

Param Dev Vs. Commissioner under Workmen's Compensation Act

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Court : Himachal Pradesh

Decided On : Mar-30-1995

Reported in : (1999)IIILLJ291HP

Judge : A.L. Vaidya, J.

Acts : Workmen's Compensation Act, 1923 - Section 4A; ;[Constitution of India](#) - Article 227

Appeal No. : C.M.P.(M) No. 96/1993

Appellant : Param Dev

Respondent : Commissioner under Workmen's Compensation Act

Advocate for Def. : Shyama Dogra, D.A.G.

Advocate for Pet/Ap. : B.K. Malhotra and; Harish Bahl, Advs.

Judgement :

A.L. Vaidya, J.

1. Present petitioner Param Dev was working on daily wages as a Driller on muster roll with respondent No. 2. On December 21, 1990 at about 10 in the morning when the workman was working on his driller a boulder rolled down a hillock and hit the head and the neck of the petitioner resulting in causing serious

injuries to him. The injured was taken to a nearby Primary Health Centre, Padhar, where he remained admitted for about 4-5 days and thereafter he was referred to District Hospital, Mandi, wherefrom he was further referred to (sic) the PGI, Chandigarh, where he remained under treatment for 2 1/2 months. According to the petitioner, he has become completely handicapped due to the said accident which was caused during the course of his employment and now he was not in a position to do any work. The case of the petitioner was reported to the Commissioner under the Workmen's Compensation Act, 1923 (hereinafter to be called as 'the Act') by respondent No. 2, who after recording the evidence made his award on September 7, 1991, to the tune of Rs. 87,890/-. This amount was paid to the petitioner in April, 1992.

2. In the present petition, preferred under Article 227 of the [Constitution of India](#), the petitioner has assailed the award made by the Commissioner under the Act on the following grounds :

'(1) That the learned Commissioner has not exercised the jurisdiction vested in him under the Act in not awarding the interest and penalty on the awarded amount in accordance with Section 4-A, Sub-section (3) and, therefore, has committed a grave error of law.

(2) That perusal of the award itself shows, that the case was reported by respondent No. 2 to the Commissioner, therefore, it was incumbent upon respondent No. 2 to deposit the amount of compensation within one month from the date it fell due. By not doing so, respondent No. 2 was liable to pay penalty and interest for the delayed payment in accordance with the provisions of the Act. The learned Commissioner did not address himself to this very important fact of the case and passed his award by non-application of mind to the mandatory provisions of the Act.

(3) That the learned Commissioner did not take into consideration the settled proposition of law that the compensation becomes due when the accident takes place. Therefore, respondent No. 2, under the provisions of law was liable to deposit the amount of compensation within one month of the accident i.e. from December 21, 1990. It was not done in the instant case. Neither any explanation

for the delayed payment was offered. In this view of the matter, it was the duty of the Commissioner under the Act to award interest and penalty. In not doing so, the learned Commissioner has transgressed the law laid down by the Supreme Court in Partap Narain Dev v. Srinivas Sabota (1976-I-LLJ-235) and Ram Dulari Kalia v. H.P. State Electricity Board ILR 1986 H.P. 842.

(4) That the learned Commissioner also fell in error in not calculating the amount of award in accordance with law. Even the relevant factor for working out the compensation in accordance with Schedule-IV has not been applied, which has resulted in less compensation in the award of the Commissioner.

(5) That the learned Commissioner has not exercised the judicial discretion available under Section 4-A Sub-section (3) with vigilance and circumspection according to justice, common sense and sound judgment. A perusal of the award would show that the discretion has not been exercised by the Commissioner reasonably, judicially and in a just and equitable manner.

(6) That the learned Commissioner also lost sight of the fact that respondent No. 2 is not a private employer, but State itself, and, therefore, it is expected to act like a model employer while dealing with the case of a workman. It was the duty of respondent No. 2 to implement the beneficent provisions of the Act in their true letter and spirit and to make payment of the compensation as soon as it fell due.:

(7) That even otherwise, the petitioner is entitled to a sympathetic consideration in view of the fact that he is totally disabled and is not capable of earning his livelihood for all times to come. He has to support a family of six members including himself besides his wife and two minor daughters and two sons.'

3. On the basis of the aforesaid grounds it has been prayed in the present petition that the award dated September 7, 1991, made by the Commissioner under the Act, be modified to the extent that the interest and penalty for the belated payment in accordance with the provisions of the Act may also be awarded in favour of the petitioner after calculating the amount of compensation by applying the correct factor in accordance with Schedule IV of the Act.

4. This petition has been contested on behalf of the respondents and in reply it has been pleaded that on the basis of the circumstances proved in the case the petitioner had been correctly awarded the amount of compensation by the Commissioner under the provisions of the Act and he was not entitled to other reliefs, prayed for by him.

