Ramlal and ors. Vs. Regional Manager, F.C.i. and ors.

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Court : Rajasthan

Decided On : Feb-27-1981

Reported in : 1981WLN74

Judge : M.C. Jain, J.

Appeal No. : S.B. Civil Misc. Appeal No. 85 of 1980

Appellant : Ramlal and ors.

Respondent : Regional Manager, F.C.i. and ors.

Advocate for Def. : Shri. I.J. Lodha, Shri. Lodha

Advocate for Pet/Ap. : Shri. B.L. Panwar, Shri. Panwar

Judgement :

M.C. Jain, J.

1. This is an appeal under Section 30 of the Workmen's Compensation Act, 1923 (hereinafter referred to as 'the Act') by the claimants of the deceased workman.

2. The deceased Bhagirath Ram was a workman employed by the Food Corporation of India. He sustained injuries by an accident arising out of and in the course of his employment resulting in his death on 17.4.1979. On that date he was working on his duty in Food Storage Depot, Pipar City. At about 12.45 p.m., while

he was working, stood of full load gunny bags suddenly fell on him and he died instantaneously on the spot. The father, mother and sister, being the dependents of the deceased workman, submitted an application for ordering deposit of compensation and award of compensation on 4.9.1979 claiming compensation to the tune of Rs. 18,000/-, penalty upto 50% of the amount of award with interest 6% from the date of accident till the date of payment. It was stated in the application that the monthly wages of the deceased amounted to Rs. 240/- and the deceased was 19 years of age at the time of his death. It was also stated that the non-applicants gave assurance for making payment of the amount of compensation, but they did not fulfil their statutory duty and obligation. A notice was, therefore, served on the non-applicants on 28.8.1979, but the compensation has not been deposited or paid.

3. The learned Commissioner issued notice, which was served on the non-applicants on 8.10.1979. However, on 28.4.1980 the District Manager, Food Corporation of India, Jodhpur, Shri Manu Nathani, presented an application stating that the matter was examined by the Legal Branch of Zonal Office (N), F.C.I., New Delhi. It was further stated that the amount of compensation actually works out to Rs. 16,800/- Rs. 6/- per day (monthly wages between 150/-to 200/-) in items of Schedule IV of the ACT and not Rs. 18,000/-. The amount could be deposited on passing Commissioner's order, settling the case accordingly within a month's time. A request was made to issue necessary orders for settling the case. On 16.5.1980 a cheque of Rs. 16,800/- was sent to the learned Commissioner. The learned Commissioner recorded the statements of Ramlal, and Ramkishan, and, thereafter heard the parties and passed the orders on 26.5.1980, wherein he determined the compensation to the tune of Rs. 16,800/-, payable in the manner as stated therein. The learned Commissioner, however. did not allow any penalty and interest. The prayer for penalty and interest was rejected, as the same was not found to be justified. Dis-satisfied with the refusal of prayer of penalty and interest the dependents have preferred this appeal.

4. I have heard Shri B.L. Panwar, learned Counsel for the appellants, and Shri I.J. Lodha, learned Counsel for the respondents.

5. The only question, which has been canvassed in this appeal, is that the learned Commissioner has wrongly refused the prayer in respect of penalty and interest without assigning any reason and thus has acted in an arbitrary manner and the discretion has not been judicially exercised.

6. At the out-set Shri Lodha, learned Counsel for the respondents, raised a preliminary objection. The grant of penalty and interest was discretionary with the Commissioner. He did not find any justification for the award of penalty and interest, so it was refused. The discretion has been rightly exercised and exercise of discretion does not raise any substantial question of law, so the appeal is not maintainable under Section 30 of the Act.

7. It is true that under Section 30 of the Act, the appeal lies only when the appeal involves a substantial question of law. Shri Panwar, learned Counsel for the appellants, urged that the appeal raises a substantial question of law, when discretion has been arbitrarily exercised by the Commissioner and no reasons have been assigned for refusal of the award of penalty and interest. According to Shri Panwar, there is no justification for refusal, as the learned Commissioner has not given any reason for the same. Shri Panwar urged that the employer was bound to deposit the compensation within one month from the date when the same fell due. The amount ought to have been voluntarily paid by the employer within one month of the accident, when the liability for compensation arose and it was at that time that the compensation fell due. The compensation was deposited as late as on 16.5.1980, much after service of notice. Thus, there was gross laches and delay on the part of the respondents to deposit the amount of compensation. In the absence of any justification for deposit of the amount of compensation so late, the Commissioner should have awarded the penalty and interest. Thus, non-award of penalty and interest, without any justifiable reason and wrong exercise of discretion raises a substantial question of law.

8. I find force in the above submissions of Shri Panwar. The only reason assigned by the learned Commissioner is that the award of penalty and interest is not justified. Why it is not justified, has not been stated. Thus, no reason has been assigned for refusal. In the circumstances it cannot be said that the discretion has

been rightly exercised. When discretion has not been rightly exercised on sound judicial, principles and when it is arbitrarily exercised, then it raises a substantial question of law and the same can be interfered with in appeal under Section 30 of the Act. Thus, I do not find any force in the preliminary objection raised by Shri Lodha.

