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(1990) 12 P&H CK 0016

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Babu Ram — APPELLANT

Vs

The Labour Officer and Others — RESPONDENT

Date of Decision: Dec. 21, 1990

Acts Referred:

- Employees Compensation Act, 1923 - Section 10A, 4A

Citation: (1992) 1 ACC 493

Hon'ble Judges: J.V. Gupta, C.J

Bench: Single Bench

Judgement

J.V. Gupta, C.J.
This appeal is directed against the order of the learned single Judge, dated 13th January, 1983, whereby the writ petition challenging the award Annexure P-1 dated 1st April, 1975, passed by the Commissioner under the Workmen''s Compensation Act, was dismissed.

2. Sadhu Ram respondent filed a Claim petition for compensation on behalf of his minor son Roshan Lal alleging that the latter was employed with Babu Ram petitioner at his sugarcane crusher in village Chulkana, Tehul and district Sonepat On March 11, 1974, Roshan Lal respondent while working on the sugarcane crusher in the employment of the petitioner met with an accident His hand was crushed in the crusher and the crushed hand was separated from the body. He prayed that his minor son Roshan Lal be got paid compensation by the petitioner who is the owner of the sugarcane crusher. In pursuance of this Claim petition the Commissioner under the Workmen''s Compensation Act issued notice to the petitioner for April 23, 1974. In the written statement filed on behalf of the petitioner a plea was taken that Roshan Lal was not employed at his sugarcane crusher and that he was merely a volunteer, who was watching the crusher for pleasure and enjoyment sake when he met with an accident. However, the parties were allowed to adduce evidence and the Commissioner vide order dated 1st May 1975 copy Annexure P, accepted the

Claim petition and directed the petitioner to pay Rs. 11,80/- including Rs. 30.80/. by way of penalty u/s 4A of the Workmen''s Compensation Act (hereinafter referred to as the ''Act'') and Rs. 460/- by way of interest to Roshan Lal respondent. In the writ petition, and objection was raised on behalf of the claimants that no writ petition as such was maintainable as the order was appealable one and in order to five the appeal the amount was to be deposited first and, therefore, the writ petition was not the alternative remedy. However, this did not find favour with the learned single Judge. On merits, the learned single Judge found that it was admitted that the accident in which Roshan Lal lost his arm did take place at the sugarcane crusher. The Commissioner thereby held that Roshan Lal met with an accident with sugarcane crusher and lost his arm during the course of his employment It was therefore difficult to hold that no foundation was Laid by the Commissioner for allowing compensation to Roshan Lal.

3. The next contention raised by the counsel for the petitioner before the learned single Judge was that there was no justification for the Commissioner to award Rs. 3780/- by way of penalty u/s 4A of the Act. This plea was also negatived as it was found that a notice of the Claim petition was given to the writ petitioner. He did not pay the compensation to Roshan Lal within 30 days and instead contested the Claim petition. Thus, keeping in view the circumstances of the case, it would be reasonable to hold that there was sufficient compliance in terms of Section 10A of the Act and the petitioner having failed to pay the compensation, the Commissioner was justified in imposing penalty in terms of Section 4A of the Act.

4. At the time of motion hearing recovery of the penalty amount of Rs. 3780/- was stayed and it was made clear that this order will in no way affect the recovery of the balance amount. During the pendency of this appeal, civil miscellaneous application No. 1149 of 1990 was moved in this Court on behalf of the respondent in which it was stated that in spite of the judgment of the learned single Judge, he has not been paid any compensation so far.

5. The only point submitted by the counsel for the appellant is that there was no justification for imposing penalty of Rs. 3780/- u/s 4-A of the Act According to the learned Counsel, the learned Commissioner did not apply his mind in this behalf. In support of his contention, he referred to Khillo Chandramma v. Hindustan Construction Co. Ltd. 1971 Lab. I.C. 135 Amarnath Balde v. Raj and Anr. v. The Commissioner under the Workmen''s Compensation Act 1981 Lab. I.C. 216 and Oriental Fire and General Insurance Co. Ltd. v. ManoramaDevi 1985 ACJ 367. On the other hand learned Counsel for the respondent cited Pratap Narain Singh Deo Vs. Srinivas Sabata and Another, .

6. After hearing the learned Counsel for the parties, we do not find any merit in this appeal.

7. The penalty imposed was fully justified taking into consideration the conduct of the appellant. It is most unfortunates that the accident took place in the year 1974 and up till today no compensation has been paid to the injured. As a matter of fact, no writ petition, as such, was maintainable and it was only appeal, which could be filed after depositing the amount determined by the Commissioner. The authorities cited on behalf of the respondents have no applicability to the facts of the present case. Sub-section (3) of Section 4A of the Act contemplates that "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" Thus the penalty was rightly imposed by the learned Commissioner in this case. Consequently, this appeal fails and is dismissed with costs.

8. Since the recovery of penalty amount of Rs. 3780/- was stayed by this Court, the appellant will be liable to pay 12 per cent interest thereon till its realisation, from the date i.e. 1.15.1975 when it had become due to the workman. In case, the principal to pay interest at the rate of 12 per cent from the date of the order of the learned single Judge i.e. 13th January 1983, till its realisation.