

K.L. Bihani Vs. Vimla Devi and ors.

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Court : Rajasthan

Decided On : May-31-2007

Reported in : 2008ACJ658

Judge : Manak Mohta, J.

Appellant : K.L. Bihani

Respondent : Vimla Devi and ors.

Judgement :

Manak Mohta, J.

1. These two appeals have been filed under Section 30 of the Workmen's Compensation Act, 1923, by the appellant-non-applicant Nos. 1 and 2 against the judgment and award dated 3.7.2006 passed by the Workmen's Compensation Commissioner, Sri Ganganagar in W.C. Case No. 7 of 2004, by which compensation of Rs. 1,96,623 along with interest at the rate of 12 per cent per annum from the date of accident, i.e., 7.4.1998 under Section 4-A (3) (a), penalty of 50 per cent under Section 4-A (3) (b) of the Act and funeral expenses of Rs. 2,500 have been awarded in favour of the claimants-respondents and the non-applicant Nos. 1 and 2 have been held responsible for the payment of compensation and interest to the applicants. Further, non-applicant No. 1 has individually been held responsible for the payment of penalty amount and Rs. 2,500 as the funeral charges.

2. Briefly stated the facts of the case are that the applicants, i.e., the mother and father of deceased Jagdish filed a claim petition on 27.7.2004 under Section 22 of the Workmen's Compensation Act, 1923 (in short, 'W.C. Act') before the learned Commissioner, Workmen's Compensation, Sri Ganganagar stating therein that their son Jagdish, aged 22 years was working as driver on jeep No. RJ 13-C 2001 and he was under employment of non-applicant No. 1, owner of the jeep on a salary of Rs. 3,500 per month. It was further stated in the claim petition that on 7.4.1998, as per the direction of non-applicant No. 1, Jagdish went to Haridwar by driving the said jeep. When he reached near Bahadurgarh village, the jeep collided with offending mini truck bearing registration No. HR 37-1407, as a result of which grievous injuries were caused to him and he died on the spot. In that regard an F.I.R. was lodged at Police Station, Patiyala. It was further stated in the claim petition that they being the parents and dependants are entitled for compensation.

3. It was further stated in the claim petition that previously they filed claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'M.V. Act') before the Motor Accidents Claims Tribunal, Sri Ganganagar (for short 'the Tribunal') but when they came to know that the offending mini truck was not insured, they withdrew their claim petition on 9.7.2004 and filed the present claim petition under W.C. Act on 27.7.2004 along with an application under Section 5 of the Limitation Act stating therein the reasons for the delay in filing the petition. It was stated that the non-applicant No. 1 being the employer and owner of the jeep and the jeep being insured with Oriental Insurance Co. Ltd., non-applicant No. 2, thus, both of them were responsible for making payment of compensation. It was prayed therein that they were dependent on the earnings of their son, as such, adequate compensation with interest and penalty may kindly be awarded.

4. A reply to the claim petition was filed by non-applicant No. 1, owner of the jeep, wherein the factum of Jagdish working as driver with him on the said jeep was admitted, however, at the same time he stated that he used to give him salary of Rs. 1,800 instead of Rs. 3,500 per month. He also admitted death of Jagdish in the accident but denied the fact that he had gone to Haridwar on his instruction. It was further stated that the said jeep is insured with non-applicant No. 2 and, therefore, the insurance company is responsible for payment of compensation.

5. Non-applicant No. 2 (i.e., the insurance company) also submitted a separate reply stating therein that the owner of jeep never informed about Jagdish working as driver under him nor he has informed about the accident. Thus, the owner of jeep violated the terms and conditions of insurance policy. The insurance company too denied its responsibility to pay any compensation, interest and penalty.

6. Learned Commissioner after hearing both the parties, vide his judgment and award dated 3.7.2006 held that the death of Jagdish occurred in an accident during the course of his employment with non-applicant No. 1, thus, taking into consideration the age and income of deceased, awarded a compensation of Rs. 1,96,623 along with interest at the rate of 12 per cent per annum from the date of accident, i.e., 7.4.1998 under Section 4-A (3) (a), penalty of 50 per cent under Section 4-A (3) (b) of the Act and funeral expenses of Rs. 2,500 in favour of claimants-respondents, and the non-applicant Nos. 1 and 2 have been held responsible for the payment of the compensation, interest and penalty in the manner, as indicated above.

7. Being aggrieved by the judgment and award dated 3.7.2006, C.M.A. No. 1266 of 2006 has been filed by non-applicant No. 1 under Section 30 (1) (aa) of the W.C. Act to the extent of imposition of interest and penalty and a separate C.M.A. No. 908 of 2007 under Section 30 of the W.C. Act has been filed by non-applicant No. 2 against the joint responsibility for the payment of interest amount.