9. Now the question arises as to whether the appellants are entitled to award of penalty and interest. Shri B.L. Panwar, learned Counsel for the appellants, mainly emphasised for award of interest and not for penalty. He urged that the appellants are entitled to interest after expiry d one month from the date of the accident, as there was statutory obligation of the employer to deposit the amount of compensation within one month from the date it fell due. Section 4A provides for compensation to be paid when due and penalty for default. Sub-section (1) of Section 4A lays down that compensation under Section 4 shall be paid as soon as it falls due, and under Sub-section (2) the the employer is under an obligation to make provisional payment to the-extent of liability which he accepts, and, such payment shall be deposited with the Commissioner or made to the workman. Sub-section (3) of Section 4A is relevant, which reads,-

(3) Where any employer is in default m 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 arrears, simple interest at the rate of six per cent 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.

Sub-section (1) of Section 3 provides that if personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of Chapter II. Section 4 provides for the amount of compensation. Thus the amount of compensation is to be calculated in accordance with the provisions contained in Section 4 and the liability for compensation arises under Section 3, when personal injury is caused to a workman by accident arising out of and in the course of his employment. Thus, it can be said that the compensation under Section 4 falls due when liability for compensation arises under Section 3 and compensation falls due when a personal injury is caused to a workman. According to Sub-section (3) of Section 4A, if an employer commits default in paying compensation due under the Act, within one month from the date it fell due, the Commissioner is empowered to direct the employer for payment of simple interest at the rate of six per cent per annum on the amount due and also for the payment of a further sum not exceeding fifty per cent of the amount due by way of penalty, if in the opinion of the Commissioner there is no justification for the delay.

10. Shri Lodha, learned Counsel for the respondents, urged that the compensation fell due only when the impugned order was passed and it did not fall due prior to that. The Food Corporation of India had shown its-willingness to deposit the amount within one month of the passing of the orders by the Commissioner and in fact the Food Corporation of India deposited the amount of , compensation, as worked out by it before passing of the order by the Commissioner, that is, on 16.5.1980. Thus, there was no delay on the part of the, Food Corporation of India and no occasion arose for exercise of discretion by the Commissioner. I am unable to agree with the above contention of Shri Lodha. Section 4A has to be read along with Sees. 3 and 4 of the Act. On reading of these provisions together it would be clear that the employer is required to deposit or to pay compensation within one month from the date when it falls due and the compensation falls due when the liability for payment arises, irrespective of the fact as to whether any order has been passed by the Commissioner for deposit or payment of the amount of compensation. Section 10 deals with notice and claim for compensation by the claimants Section 10A deals with the power of Commissioner to require from the employers statements regarding fatal accidents. Sub-section (2) of that section provides that if the employer is of opinion that he is liable to deposit compensation, he shall make the deposit within thirty days of the service of the notice. Section 10B provides for sending report by the employer to the Commissioner giving the circumstances attending the death or serious bodily injury, within seven days, where, by any law, notice is required to be given to any authority, of any accident occurring on his premises. It may be stated that payment under Section 10A(2) does not in any way absolve the employer from liability to pay interest and penalty, if so directed by the Commissioner under Sub-section (3) of Section 4A and on the

basis of Sub-section (2) of Section 10A, it cannot be said that payment of compensation falls due only on expiry of thirty days of service of notice under Section 10A. In my opinion, falling due of compensation is to be read in the light of arising of liability for payment of compensation, as there is no other provision under the Act, nor such a provision has been referred to me, which lays down that compensation shall fall due on a particular date. In this connection reference may be made to Saraswati Press, Dehradun v. Nand Ram 1971 A.C.J. 316. It was observed in this case that,--'Under Section 4A of the Act, compensation under Section 4 shall be paid as soon as it falls due. Consequently, the workman becomes entitled to the compensation as soon as it falls due, i.e. when the liability for payment of compensation is fixed on the employers. This shall, as laid down in Section 3 be on the date the injury is caused and not at any subsequent occasion. Any rule laid down by the English Courts may, if necessary, be applied by the Courts in India only if there is no provision to the contrary in the enactment. When the Workmen's Compensation Act lays down that compensation shall be payable on a personal injury being caused, the compensation has to be determined and paid forwith and not that there be a mere declaration of the liability and the determination of the amount of compensation and the payment thereof, postponed for a future date.'

