

Asstt. Engineer (D and M) R.S.E.B. Vs. Indira Devi and anr.

Asstt. Engineer (D and M) R.S.E.B. Vs. Indira Devi and anr.

SooperKanoon Citation : sooperkanoon.com/757936

Court : Rajasthan

Decided On : Jan-16-1995

Reported in : 1996ACJ277; [1995(71)FLR369]; (1996)1LLJ367Raj

Judge : B.J. Shethna, J.

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

Appeal No. : S.B.C.M.A. No. 317/1994

Appellant : Asstt. Engineer (D and M) R.S.E.B.

Respondent : indira Devi and anr.

Advocate for Def. : S.N. Trivedi, Adv.

Advocate for Pet/Ap. : D.S. Sishodia, Adv. assisted by,; R.K. Singhal, Adv.

Disposition : Appeal dismissed

Judgement :

ORDER

B.J. Shethna, J.

1. Heard Shri Sishodia, for the appellant.

2. Initially, the learned counsel has raised two submissions - (1) that the learned Workmen Compensation Commissioner committed an error in calculation in awarding compensation, which was given up subsequently when the learned counsel realised that no error was committed by the Commissioner, as per the Schedule to the Act. The second submission was raised by the learned counsel regarding awarding penalty at the rate of 25 percent. He submitted that the learned Commissioner ought not to have awarded penalty as, much before the filing of the application for compensation the appellant had deposited the compensation amount and, therefore, it cannot be said that his conduct was such which would call for the penalty.

3. Before appreciating the second submission made by learned counsel, few facts are required to be stated. The accident took place on August 15, 1990 and the application for compensation was filed by the claimants before the Commissioner on November 29, 1991. Before that, the appellant had deposited the compensation amount to the tune of Rs. 83, 182/- on July 10, 1991. It was also argued and averred in the memo of appeal that much before that the appellant tried to deposit the said amount of compensation by way of Demand Draft on May 3, 1991 but learned Commissioner refused to accept the same and orally asked the appellant to pay the said amount in cash which was in turn paid in cash on July 10, 1991. Therefore, in short the submission was that there was no deliberate delay on the part of the appellant in depositing the compensation amount.

4. Under the Workmen Compensation Act, the employer is required to calculate and deposit the compensation amount within 30 days from the date of accident. It is admitted fact that the appellant has not deposited the said amount within 30 days. It came to be deposited only on July 10, 1991. Of Course, there is an averment and also the submission that they tried to deposit the amount by Demand Draft on May 3, 1991 and the Commissioner refused and orally asked to pay in cash which they have deposited on July 10, 1991.

5. Except the bare words of the appellant, there is nothing on record to show that they have tried to pay the said amount by Demand Draft on May 3, 1991. Even assuming for the sake of arguments that they did try to deposit the said amount by

Demand Draft, which was not accepted and they were asked to deposit in cash, there is further delay of more than 2 months in depositing the cash amount. That delay has remained unexplained. To award a penalty is a discretion of the Commissioner and on the facts, if the Commissioner is satisfied that there is deliberate delay on the part of the employer, then the Commissioner must impose the penalty and, in this case, in my view, learned Commissioner has rightly awarded the penalty.

6. In view of the above discussion there is no substance and merit in this appeal. It fails and is hereby dismissed accordingly, with costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com