

Ganga Devi and ors. Vs. O.S. Motors Limited and anr.

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Court : Rajasthan

Decided On : Mar-01-2007

Reported in : [2008(116)FLR163]; RLW2008(1)Raj560

Judge : R.S. Chauhan, J.

Appellant : Ganga Devi and ors.

Respondent : O.S. Motors Limited and anr.

Advocate for Def. : Mr. Virendra Agrawal

Judgement :

R.S. Chauhan, J.

1. For enhancement, the appellant No. 1, who happens to be the wife of deceased workman, appellant No. 2, his mother and appellant Nos. 3 to 5, his minor children have challenged the award dated 17.11.05 whereby the learned Commissioner has granted them a compensation of merely Rs. 2, 07,927/- without imposing a penalty and without granting them any interest on the said amount.

2. In a nutshell, the brief facts of the case are that Roop Singh was hired as a driver on the jeep owned by the respondent No. 1. Thus, he was a workman employed by respondent No. 1. On 16.1.04, while driving the jeep, Roop Singh met with an accident and expired. At the time of his death, he was 32 years old

and was earning Rs. 5, 000/- per month. Since the jeep was insured and since the appellants depended on the deceased for their financial needs, they filed a claim petition against the respondents, the employer and the Insurance Company.

3. The learned Commissioner framed five issues and after going through the oral and documentary evidence granted the compensation as aforementioned vide award dated 17.1.05. Since the appellants are still aggrieved by the amount of compensation, they have filed the present appeal before this Court.

4. Mr. Vinay Mathur, the learned Counsel for the appellants, has raised three contentions before this Court; firstly, that the income assessed by the learned Commissioner is on the lower side. Secondly, that only 6% interest has been granted by the learned Commissioner on the compensation amount whereas it should have been 12%. Thirdly, that no penalty has been imposed upon the employer as required by Section 4-A of the Workmen's Compensation Act, 1923 (henceforth to be referred to as 'the Act', for short). According to Section 4-A, in case the employer has defaulted in paying the compensation from the date it fell due, the Commissioner is mandatorily required to impose penalty on the employer. Since the learned Commissioner has not imposed any penalty, he has failed to exercise mandatory legal duty imposed upon him by Section 4-A of the Act.

5. Although notices were served upon respondent No. 1, he has chosen not to appear before this Court either personally or through an advocate. Hence this Court does not have the benefit of assistance from his side.

6. Mr. Virendra Agrawal, learned Counsel for respondent No. 2, the Insurance Company, has raised three contentions before this Court: firstly, that the learned Commissioner has correctly, assessed the income of the deceased workman. Secondly, it is not mandatory that the award should carry an interest of 12%; the learned Commissioner is free to impose an interest up to 12% but not beyond. Thirdly, even if a penalty is to be imposed by the learned Commissioner, it could be imposed only upon the employer and not on the Insurance Company.

7. We have heard the rival contentions of the learned Counsels and have perused the impugned award.

8. Although the claimants alleged that the workman was receiving a salary of Rs. 5, 000/-, they have not submitted any document to prove this claim. On the other hand, respondent No. 1 had denied paying such a high salary to the workman. Since there was lack of documentary evidence on both the sides, the learned Commissioner was justified in taking the minimum wages, as laid down by the Minimum Wages Act, as a safe guideline for calculating the salary of the workman. Since at the relevant time, the minimum wage was Rs. 68/- per day, the learned Commissioner has correctly taken the salary to be Rs. 2,040/- per month for the workman. Therefore, the first contention of the learned appellant is unacceptable.

9. Section 4-A of the Act is as under:

4-A. Compensation to be paid, when due and penalty for default-(1) Compensation under Section 4 shall be paid as soon as it falls due.

(2) In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts, and, such payment shall be deposited with the Commissioner or made to the workman as the case may be, without prejudice to the right of the workman to make any further claim.

(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 Com-missioner 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 jurisdiction 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 per cent 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 - For the purposes of this Sub-section, 'scheduled banks' means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934.

(3A) the interest payable Under Sub-section (3) shall be paid to the workman or his dependent, as the case may be, and the penalty shall be credited to the State Government.

10. A bare perusal of the said provision clearly reveals that the compensation Under Section 4 is to be paid as soon as it falls due. The compensation is said to fall due on the date of the accident. Sub-section (2) imposes a duty on the employer to make provisional payment to the workman based on the extent of liability which the employer accepts. However, the provisions payment of compensation shall be without prejudice to the right of the workman to raise any further claim. Sub-section (3) grants two powers to the learned Commissioner in case the employer has defaulted in making the payment of compensation within one month from the date it falls due: firstly, to grant a simple interest @ 12% on the amount due and secondly to impose a penalty not exceeding 50% of such amount on the employer. Both these powers are mandatory in nature and not directory. Sub-section (3A) further states that the interest and the penalty shall be payable to the workman or his dependents as the case may be. Section 4-A is a beneficial piece of legislature in favour of the workman. The said provision has been enacted with a view to deter from taking pleas and avoiding payment of compensation which become payable. Since the provision is beneficial in nature it should be applied as liberally as possible.

10.1. As stated above, the provisions of Sub-section (3) of Section 4-A are mandatory in nature. Therefore, the learned Commissioner was duty bound to impose an interest of 12% upon the employer and the Insurance Company jointly and severally. Furthermore, he was duty bound to impose a penalty up to 50% of the amount due upon the employer. The said penalty could not be imposed on the

Insurance Company as has been held by the Hon'ble Supreme Court in catena of cases. Refer to: Ved Prakash Garg and Ors. v. Premi Devi and Ors. 1998 TAC 215 and Smt. Rama Devi and Ors. v. The Sanganer Cooperative Housing Society Ltd. 1986 Rules 1018. Therefore, this Court has no option but to modify the award dated 17.1.05 in the following terms.

11. The compensation amount of Rs. 2, 07,927/- shall be paid not @ 6% interest p.a., but at the rate of 12% p.a. Moreover a penalty of 50% of the said amount of Rs. 2, 07,927/- i.e. Rs. 1, 03,963/- shall also be paid by the employer to the appellant. To this limited extent, the impugned order stands modified. The teamed Tribunal is directed to realize the said compensation amount along with the interest from the respondents and to pay the same to the appellants within a period of two months from the date of receipt of the certified copy of this Judgment. The appeal is partly allowed. There shall be no order as to costs.

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