Since both the appeals arise out of common judgment and order and are based on identical fact, therefore, they were heard together and are being disposed of finally by this common judgment.

8. During the course of arguments with regard to the appeal filed by non-applicant No. 1, the learned Counsel for the appellant submitted that the learned Commissioner committed grave legal error in awarding interest at the rate of 12 per cent per annum from the date of accident till realisation of payment of compensation amount. It was contended that the full amount of compensation has been deposited by the insurance company, non-applicant No. 2, before the final adjudication of the claim petition. It was contended that the applicants themselves are responsible for the delay in filing the claim under the W.C. Act as they have

filed the claim after a lapse of 6 years from the date of accident, i.e., on 27.7.2004. It was argued that the appellant cannot be blamed for causing delay in payment of compensation, as applicants-respondents themselves had earlier moved a petition under the M.V. Act and continued there up to 9.4.2004, but the learned Commissioner has not properly considered this aspect of the matter before awarding interest from the date of accident. It was submitted that interest is only payable when after adjudication amount of compensation becomes due and that is not deposited in time. He also placed reliance on the decision of the Hon'ble Supreme Court given in case of National Insurance Co. Ltd. v. Mubasir Ahmed : (2007)ILLJ 1035 SC , in support of his contention and prayed that the imposition of interest from the date of accident under Section 4-A (3) (a) of the W.C. Act is not sustainable and may be quashed.

9. The learned Counsel for the appellant also contended that imposition of penalty by the learned Commissioner is also illegal as before imposing penalty, no notice was given by the learned Commissioner in this respect as required by law. Further, it was contended that no delay has been caused in payment of compensation. The claim under W.C. Act was filed on 27.7.2004 before the learned Commissioner and the amount of compensation of Rs. 1,87,182 has been deposited by the insurance company, non-applicant No. 2 on 20.1.2006 and the remaining amount of Rs. 9,441 has also been deposited before the final order. The learned Commissioner has not properly appreciated the facts before imposing the penalty and, therefore, the imposition of penalty up to 50 per cent under Section 4-A (3) (b) of W.C. Act is not justified and deserves to be quashed.

10. Thus, on the basis of the above submissions, it was prayed that the appeal may kindly be allowed and the judgment and order dated 3.7.2006 to the extent of imposing penalty and interest may kindly be quashed and set aside.

11. With regard to the appeal preferred by the insurance company, non-applicant No. 2, the learned Counsel for the appellant submitted that the learned Commissioner has committed grave error of law and facts both while directing the present appellant to pay interest at the rate of 12 per cent per annum to the claimants-applicants from the date of accident. It was contended by the learned

Counsel for the appellant that the rights and obligations between the employer and insurer would be governed by the terms and conditions of the insurance policy. The appellant was not having any statutory liability to indemnify the employer with regard to payment of interest on compensation. Learned Commissioner has not properly considered the facts in the right direction. It was also submitted that the appellant had deposited the full amount of compensation before final adjudication, thus, awarding of interest was not justified inasmuch as the insurance company cannot be made responsible for the same. Thus, the finding of the learned Commissioner in this respect is not sustainable and is liable to be quashed. The learned Counsel for the appellant also placed reliance on the decision rendered in the case of *New India Assurance Co. Ltd. v. Harshadbhai Amrutbhai Modhiya* : (2006)IILLJ782SC . It was urged that the appeal may kindly be allowed and the judgment and award dated 3.7.2006 to the extent of responsibility for depositing interest amount may kindly be quashed.

12. Learned Counsel for the claimants-respondents refuted the contentions raised by the learned Counsel for the appellants and supported the judgment and award passed by the learned Commissioner in W.C. case. It was further submitted by the learned Counsel for the claimants that the employment of deceased workman Jagdish has been admitted by non-applicant No. 1 and the death has been caused in an accident and that happened during the course of his employment despite that neither any compensation was paid nor deposited by the non-applicant No. 1 and after a long period, the compensation was deposited by non-applicant No. 2, insurance company, thus it was urged that the learned Commissioner has rightly awarded interest and penalty and that should be maintained and the appeals may kindly be dismissed.

13. I have considered the rival submissions made by the parties with reference to both the appeals and perused the judgment and award passed by the learned Commissioner under the Workmen's Compensation Act. The learned Commissioner after considering the facts has condoned the delay caused in filing the claim petition. Further, the learned Commissioner has rightly held that death of Jagdish occurred in an accident during the course of his employment. The learned Commissioner after taking into consideration the age and monthly income of the

deceased workman has determined the compensation amount of Rs. 1,96,623, which has not been disputed by the non-applicants-appellants. Thus, the finding of the learned Commissioner is maintained to this extent.

