreme Court in a series of judgments starting from **Pratap Narain Singh Deo** case to **Siby George** case. In fact the principles laid down in these judgments have been followed by learned Single Judges in the cases of **Sunita wd/o Gajanan Kale** (supra) and **Udhav Rangnathrao Pawar Vs. Sheshrao Ramji Jogdand** (supra). In the latter case, the learned Single Judge, while summarizing these principles, has observed that merely because the dispute is raised in respect of the liability to pay the compensation by the employer and the same is the subject matter of determination by the learned Commissioner under Section 19 of the Act, the employer is not absolved from his liability to pay the amount of interest with effect from the date of incident or accident. The learned Judge has further observed that in such a situation, though the liability to pay is determined on any date subsequent to the date of occurrence of an accident, the payment of interest is automatic and it becomes a part and parcel of the legal liability of the employer, which accrued to him on the date of the accident. Thus,

the substantial question of law involved in this case has to be answered in terms that the starting point for payment of interest is the date of accident and not the date of adjudication and, therefore, the impugned judgment and award insofar as they grant interest from the date of award cannot be sustained in law. To this extent, the appeal succeeds.

14. Appeal is, therefore, allowed and the impugned judgment and award to the extent that it grants interest from the date of award is hereby quashed and set aside and it is directed that the interest at the rate of 12% per annum shall be payable from the date of accident till the date on which the amount of compensation has been deposited in the Labour Court.

In the circumstances of the case, there shall be no order as to costs.

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