

Raveendran Vs. Jayasree

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Court : Kerala

Decided On : Jun-20-2005

Reported in : IV(2005)ACC73; 2006ACJ1215; [2006(107)FLR202];
2005(3)KLT351; (2005)IIILLJ498Ker

Judge : J.B. Koshy and; K.R. Udayabhanu, JJ.

Acts : Workemen's Compensation Act, 1923 - Sections 4(1), 4A(3) and 17

Appeal No. : M.F.A. No. 99 of 2005

Appellant : Raveendran

Respondent : Jayasree

Advocate for Pet/Ap. : A. Mohamed Mustaque and; Kauser Edappagath, Advs.

Disposition : Appeal dismissed

Judgement :

J.B. Koshy, J.

1. First opposite party in W.C.C. No. 10 of 2002 on the file of the Commissioner for Workmen's Compensation, Kannur is the Appellant herein. Respondents in the appeal claimed compensation on the ground that husband of the first respondent and father of respondents 2 to 5, while working as watchman in the house of the

appellant, died during the course of employment and the death was arising out of employment. During the pendency of the proceedings, the matter was agreed to be settled on payment of Rs. 75,000/-. The agreement was not produced. First claimant widow of the deceased employee deposed before the Court that her husband was employed under the appellant and during the course of employment he met with an accident and died. Even though in the application for claim, she claimed that his salary was Rs. 4,500/-, during evidence, she deposed that it was only Rs. 1,000/- (may be due to the settlement). Even though in the claim petition the age of her husband was mentioned as 54, she deposed that the husband was aged 65 years. A reduced income of Rs. 1,000/- and a higher age of 65 might have been deposed to suit the amount of compensation agreed upon. She was not cross-examined. Therefore, compensation was calculated taking 65 as his age and Rs. 1,000/- as the monthly income. The compensation was calculated as follows:

$$1000 \times 50 \times 99,37\text{-----} = \text{Rs. } 49,685\text{-}1000$$

But, minimum compensation payable to the dependents on the death of a workman under Section 4(1)(a) of the Workmen's Compensation Act (hereinafter referred to as 'the Act') is Rs. 80,000/- and minimum compensation of Rs. 80,000/- was awarded. It is the case of the appellant that apart from Rs. 80,000/-, 12% simple interest from the date of accident till its deposit was also awarded. Since the matter is compromised, the contention of the appellant is that he is not bound to pay the amount of interest. It is further contended that the amount fell due on the date of the settlement and not on the date of accident.

2. Under Section 4A(3)(a) of the Act, it is mandatory to pay simple interest at the rate of 12% from the date of accident. Section 4A(3)(b) of the Act also provides that the Commissioner is empowered to impose 50% of the compensation as penalty if the employer is delaying the matter without any justification. In this case, the Commissioner did not award any penalty. But, grant of 12% interest per annum from the date of accident is mandatory. The matter is covered by the decision of the Supreme Court in Ved Prakash Garg v. Premi Devi and Ors., : AIR 1997 SC3854 . We also note that under Section 17 of the Act, the workman is not

entitled to relinquish the rights of compensation and compensation has to be calculated, strictly according to the Act. Section 17 reads as follows:

'17. Contracting out.-- Any contract or agreement whether made before or after the commencement of this Act, whereby a workman relinquishes any right of compensation from the employer for personal injury arising out of or in the course of the employment shall be null and void in so far as it purports to remove or reduce the liability of any person to pay compensation under this Act.'

Section 8(1) of the Act is also relevant here. It is as follows:

'8. Distribution of compensation:- (1) No payment of compensation in respect of a workman whose injury has resulted in death, and no payment of a lump sum as compensation to a woman or a person under a legal disability, shall be made otherwise than by deposit with the Commissioner, and no such payment made directly by an employer shall be deemed to be a payment of compensation.'

Here, there is also no case that part payment was made to the dependents of the deceased before the award of the Commissioner. As held by the Apex Court in *Roshan Deen v. Preeti Lal*, : (2002)ILLJ465SC , legislative mandate is to protect the rights of the workman and it cannot be bypassed by way of extraordinary jurisdiction of the Court and by settlement between the parties. Since only minimum compensation payable under the Act was awarded and only statutory interest was ordered to be paid, we see no ground to interfere in the matter. Appeal is dismissed.

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