14. Main questions for consideration in appeal filed by the appellant-non-applicant No. 1 are that whether awarding of interest at the rate of 12 per cent per annum on the determined amount of compensation from the date of accident till its realisation and penalty of 50 per cent are justified and legally tenable? So far as the awarding of interest is concerned, it is revealed from the judgment and award that the claimants-respondents previously moved a claim petition under the M.V. Act before learned Tribunal, Sri Ganganagar and continued there up to 9.7.2004, thereafter they withdrew it and filed claim under W.C. Act before the learned Workmen's Compensation Commissioner at Sri Ganganagar on 27.7.2004. Learned Commissioner finally determined the compensation amount vide judgment and award dated 3.7.2006 and made it recoverable from non-applicants. It is also revealed from the judgment that the full amount of compensation was got deposited by the non-applicant No. 2, the insurance company, prior to the order and nothing remained due to be paid. Thus, there was no justification for the learned Commissioner to have awarded interest from the date of accident till its realisation. The Hon'ble Supreme Court in its recent judgment in the case of National Insurance Co. Ltd. v. Mubasir Ahmed : (2007)ILLJ 1035 SC , has held that the starting point of interest is on completion of one month from the date on which it fell due and it cannot be the date of accident. The relevant portion of the authority is reproduced as under:

The starting point is on completion of one month from the date on which it (the compensation) fell due. Obviously, it cannot be the date of accident.

15. Thus, on the basis of the aforesaid law laid down by the Hon'ble Supreme Court, the finding of the learned Commissioner to the extent of awarding interest is not sustainable as the total amount of compensation was already deposited with the learned Commissioner under the Workmen's Compensation Act. Therefore to this extent the contention of the learned Counsel for the appellant are acceptable and the responsibility for paying interest amount is liable to be quashed.

16. I have also considered the contentions raised by the appellant-non-applicant No. 1 with regard to awarding of penalty. The first contention raised by the appellant that he was not being heard on the point of penalty before its imposition but this contention is not tenable. From the perusal of the judgment, it is revealed that appellant-non-applicant No. 1 has submitted his contentions before learned Commissioner that for the payment of compensation the insurance company is responsible and denied his liability for interest and penalty. The other contention was raised that the amount of compensation was deposited before the final award was passed, but this contention is not tenable. Appellant-non-applicant No. 1 has not made any efforts for depositing any provisional amount of compensation with the Workmen's Compensation Authority and on the contrary he denied the responsibility to pay compensation amount and amount of compensation was not deposited by the appellant-non-applicant No. 1 but it was deposited by the non-applicant No. 2, insurance company, at a later stage. The learned Commissioner after considering all aspects, has awarded penalty of 50 per cent of the awarded compensation amount. There is no infirmity or illegality in the judgment and it deserves to be maintained. The contentions of the learned Counsel for the appellant in this respect are not acceptable and are liable to be rejected.

17. Thus, on the basis of the aforesaid discussion, the appeal filed by appellant-non-applicant No. 1 to the extent of awarding of interest deserves to be allowed but with regard to awarding of penalty, no interference is warranted in the finding given by the learned Commissioner.

18. With regard to the appeal filed by appellant-non-applicant No. 2, the main contention of the appellant is that the insurance company cannot be made responsible for payment of interest on compensation awarded under Section 4-A (3) (a) of the W.C. Act. I have considered the contentions. The responsibility for payment of interest has not been taken by non-applicant No. 2. Thus, the non-applicant No. 2, the insurance company, cannot be held for the payment of interest amount. The finding of the learned Commissioner is not legally sustainable. The Hon'ble Apex Court in the case of *New India Assurance Co. Ltd. : (2006)IILLJ782SC* , held that insurance company cannot be held responsible for payment of interest. In addition to this, as per the finding arrived in appeal filed by

the employer, non-applicant No. 1, it has been held that there was no justification for awarding interest and award of interest has not been maintained. Thus, the liability for payment of interest against the present appellant-non-applicant No. 2 is also not sustainable. Therefore, the appeal filed by the appellant-non-applicant No. 2 deserves to be accepted.

19. In the result, the appeal filed by the employer, non-applicant No. 1, being S.B. Civil Misc. Appeal No. 1266 of 2006 is partly allowed to the extent that the award of interest in judgment and award is set aside and the appellant is not responsible for the payment of interest amount and the remaining part of the judgment and award as it is confirmed. The appeal filed by the insurance company, being S.B. Civil Misc. Appeal No. 908 of 2007 is allowed and the award of interest is set aside and the appellant is not responsible for payment of interest. The judgment and award to this extent is set aside. There shall be no order as to costs.

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