

Raksha Devi and ors. Vs. H.P. State Electricity Board and ors.

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Court : Himachal Pradesh

Decided On : May-16-2001

Reported in : II(2001)ACC521

Judge : Kamlesh Sharma and; Lokeshwar Singh Panta, JJ.

Appellant : Raksha Devi and ors.

Respondent : H.P. State Electricity Board and ors.

Judgement :

Kamlesh Sharma, J.

1. Appellant No. 1 is the widow, whereas appellants 2 and 3 are the minor daughters of workman Prithi Singh who met with fatal accident on 2.5.1990 during the course of his employment as Beldar with respondent-Himachal Pradesh State Electricity Board (hereinafter called 'the Board'). Original respondent No. 6 Smt. Gulabo Devi was the mother of the workman who has died during the pendency of this appeal and her legal representatives were brought on record. The appellants and original respondent No. 6, Smt. Gulabo Devi, have been awarded an amount of Rs. 51,257/- as compensation by the award dated 9.12.1992 passed by the Commissioner under Workmen's Compensation Act, HPSEB, Shimla, Camp at Solan. It has been apportioned equally among all the claimants i.e., the appellants and original respondent No. 6, Smt. Gulabo Devi. The appellants have not challenged the quantum of compensation awarded by the Commissioner. Their

precise challenge to the award is that he has not awarded the interest and penalty Under Section 4-A of the Workmen's Compensation Act, 1923 (hereinafter called 'the Act').

2. We have heard learned Counsel for the parties and gone through the record. In order to appreciate their respective submissions reference to Section 4-A of the Act is desirable Section 4-A is:

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 justification for the delay, a further sum not exceeding fifty per cent of such amount, shall be recovered from the employer by way of penalty.

3. A perusal of Sub-section

(1) of Section 4-A of the Act leaves no doubt that employer has a statutory duty to pay the amount of compensation Under Section 4 as soon as it falls due. In other words, the compensation falls due soon after the accident in which the workman dies or receives injury, as the case may be, and the employer is required to calculate the compensation Under Section 4 of the Act and pay it at the earliest. Further, as provided under Sub-section

(2) of Section 4-A of the Act, even if the employer does not accept the liability for compensation to the extent claimed, he should make the provisional payment based on the event of liability which he accepts either directly to the workman or

by depositing the same with the Commissioner without prejudice to the right of the workman to make any further claim. It is also provided under Sub-section

(3) of Section 4-A of the Act that if the amount of compensation due under the Act is not paid within one month from the date it fell due, i.e., the date of accident, the Commissioner will award interest on the amount due and if in the opinion of the Commissioner there is no justification for the delay a further a sum not exceeding fifty percent of the amount of compensation shall be recovered from the employer by way of penalty. In other words, interest is awarded if payment of compensation due is not made within one month from the date it fell due even if the employer explains the delay to the satisfaction of the Commissioner. On the other hand, penalty not exceeding fifty per cent on the amount of compensation is awarded only if the employer fails to give justification for the delay to the satisfaction of the Commissioner in making payment of the compensation due Under Section 4 of the Act. The rate of interest was 6% per annum which has been enhanced to 12% per annum by amendment which came into force on 15.9.1995. Since the accident in the case in hand had taken place on 2.5.1990, rate of interest would be 6%.

4. In the present case, the employer being the instrumentality of the State was expected to act itself as the model employer and make payment of the compensation as soon as it fell due, i.e., within one month from the date of accident, but from the record it is clear that the employer has failed to pay the amount of compensation Under Section 4 of the Act within one month from the date of accident when it fell due, making itself liable to pay interest at the rate of 6% on the amount of compensation from the date of accident till the date of payment. After waiting for 3 1/4 months the appellants had filed application before the Commissioner for Workmen's Compensation, Solan, who had transferred it to the Commissioner, under Workmen's Compensation Act, HPSEB, Shimla, before whom Assistant Executive Engineer (E), Sub Division HPSEB, Parwanoo appeared on 14.1.1991 and took time to file reply to the claim petition and wages chart. The appellants were also directed to file legal heirs certificate and date of birth certificate of deceased workman. Despite opportunities granted to the representative of the employer, reply to the claim petition was not filed and the Commissioner proceeded to record the statements of appellant Raksha Devi and

Ashok Kumar Bhatia, Junior Engineer, Electric Sub Division, Parwanoo, who has admitted that Prithi Singh workman was working as Beldar and he had died while performing his duty. As per this witness, the workman was getting Rs. 20/- per day and his date of birth is 20.5.1962. He has also stated that the Board has no objection for the payment of compensation as per law. If it was so the Board was required to make the payment when it fell due instead of waiting for the award to be passed by the Commissioner.

5. Since the Commissioner is deputed with the Board its Officer under whom -the workman was working at the time of accident was duty bound to inform the Commissioner soon after the accident and deposit the amount of compensation due and payable Under Section 4 of the Act. There is no legal and valid reason brought on record for not performing the statutory duty by the concerned Officer/official of the Board. Therefore, we have no hesitation to hold that delay was not satisfactorily explained and the Board was liable to pay the penalty. However, in view of the attitude of the Board that it has not opposed the application for compensation and has very fairly placed the requisite documents on record, we hold it liable to pay 25% penalty on the amount of compensation. We also hold that in the facts and circumstances on record, the Commissioner has failed in its duty in not awarding the interest and the penalty as provided Under Section 4-A of the Act. We would have remanded the case to the Commissioner for passing the award in respect of interest and penalty but in view of the fact that accident had taken place more than 11 years before we have awarded the interest and penalty after perusing the records.

6. The result of above discussion is that this appeal is accepted and the impugned award is modified to the extent that the respondent-Board is held liable to pay interest at the rate of 6% per annum on the amount of compensation. It is also liable to pay penalty at the rate of 25% on the amount of compensation. Since the other legal heirs of original respondent No. 6, Gulabo Devi, are her major sons and married daughters the amount of interest and penalty is ordered to be paid to appellants only, who are widow and minor daughters of deceased workman. The respondent-Board is directed to deposit the amount of interest and penalty within a period of two months from today. No costs.

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