11. In Smt. Vimlaben Vashrambhai and Ors. v. The Gujarat Housing Boards and Ors. 1975 A.C.J. 84, at page 89 in second column after quoting Section 4A, it was stated that, 'It is not disputed that the notices were served on the Opponents Nos. 1 and 2 by the claimants. Vashram died on 25th November 1967 and immediately the opponents Nos. 1 and 2 became liable to pay the compensation and the compensation became due at that time and the Opponents Nos. 1 and 2 became liable to pay compensation.' It was also observed that,--'However, the opponents Nos. 1 and 2 did not pay the compensation to the claimants. They also did not comply with the provisions of Sub-section (2) of Section 4A.' Thus, it would appear that the compensation falls due within the meaning of Section 4A on the happening of the accident and liability for payment of interest and penalty arises, if so directed, when a default is made by the employer in payment of compensation within one month from the date it falls due. In Vimlaben Vashrambhai's case it was argued on behalf of the appellant that the employers were in default in paying the

compensation within one month from the date it fell due and, therefore, the claimants were entitled to simple interest at 6 per cent per annum on the amount due and an amount of Rs. 4,000/-as penalty as there was no justification for the delay. In that case total amount awarded was Rs. 8,000/-. The Division Bench of the Gujarat High Court stated that 'The employers have shown no justification for not making the payment immediately after it became due within the period of one month after it fell due. 'Nothing is brought on record to show that there was any justification for not paying the amount of compensation within the stipulated time. On the contrary, in the first place the Opponents Nos. 1 and 2 denied their liability. They did not give any reply to the notice. The opponent No. 1 knew that the contract was given by it to the opponent No. 2. The work of the opponent No. 2 was supervised by the Deputy Engineer of the opponent No. 1. Therefore, clearly there were malafides on the part of the opponents No. 1 and 2 in not paying the compensation to the claimants. Under the circumstances we are of the opinion that the claimants are entitled to the amount of Rs. 4,000/- being 50 per cent of the compensation awarded to the claimants. In the result, we allow the appeal and set aside the award passed by the learned Civil Judge (Senior Division), Baroda, we direct that the opponents Nos. 1 and 2 shall pay Rs. 8,000/- with interest at the rate of 6 per cent from the date of the application till the date of payment. We also direct that the Opponents Nos. 1 and 2 shall pay the amount of Rs. 4,000/- to the claimants as penalty. The opponents Nos. 1 and 2 shall pay the costs of the claimants in both the courts and they shall bear their own costs. The opponent No. 3 shall bear its own costs in both the Courts.'

12. In Khille Chandramma v. Hindusthan Construction Co. Ltd. 1961 LAB.I.C. 135, the learned judges referred to the provisions of Section 4A and 10A and after considering the two provisions, the learned judges observed as under:

It would appear from Sub-section (3) that if the employer is of opinion that he is liable to deposit compensation, he shall make the deposit within thirty days of the service of notice. 'This would indicate that the expression as soon as it falls due' means within thirty days from the date of service of notice under Sub-section (1) of Section 10A.

In this case, if the company has deposited Rs. 3,600/- within thirty days from the date of service of notice, then it is not liable to any penalty for default under Section 4A(3).

As regards the question of payment of penalty and interest a definite answer was not given, as the recessary data was not before the court and only reference was answered. At the end of para 6 it was observed:- 'We have made it dear that if the sum of Rs. 3,600/- has not been deposited in lime, the principle of Section 4A(3) can be appropriately invoked by the Commissioner.' The view, which has been taken in Khillo Chandramma's case (supra) is that the expression 'as soon as it falls due' under Section 4A means within thirty days from the date of service of notice under Sub-section (1) of Section 10A. This view appears to be different from the view, which was taken by the Allahabad and Gujarat High Courts. According to these High Courts compensation falls due when the liability for payment of compensation arises and it is not related to the question of any service of notice. The employer himself can determine the amount of compensation under Section 4 and when accident occurs on his premises under Section 10B he is required to send a report to the Commissioner. Thus, when liability for payment of compensation arises, it is legitmate to hold that compensation falls due on that date. Thus I am in respectful agreement with the view taken by the Allahabad and Gujarat High Courts.

13. In the present case, the respondents committed default in payment of compensation within one month from the date it fell due, so it can be said that they incurred liability for payment of interest. The accident took place in the premises of the respondents, and, they were aware of the accident. A notice claiming compensation was given to them on 28.8.79 and an application for compensation was presented on 4.9.1979. Notice of the application was even served on 8.10.1979, but no payment of compensation was made and it was made as late as on 16.5.1980. It is true that the Legal Branch worked out compensation to the tune of Rs. 16,800/- and it is also true that willingness to pay compensation was shown on 28.4.1980 and the orders of the Commissioner were awaited. These may be mitigating circumstances, but it cannot be said that these circumstances are sufficient for absolving the respondents from payment of interest completely.

Although, in the circumstances it can be said that the respondents may not be made liable for payment of penalty, but interest may be awarded and that is sufficient penalty In my opinion, it would be just and proper to direct payment of interest on the amount of compensation at six percent per annum from the date of application, that is, 4.9.1979 till the date of payment, that is, 16.5.1980.

15. Accordingly, the appeal is partly allowed. The respondents are directed to pay interest on Rs. 16,800/- (rupees sixteen thousand eight hundred) at the rate of six percent per annum for the period from 4.9.1979 to 16.5.1980. In the circumstances of the case, the parties shall bear their own costs of this appeal.