5. At the first instance the learned Counsel for the petitioner contended that the amount awarded has not been calculated in accordance with law and in this behalf the relevant factor for working out the compensation in accordance with Schedule IV has not been applied. It was further submitted that monthly wages of the petitioner were also not correctly taken note of while assessing the award. However, the learned counsel when apprised of the factual and legal position in this behalf confined his submissions to the reliefs prayed for with respect to interest and penalty.

6. It may not be out of place to mention here that as per statement of the petitioner himself, made before the Commissioner, he deposed that at the time of accident his monthly wages were Rs. 806/- only. Under Section 4(b) of the Act where permanent total disablement results from the injury, an amount equal to fifty per cent of monthly wages of the injured workman multiplied by the relevant factor, has to be assessed as amount of compensation. The relevant factor has been provided in Schedule IV and in the present case, as the age of the petitioner was admitted to be 25 years, this relevant factor would be 216.91 and it is on the basis of this multiplier that the compensation has been arrived at by the Commissioner. Thus, on the basis of the facts present in the case, the compensation awarded by the Commissioner in favour of the petitioner cannot be said to be not in accordance with law which fact is now being disputed during the course of arguments.

7. In order to appreciate the case of the petitioner for the grant of interest and penalty concerned, the provisions of Section 4-A have to be kept in mind which, for the sake of convenience, are reproduced hereunder:

'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 event 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 Commissioner may direct that in addition to the amount of the 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 jurisdiction for the delay, a further sum not exceeding fifty per cent of such amount, shall be recovered from the employer by way of penalty.'

8. This provision of Section 4-A of the Act, as referred to above, was for the first time inserted by the Amending Act 8 of 1959 with effect from June 1, 1959, and prior to it there was no such corresponding provision in the Act. The Object and Reasons of the said amendment were that the provision was being made in order to ensure that the workman was able to get whatever amount the employer was prepared to pay immediately pending decision as to the amount of compensation actually due. It may also be pointed out here that Section 3 of the Act provides for employer's liability for payment of compensation on account of injury and Section 4 of the Act deals with the amount of compensation, to be paid to the workman in case of death resulting from the injury and in case of permanent total disablement resulting from the injury.

9. In the present case, in so far as the injury caused to the workman during his employment resulting in his disablement has not been disputed. In this behalf the observations made by the Commissioner in the order under reference can safely be reproduced.

'...the condition of the workman Param Dev is indeed critical. He cannot help himself. He is to be helped even for sitting which is an ordeal for the workman as I have personally visited him at his place. He is virtually completely handicapped.'

10. In a case of such a nature it is not only the sympathy alone but the actual provisions of the Act required to be complied with.

11. The employer in this case, as per requirement of law, submitted the information before the Commissioner under the Act with respect to the workman having received injuries during the course of his employment as a result of an accident which took place on December 21, 1990. This information was sent by the Asstt. Engineer, Padhar Sub Division, on December 27, 1990. There is some evidence that the department had helped the workman in the medical treatment given to him but the fact remains that the employer did not at all either pay or deposit the compensation with the Commissioner as the compensation fell due to the workman. It is an admitted fact that the compensation awarded by the Commissioner vide order dated September 7, 1991 was made available to the workman in April, 1992.

12. Under Section 4-A of the Act, the compensation shall be paid as soon as it fell due. There has been some variance earlier as to when such compensation becomes due to the workman on the basis of the facts involved in a particular case. The compensation becomes payable on the date of the accident and not on the date of determination of the amount thereof. The compensation would become due when the liability to pay compensation arises and definitely it arises when the accident takes place resulting in personal injury to the workman. *PratapNarain Singh Deo v. Srinivas Sabota and Anr. (1976-I-LLJ-235) (SC)* can safely be relied upon in this behalf. The relevant observations are reproduced hereunder :

'In case of a personal injury caused to a workman by an accident which arises out of and in the course of employment, unless the right to compensation is taken away under Sub-section(5) of Section 3, the employer becomes liable to pay the compensation as soon as the aforesaid personal injury is caused to the workman. Section 19 only provides for settlement by the Commissioner of any question regarding liability of any person to pay compensation or the amount or duration of compensation, in default of any agreement, if such question arises in any proceeding under the Act. The Section does not have the effect of suspending the liability of an employer to pay compensation under Section 3 till after the

settlement contemplated under Section 19. It is the duty of the employer to pay compensation under Section 4-A(1) at the rate provided by Section 4 as soon as the personal injury is caused to the workman. Where the employer fails to do so and also makes no provisional payment under Section 4(2) but challenges the jurisdiction of the Commissioner, the employer is liable to pay interest and penalty.'

13. Similar proposition has been decided in the same manner in *Ram Dulari Kalia v. H.P. State Electricity Board and Anr.* ILR1986 H.P. 842 where it has been held that the employer's liability to pay compensation becomes effective when the accident takes place.

