

**Ramlal Son of Mohanlal Maraskolhe Vs. the Commissioner Workmen's Compensation Act and Ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/355247](http://sooperkanoon.com/355247)

**Court :** Mumbai

**Decided On :** Sep-21-1988

**Reported in :** [1989(59)FLR61]; (1993)IIILLJ33Bom

**Judge :** V.A. Mohta, J.

**Acts :** Workmen's Compensation Act, 1923 - Sections 4 and 4A

**Appeal No. :** Writ Petition No. 19 of 1988

**Appellant :** Ramlal Son of Mohanlal Maraskolhe

**Respondent :** The Commissioner Workmen's Compensation Act and Ors.

**Advocate for Def. :** Anjan De, Adv. for R-3

**Advocate for Pet/Ap. :** V.G. Deshpande, Adv.

**Disposition :** Petition allowed

**Judgement :**

**V.A. Mohta, J.**

1. During the course of employment with respondent No. 2 M/s. Ajaipal Mangal and Company-civil contractor-a female coolie Ku. Ratulabai daughter of Mohanlal

Maraskolhe met with an accidental and instantaneous death on 17th May 1983. A sum of Rs. 16,800/- was deposited by way of compensation to be paid to the legal heir on 12th October 1984 with the Commissioner, under the Workmen's Compensation Act, 1923 (the Act). Sole legal heir of Ratulabai-her younger brother Ramlal, the petitioner - filed an application under Section 8 of the Act on 10th March 1987, claiming the amount, interest and penalty for delayed deposit at the rate of 50% from the second respondent. The second respondent resisted the application inter alia, on the ground that the employee was insured against such a claim, the Insurance Company was moved in the matter and the delay was on the part of the Insurance Company. The petitioner thereafter applied for amendment and joined the insurance company-respondent No. 3-as a party. The Insurance Company did not file any reply. The petitioner entered into witness box. None was examined by respondents No. 1 and 2 and the Commissioner passed the following order:

'Read evidence of applicant Ramlal. Satisfied that except applicant there is no other dependent. As such the compensation amount of Rs. 16,800/- less Rs. 5,000/- already paid be paid in cash to applicant Ramlal. Claim for interest and penalty disallowed.'

Aggrieved by the order of disallowing interest and penalty, the present petition has been filed.

2. That the amount falls due as soon as the accident takes place, is clear from Section 4 of the Act. Not only the amount was neither paid nor deposited within a period of one month but even the interim compensation was not offered. Delay was admitted but the blame was shifted on the Insurance Company. The respondents chose not to examine anybody. The commissioner has given no reason for disallowing either interest or penalty despite the clear provisions of Section 4-A of the Act, ignoring the basic object with which the section has been introduced on the statute Book by Act No. 8 of 1959 with effect from 1st June, 1959.

3. Shri Deshpande, the learned counsel for the petitioner, is absolutely right when he contends that the claimant was not concerned with what transpired between

the insured and the insurer. The delay of nearly 17 months was admitted. It is not a small delay. The object of Section 4-A of the Act is to compel the employer to deposit the amount, in any case, within a period of one month, or to face the consequences of payment of interest as well as penalty. Once there is delay, order of interest and penalty must follow unless reasons for delay are explained and established. The respondents Nos. 1 and 2 had sufficient notice of the demand of the claimant for interest and penalty. Justification put forward is not legal apart from the fact that no material is placed on record to explain how 17 months' time was required to deposit the amount the liability in respect of which could not be disputed. The commissioner has given no reason whatsoever for disallowing the interest as well as the penalty. Under the circumstances, the grievance made by the petitioner is absolutely correct. He is entitled to interest at 6% per annum from 17th May 1983 till 12th October, 1984, which amount, according to the calculation made by Shri Deshpande, comes to Rs. 1428/-.

4. What about penalty is the last surviving question. It is pertinent to notice that with effect from 1st July 1984, new Section 4 as amended by Act No. 22 of 1984 applies. As per new section amount comes to Rs. 20,000/- Having regard to all these factors, in my judgment imposition of penalty at 25% would meet the ends of justice.

5. So calculated, the additional amount to which the claimant is entitled comes to Rs. 5628/-. (Rs. 1428/- interest + Rs. 4200/-penalty). I direct the respondents to pay the amount within a period of one month from today. This amount shall carry interest at 18% per annum from the date of default till actual payment.

6. I am conscious that imposition of penalty and interest is a matter of discretion of the Commissioner. Remand to him to decide these questions is possible but not desirable, considering the amount involved and the unbearable burden on the petitioner to face further litigation. It would also further delay the matter. It is under these circumstances that I have chosen to close the chapter here itself.

7. To conclude, the petition is allowed and the rule made absolute in the above terms. Respondents to pay the costs of this petition.

