

Naresh Kumar Vs. Indra Devi and anr.

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Court : Himachal Pradesh

Decided On : Nov-05-2003

Reported in : II(2004)ACC785,(2004)IILLJ566HP

Judge : Arun Kumar Goel, J.

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

Appeal No. : F.A.O. (WCA) No. 528/2003

Appellant : Naresh Kumar

Respondent : indra Devi and anr.

Advocate for Def. : Suneel Chauhan, Adv. for Respondent No. 1 and; Deepak Bhasin, Adv. for Respondent No. 2

Advocate for Pet/Ap. : C.B. Singh, Adv.

Disposition : Appeal dismissed

Judgement :

Arun Kumar Goel, J.

1. Heard learned counsel.

2. Admit. Issue notice. Learned counsel for the parties stated that only question involved in this case is whether the order of imposing 50% penalty passed by the Commissioner below is in consonance with the provisions of Section 4-A(3)(b) proviso of Workmen's Compensation Act, 1923 or not. Thus they submitted that instead of allowing this appeal to remain pending, it may be heard at this stage and disposed of today itself. It was for this reason that appeal has been finally heard and is being disposed of, as jointly prayed for by learned counsel for the parties.

3. After hearing learned counsel for the parties facts as they emerge from the order dated October 31, 2001 in File No. 2/2000, passed by the learned Commissioner under the Workmen's Compensation Act (SDM), Rajgarh, District Sirmour are;

That respondent No. 1 Indra Devi filed claim petition under Workmen's Compensation Act for the grant of Rs. 3,00,000/- as compensation. At the time of hearing it was not disputed that deceased Subhash son of said Indra Devi was working as a conductor on truck No. HP-18-4525. It was insured with respondent No. 2-Insurance Company. During the course of the employment of the deceased under the appellant, this truck met with an accident at Bagthan, Tehsil Pachhad, District Sirmour, H.P. on July 25, 1999. Deceased was 21 years of age, when he died in this accident. This resulted in the institution of case No. 2/2000 supra.

4. Appellant was admittedly set ex parte as is evident from the Zimini orders passed by the Commissioner below, certified copies whereof were shown by Mr. Suneel Chauhan, Advocate, for respondent No. 1-claimant, Indra Devi. Insurance Company contested her claim. Finally, an award in the sum of Rs. 2,22,710/- with interest was passed in favour of respondent No. 1 and against the insurer of the vehicle. It is further admitted case of the parties that insurer i.e. National Insurance Company Ltd. has deposited the awarded amount and has also not challenged the same.

5. A perusal of the award dated October 31, 2001 passed by the Commissioner below shows, that he intended to impose penalty therefore, in accordance with the mandate of Section 4-A(3)(b) proviso of the Act supra, he decided to issue notice

to the present appellant. What was said by him in this behalf is extracted hereinbelow for ready reference:

'Before passing the order for penalty under Section 4- A(3)(b) of the Act *ibid*, it is mandatory to provide reasonable opportunity to the employer to show cause why the order for penalty should not be passed. This show cause notice to the owner of the Vehicle respondent No. 1 is issued separately and in the meantime the respondent No. 2 is directed to deposit the above amount of Rs. 2,22,710/- (Two lacs twenty two thousand seven hundred ten) alongwith 12% rate of interest as directed within 30 days from today otherwise the same will be recovered as arrear of Land Revenue.'

6. In the aforesaid background, appellant filed an application for setting aside the *ex parte* award against him dated October 31, 2001. The same has been rejected. This application was accompanied by an application for condonation of delay under Section 5 of the Limitation Act. Suffice it to say in this behalf, that there was no occasion for the appellant to have felt aggrieved by the *ex parte* award dated October 31, 2001. Reason being that appellant could not have been aggrieved by this *ex parte* award, because not a single penny was held payable by him. Therefore, filing of application under Order 9 Rule 13 C.P.C. for setting aside *ex parte* award and/or appellant being not present when that award was passed is of least significance and has no bearing in this case.

7. It could not be disputed on the basis of the contemporaneous official record on behalf of the appellant, that as per requirement of law, show cause notice was issued to the appellant. For reasons best known to him, he again chose to remain absent. Atleast this is what follows from the order dated January 28, 2002 when order levying penalty was passed by the Commissioner below. For ready reference this order is extracted in it in extenso:

'Whereas a petition was filed by the petitioner against the respondents under Workmen's Compensation Act, 1923 for the compensation of Rs. 3 lakhs.

Whereas the petition was decided on October 31, 2001 and the respondent No. 2 was directed to deposit an amount of Rs. 2,22,710/- (Two lacs, twenty two

thousand, Seven hundred ten only) alongwith 12% rate of interest.

Whereas the employer was found in default in paying the compensation due under this Act within one month from the date it fell due i.e. from July 25, 1999.

Whereas as per ruling of the Hon'ble Supreme Court of India (AIR 1997 SC 3854), the owner of the vehicle is liable to pay the penalty under Section 4-A(3)(b) of Workmen's Compensation Act, 1923, if imposed by the Commissioner.

Whereas the respondent No. 1 was in default in paying the compensation, a show cause notice under Section 4-A(3)(b) was issued to him with the direction to show cause why the penalty under Section 4-A(3)(b) should not be passed.

Whereas the respondent No. 1 did not appear on January 28, 2002 inspite of the service of the show cause notice and therefore, it appears that he has nothing to say in this matter.

Now, therefore, under the provisions of Section 4-A(3)(b) of the Workmen's Compensation Act, 1923, a penalty order for Rs. 1,11,355/- (One lac, eleven thousand, three hundred fifty five only) (i.e. 50% of Rs. 2,22,710/-) is passed with the direction to respondent No. 1 to deposit the penalty amount within one month otherwise, the same will be recovered as an arrear of land revenue.'

8. In the aforesaid background as well as facts of this case Mr. Singh learned counsel for the appellant submitted that Commissioner below has gravely erred in imposing the penalty upon his client, that too, to the tune of 50% of the awarded amount. His two fold submission in this behalf were, that his client has not been heard within the meaning of Section 4-A(3)(b) of the Workmen's Compensation Act, 1923 and unless he was heard in the matter, the impugned order could not have been passed. Keeping in view the facts of this case as briefly noted hereinabove regarding which learned counsel for the parties were again not at variance, in my considered view this plea has been raised simply to be rejected.

9. Again, faced with this situation Mr. Singh made another submission to the Court that subject to his client's depositing substantial amount, case may be sent back to the Commissioner so that appellant is in a position to satisfy the Commissioner

that he is not liable for payment of any amount whatsoever, muchless 50% penalty imposed upon the appellant.

10. Cases are not to be remanded back at the mere askance of a litigant, like appellant. Reason being that unless a fault in law could be pointed out so as to justify the remission of the case, such a prayer cannot be accepted. Again if the prayer made by a litigant, like the present appellant, in the circumstances of this case is allowed, it will be against the public policy and multiplying litigation which at all costs has to be avoided. Since no infraction of any provisions of law has been pointed out on the basis of the material on record, I find no merit in this appeal which is accordingly dismissed with no order as to costs. It is, however, clarified that amount of penalty levied by the Commissioner below is payable to respondent No. 1, i.e. Indra Devi alone. Commissioner below is directed to take immediate steps for its recovery in accordance with law and as directed by him in the order dated January 28, 2002. And on the recovery being affected will make the same available to respondent No. 1 Indra Devi.

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