

Kailash Vs. Rajesh and anr.

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SooperKanoon Citation : sooperkanoon.com/511477

Court : Madhya Pradesh

Decided On : Jan-30-2008

Reported in : [2008(117)FLR736]

Judge : N.K. Mody, J.

Appellant : Kailash

Respondent : Rajesh and anr.

Advocate for Def. : Mr. S.S. Chawla

Disposition : Appeal dismissed

Judgement :

N.K. Mody, J.

1. Being aggrieved by the order dated 7.8.2006, passed by Commissioner for Workmen's Compensation, Labour Court, Indore, in Case No. 46/99, W.C.N.F., whereby on account of injuries sustained by the appellant a sum of Rs. 1,14,367/-, has been awarded along with interest @ 6% p.a. from the date of accident, the present appeal, has been filed.

2. Short facts of the case are that the appellant filed a claim petition alleging that appellant sustained injuries on 10.7.1998, during the course of his employment. Claim petition filed by the appellant was contested by respondent No. 2 and was

allowed along with interest from the date of accident. Learned Counsel for the appellant submits that the interest has been awarded @ 6% p.a., while the interest ought to have been awarded @ 12% p.a., as per Section 4-A of Workmen's Compensation Act, which has been amended w.e.f. 15.9.1995 by Amendment Act, No. 30/1995.

3. Mr. S.S. Chawla, learned Counsel for respondent No. 2 submits that the appellant is entitled for the interest from the date of adjudication. Thus, the question involved in the appeal is that whether appellant is entitled for interest @ 12% p.a. and also from the date of accident or from the date of adjudication?

4. Mr. S.S. Chawla, learned Counsel for respondent No. 2 placed reliance on a decision of Hon'ble Apex Court in the matter of National Insurance Co. Ltd. v. Mubasir Ahmed and Anr. 2007 (112) FLR 1933 (SC), wherein the Hon'ble Apex Court has observed that 'Interest is payable under Section 4-A(3) if there is default in paying the compensation due under this Act within one month from the date it fell due. The question of liability under Section 4-A was dealt with by this Court in Maghar Singh v. Jashwant Singh : 1997 ACJ 517 (SC). By Amending Act, 30 of 1995, Section 4-A of the Act was amended, inter alia, fixing the minimum rate of interest to be simple interest at the rate of 12 per cent. In the instant case, the accident took place after the amendment and, therefore, the rate of 12 per cent 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 'falls due'.

Significantly, legislature has not used the expression 'from the date of accident'. Unless there is an adjudication, the question of an amount falling due does not arise.'

5. Learned Counsel submits that in view of the aforesaid position of law the liability of respondent No. 2 insurance company for payment of interest is from the date when it was held that the respondent is liable for payment of compensation.

6. Facing to this situation Mr. H.S. Rajpal, learned Counsel for the appellant submits that appellant is entitled for interest from the date of accident. Reliance was placed on a decision of Hon'ble Apex Court in the matter of Pratap Narain Singh Deo v. Shrinivas Sabata and Anr. 1976 (32) FLR 92 (SC), wherein four judges of the Hon'ble Apex Court observed that 'The employer therefore become liable to pay the compensation as soon as the aforesaid personal injury was caused to the workman by the accident, which admittedly arose out of and in the course of the employment.'

7. In the matter of Swan Gali Bai and Ors. v. Kamal Agrawal, in M.A. No. 534/2007, Division Bench of this Court had an occasion to take into consideration the law laid down by the Hon'ble Apex Court in the case of Pratap Narain Singh (supra), and also in the matter of National Insurance Co. (supra). It was held by the Hon'ble Division Bench that the law laid down in the matter of Pratap Narain Singh's case the Hon'ble Apex Court was dealing with the issue of penalty and therefore, is not applicable to the concept of interest in as much as penalty is not payable by the insurer as per the decision rendered in the case of Ved Prakash Garg (supra). It was also held by the Hon'ble Division Bench that the decision rendered in Pratap Narain's case is distinguishable. In the present case the order passed by the learned Court below is dated 7.8.2006. Since the interest is payable @ 12% p.a., therefore, there was no justification on the part of learned Court below in awarding interest @ 6% p.a.

8. Since the learned Court below has awarded the interest from the date of application and the same has not been challenged by the respondent No. 2 by way of filing appeal or in shape of cross-objections, therefore, at this stage respondent No. 2 cannot be allowed to raise the objection that the interest was

payable from the date of passing of the order.

9. From perusal of the record it is evident that the date of accident was 10.7.1998, while claim petition was filed on 6.5.1999. In his cross-examination appellant has admitted that appellant obtained the licence of heavy motor vehicle with effect from 18.11.1998 and prior to it appellant was having the licence of Light Motor Vehicle. This fact makes it clear that on the date of accident appellant was not possessing the valid driving licence for Heavy Motor Vehicle. It also makes clear that after the accident which took place on 10.7.1998, appellant was found fit for driving heavy motor vehicle on 18.11.1998, i.e. after four months of accident. It appears that this fact was not at all taken into consideration by the learned Court below while passing the order in favour of appellant. Since the learned Court below has allowed the permanent disability @ 50% while computing the compensation and the appellant was found fit on 18.11.1998, when the licence of heavy motor vehicle was issued to him, therefore, appellant is not entitled to claim higher rate of interest. In view of this the appeal stands dismissed. No order as to costs.