Sasidharan Vs. State of Kerala

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Court : Kerala

Decided On : Nov-20-2000

Reported in : 2001ACJ1502

Judge : Mr. J.B. Koshy and; Mr. N. Krishnan Nair, JJ.

Acts : Workmen's Compensation Act, 1923 - Sections 4-A(3)

Appeal No. : M.F.A. No. 324 of 1999

Appellant : Sasidharan

Respondent : State of Kerala

Advocate for Def. : Ashok M. Cherian, Adv.

Advocate for Pet/Ap. : P.M. Pareeth, Adv.

Judgement :

J.B. Koshy, J.

1. Appellant who is the claimant in a Workmen's Compensation case questions thejudgment of the Commissioner for Workmen's Compensation in so far as the Commissioner did not award any interest from the date of the accident. The Commissioner awarded the compensation as follows:

'The opposite party is hereby directed to deposit with this Court an amount of Rs. 94,792/-(Rupees ninety four thousand seven hundred and ninety two only) within 30 days from the date of receipt of this order, failing which revenue recovery proceedings will be initiated for the realisation of the said amount with 12% interest from the date of default onwards.'

2. The case of the appellant is that as per the amended provision of S. 4-A(3)(a) of the Workmen's Compensation Act, 1923 (hereinafter referred to as 'The Act') 12% interest has to be awarded 'on the amount due'. Before amendment of the Act S. 4-A(3) read as follows:

'(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 may direct that in addition to the amount of the arrears, simple interest at the rate of six percent per annum on the amount due together with, if in the opinion of the Commissioner there is no justification for the delay, a further sum not exceeding fifty per cent of such amount, shall be recovered from the employer by way of penalty.'

From 15.9.95 the Act was amended and S. 4-A(3)(a) was amended as follows:

'(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-

(a) 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

(b) 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 percent 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:-.....'

3. The amount of compensation payable has to be paid or deposited within one month from the date of accident. In default, interest is payable from the date on which the accident occurred and not from the date of the order passed by the Commissioner for Workmen's Compensation. This has been so held by the DivisionBench of this Court in The Oriental Insurance Co. Ltd. v. Abdul Nazar (ILR 1997 (1) Kerala 496). Rate of interest is 12% and the word used is 'shall' and therefore it is obligatory on the part of the Commissioner to grant interest at the rate of 12% from the date of accident till the date of payment, if deposit of compensation is delayed for more than a month. Liability to pay interest is different from liability to pay penalty which can he imposed only on finding that there is no justification on the part of the employee for delaying the payment.

In this case, admittedly the accident occurred on 9.3.96 only after the amendment of the Act and therefore even though order for compensation was passed only in 1998, the liability to pay interest starts from the date of accident. Hence we allow the appeal and direct the Kerala Electricity Board to deposit before the Commissioner for Workmen's Compensation the interest on the amount awarded at the rate of 12% per annum from the date of accident till the date of deposit of the amount awarded.