Mohan Lal Vs. Executive Engineer (E) Division, H.P.S.E.B. and anr.

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Court : Himachal Pradesh

Decided On : Aug-26-1997

Reported in : I(1998)ACC412,1999ACJ120

Judge : M. Srinivasan, C.J. and; A.L. Vaidya, J.

Appeal No. : F.A.O. (WCA) No. 3 of 1988

Appellant : Mohan Lal

Respondent : Executive Engineer (E) Division, H.P.S.E.B. and anr.

Advocate for Def. : R.S. Jamalta, Adv.

Advocate for Pet/Ap. : Rajiv Sharma, Amicus Curiae

Judgement :

M. Srinivasan, C.J.

1. This appeal is against the award of the Commissioner under the Workmen's Compensation Act, 1923, (for short, 'the Act'). The appellant was working as a beldar. On 7.2.1985 an accident occurred while he was in the course of his employment on account of which he suffered loss of his left arm which was amputated above elbow. The medical certificate issued to him showed that he had suffered permanent physical impairment of 80 per cent. He was earning Rs. 360 per month as a beldar. The Commissioner has worked out the compensation at

Rs. 31,000.32 and awarded the same. The appellant has preferred this appeal challenging the award amount. According to the appellant, there are two errors committed by the Commissioner. The first is that the Commissioner has not considered the question of awarding penalty under Section 4-A of the Act. The employer had not given the information as required by the Act within a period of 7 days from the date of the accident. The accident occurred on 7.2.1985 but the information was given on 18.7.1986. The second error pointed out by the appellant is that the Commissioner has erred in fixing the amount of Rs. 31,000 taking the disability at 80 per cent whereas it is a case of permanent total disablement as the appellant has been incapacitated to work as a labourer after the amputation of his left arm. Hence it is contended that a compensation of Rs. 38,000 and odd should have been awarded in addition to the penalty.

2. Insofar as the quantum of compensation is concerned, we are unable to accept the contention of the learned Counsel for the appellant. Schedule I shows that the amputation below shoulder falls under Part II of the Schedule. Learned counsel contends that this will fall under Part I as it is a case of loss of hand but we find if it is a case of loss of both hands or amputation at higher sites or a loss of hand and a foot, then it will fall under Part I. But this is a case of amputation of one arm below shoulder, hence this will fall under Part II and the disablement is as shown in the medical certificate.

3. It is next contended by the learned Counsel that the percentage of disablement must be fixed with reference to work being done by the concerned worker immediately before the accident. Reliance was placed on the judgment of the Supreme Court in Pratap Narain Singh Deo v. Shrinivas Sabata 1976 ACJ 141 (SC). In that case a carpenter fell down during the course of his employment and suffered injuries resulting in the amputation of his left arm. The injury was of such a nature as to cause permanent disablement and it incapacitated him from performing all work which he was capable of performing, namely, that of a carpenter. In that case it was held to be a total permanent disablement. That principle is not applicable in this case. It is not shown in this case that the appellant is not in a position to work. He has prayed for alternative job being given to him. Hence this contention is rejected.

4. As regards the penalty, the learned Counsel's contention is well founded. The Commissioner has overlooked the provision of Section 4-A of the Act. In fact there was a correspondence between the office of the Commissioner and the respondents prior to the passing of the award. By a communication to HPSEB SECTT: CW: NFA: 225/86-1632-33 dated 11.8.1986, the Executive Engineer was informed the accident report having been sent only on 18.7.1986 and, there being a failure to send the report within seven days after the accident as required by the Act, the addressee was asked to give reasons for the inordinate delay. The addressee was also informed that the penalty will be imposed on the addressee unless reasons were given. There appears to have been no reply to that communication and further communication was also sent to the same effect. In spite of that, the Commissioner has failed to consider the question of awarding penalty against the respondents. Taking into consideration the facts and circumstances of the case we are of the opinion that one-half of the amount of compensation will be appropriate penalty in this case. Hence we allow this appeal to the extent of awarding Rs. 15,500 by way of penalty in favour of the appellant and against the respondents. Thus, the appellant will be entitled to a sum of Rs. 15,500 by way of penalty in addition to the amount awarded by the Commissioner under the Act. The appeal is allowed with costs to the extent indicated above.

5. We are grateful to Mr. Rajiv Sharma for acting as amicus curiae. and helping the court with all the relevant authorities.