14. The provisions of Section 4-A have not been complied with by the employer whereby the employer was bound to make provisional payment based on the event of liability which he accepted and in the present case the employer did not dispute the liability for compensation at all. It was the employer who submitted the information to the Commissioner under the Act. In such an eventuality under Section 4-A of the Act it was mandatory obligation cast upon the employer to make payment of compensation as was due under the Act to the workman. The same has not, admittedly, been discharged.

15. Another lapse on the part of the employer has been not to pay the compensation due under the Act within one month from the date it fell due. It may not be out of place to mention here that the information supplied to the Commissioner under the Act by the employer on December 27, 1990, clearly included all the allegations pertaining to the alleged accident resulting in causing injuries to the workman. There is no doubt that at that particular time the extent of injuries suffered by the workman could not be specifically pointed out for want of medical certificate but there is ample evidence on record that after December 27, 1990 this aspect of the matter also was fulfilled and there was sufficient material before the employer for coming to the conclusion that the workman had suffered an injury making him completely handicapped and in spite of these circumstances the employer failed to pay compensation to the workman or to deposit the same before the Commissioner. There is no dispute to the proposition that these provisions made in the Act have been formulated with some purpose so that the

welfare of the workman is protected by statutory provisions, more so, when a workman receives such an injury during the course of his employment which makes him altogether disabled as has happened in the present case. For such a lapse the law provides that in addition to the compensation, which is due to the workman, the Commissioner may direct 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, by way of penalty from the employer.

16. In the present case the Commissioner directed that the compensation amount of Rs. 87,890/- should be deposited before October 15, 1991 failing which the department was made liable to pay 15 per cent per annum interest for the period of delay and also the expenses involved in the process of recovery, if any. The reply of the Commissioner to these proceedings revealed that the Executive Engineer, Mandi Division No. 1 vide Cheque No. 465730 dated March 13, 1992 deposited the compensation amount in the office of the Commissioner under the Act. That means, the order of the Commissioner was also not complied with and admittedly this amount was deposited on March 13, 1992 and paid to the workman in April, 1992.

17. On the basis of the aforesaid circumstances the workman definitely is entitled to be paid interest on the amount of compensation awarded in his favour at the rate of 6 per cent per annum from the date of the accident till the amount was paid to him in April, 1992.

18. The workman has asked for the penalty also as has been provided under Section 4-A(3) of the Act. Such a penalty could be imposed in favour of the workman for a further sum not exceeding fifty per cent of such amount, in case there was no justification for the delay. Here in the present case I am convinced that there was absolutely no justification for the department to have withheld the payment of compensation in favour of the applicant which was legally due to him under the provisions of the Act.

19. It has come on record that the employer did not make the payment of the compensation when it was due but it was made available to the workman in April,

1992, after more than six months of the award made by the Commissioner. There is absolutely no explanation rendered by the department to behave in that manner. Another important aspect which does not justify the delayed payment made to the workman by the department has come in the affidavit filed by the Commissioner in these proceedings wherein it has been averred that the case was referred by the Executive Engineer, Mandi Division, to higher officer for providing L.O.C. for making payment in this case. But after persuasion L.O.C. could be received in the office of the Executive Engineer, Mandi Division No. 1 on March 13, 1992 and the amount of compensation was deposited by the Executive Engineer, Mandi Division No. 1 on the same day vide Cheque No. 465730 in the office of the Commissioner under the Act. That means, the department has not only been negligent but without any reason delaying the payment of compensation to the workman to which he was legally entitled to. In this view of the matter, this is a fit case for imposing penalty against the employer, as provided under Section 4-A of the Act. The maximum penalty provided under the Act is for a sum not exceeding fifty per cent of such amount, which is the amount of compensation. Keeping in view the circumstances existing in the case and the disability suffered by the workman, it is a fit case where maximum penalty provided under the law is to be delivered and, as such, fifty percent of the amount of compensation, that is, Rs. 43,945/- (Rupees forty three thousand nine hundred and forty five only) is ordered to be recovered from the employer by way of penalty.

20. In view of the foregoing reasons, the present petition is accepted and the order under reference, passed by the Commissioner, is modified as under :

Apart from the compensation amount of Rs. 87,890/- (Rupees eighty seven thousand eight hundred and ninety), awarded in favour of the workman, he shall be entitled to get interest at the rate of six per cent per annum on this amount from the date of accident till this amount was actually paid to the workman. In addition to this, a sum of Rs. 43,945/- (Rupees forty three thousand nine hundred forty five only), being half of the compensation amount awarded in favour of the workman shall be recovered from the employer by way of penalty which the employer is directed to pay to the workman forthwith, without any undue delay.

21. The workman shall get the costs of this petition also which are assessed at Rs. 2000/-(Rupees two thousand only).

The petition stands accordingly disposed of.

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