**(2009) 11 AHC CK 0236**

**Allahabad High Court (Lucknow Bench)**

**Case No:** None

New India Assurance Co. Ltd. — APPELLANT

Vs

Abdul Sattar Khan and Others — RESPONDENT

**Date of Decision:** Nov. 20, 2009

**Acts Referred:**

- Workmens Compensation Act, 1923 - Section 30

**Citation:** (2011) ACJ 403 : (2010) AWC 1455

**Hon'ble Judges:** Rajiv Sharma, J; Anil Kumar, J

**Bench:** Division Bench

**Final Decision:** Dismissed

**Judgement**

Rajiv Sharma and Anil Kumar, JJ.
List is being revised.

2. In spite of names of Sri Rajendra Jaiswal and Sri Shiv Kant Tlwari, have been printed in the cause list as counsel for the respondents, neither they are present to press the appeal nor there is any request for passing over or adjournment of the case.

3. Heard Sri Rajesh Nath, learned Counsel for the appellant.

4. Through this First Appeal From Order u/s 30 of the Workmen''s Compensation Act, 1923, the appellant is assailing the judgment and order dated 28.1.2005 passed by the Deputy Labour Commissioner/Workmen''s Compensation commissioner, Faizabad in Case No. WC/04/2003, whereby a compensation of Rs. 4,19,840 has been awarded and the appellant has been directed to pay the same within one month, failing which, 12% interest would be payable.

5. Admitted facts, which are necessary to be noted, are that the workman (Sarwar Husain Khan alias Sarwar Khan) was employed by the respondent No. 7 Rashid Ali as a driver. On 24.10.1997 while on duty and driving a Truck bearing No. U.P.78B-1774

L.P. in respect whereof respondent No. 7 had obtained an insurance cover from the appellant, workman was murdered by some criminal falling within the territorial jurisdiction of Police Station Panki, Kanpur Dehat. The workman was aged 29 years at the time of the accident and his last drawn wages were Rs. 4,000 per month. Thereafter, respondent No. 1 Sri Abdul Sattar Khan, who is said to be legal heir of workman, filed a claim petition before the Deputy Labour Commissioner/ Workmen''s Compensation Commissioner, Faizabad (hereinafter referred to as ''court below'' for the sake of brevity). Appellant was impleaded as a respondent being the insurer of the Truck. The court below, vide order dated 28.1.2005, allowed the claim of the respondent No. 1 and awarded Rs. 4,19,840 as compensation to the respondent No. 1. It has also directed to pay the awarded amount within one month, failing which, 12% interest would be payable by the appellant.

6. Against the order dated 28.1.2005, the appellant preferred the instant first appeal from order inter alia on the grounds that the court below has erred in law while calculating the compensation amount on the basis of Rs. 4,000 as wages of the deceased.

7. Learned Counsel for the appellant submits that the learned court below has overlooked the Explanation II of the provisions of Section 4 of the Workmen''s Compensation Act, 1923 which clearly provides that where the monthly wages of a workman exceed Rs. 1,000, his monthly wages for the purposes of Clause (a) and Clause (b) shall be deemed to be Rs. 1,000 only. He submits that the said provision was substituted by Act 30 of 1995 w.e.f. 15.9.1995 and again by Act No. 46 of 2000 w.e.f. 8.12.2000 and as such, the compensation amount is required to be calculated on monthly wages of the deceased workman as Rs. 2,000 per month and on this figure, the amount of compensation comes to the tune of Rs. (2,000 x 209.92)= 2,09,920 only. Therefore, the calculation has wrongly been drawn.

8. In order to resolve the controversy, it is relevant to produce Explanation-II of Section 4 of the Workmen''s Compensation Act, 1923. After substituting the Act by Act No. 30 of 1995 w.e.f. 15.9.1995, the Explanation II of Section 4 reads as under:

Explanation II.--Where the monthly wages of a workman exceed (one thousand rupees), his monthly wages for the purposes of Clause (a) and Clause (b) shall be deemed to be(one thousand rupees) only ;

After substituting the Act No. 30 of 1995 by Act No. 46 of 2000 w.e.f. 8.12.2000, the Explanation II of Section 4 reads as under:

Explanation II.--Where the monthly wages of a workman exceed (two thousand rupees), his monthly wages for the purposes of Clause (a) and Clause (b) shall be deemed to be (two thousand rupees) only;

9. Now, question is to be considered in the instant appeal is what will be the correct wages which is to be calculated. Whether it is to be calculated as provided under

Explanation II of Section 4 of the Act prevailing at that time of the accident or to be calculated with latest provisions of the Act which has been given effect with effect from 8.12.2000.

10. In the case of N. Parameswaran Pillai and Another Vs. Union of India (UOI) and Another, the Hon''ble the Supreme Court has held that:

After hearing the learned Counsel for the parties and perusing the record, we have no doubt in our mind that the claim of the appellants is squarely covered by the judgment of this Court in Rathi Menon''s case (supra) wherein while setting aside the similar judgment of the Kerala High Court, it was held :

The asinine consequence of accepting the interpretation placed by the Division Bench of the High Court can be demonstrated through an illustration. If a person sustained injury as described in Rule 3 (2) of the Rules, in an accident in a train on 30.10.1997, and Anr. person sustains the same kind of injury in another accident in a train the next day, i.e., 1.11.1997, when both persons made separate applications before the same Claims Tribunal for compensation, the Tribunal can award Rs. 2 lakhs only in the first case and Rs. 4 lakhs in the second case. What a woeful discrimination, if not a glaringly unfair differentiation. See the interval between the two accidents of identical features. It was only a few hours, but the difference in the compensation amount is enormously high. Any Court should avert an interpretation which would lead to such a manifestly absurd fallout, unless the Court is compelled otherwise by any mandatory provision.

Why the Central Government decided to make such a vast variation in the amount of compensation while exercising the powers conferred by Section 129 of the Act?

It cannot be conceived that the Government wanted to make a discrimination between those victims who suffered an injury in an accident prior to 1.11.1997 and those who suffered an identical injury in a similar accident on or after that date. The raison d''etre for making such variation is easily discernible. The Central Government wanted to update the compensation amount. Rupee value is not an unchanging unit in the monetary system. Students of economic history know that currency value remained static before the Second World War. But the post-World War II witnessed the new phenomenon of vast fluctuations in money value of currency notes in circulation in each nation. When the U.S. Dollar registered a steep upward rise, currencies in many other countries made downward slip. What was the value of one hundred rupees twenty years ago is vastly different from what it is today. This substantial change has caused its impact on the cost of living also.

The Central Government while changing the figures in the compensation amount after an interval of a decade was only influenced by the desire to update the money value of the compensation. In other words, what you were to pay ten years ago to one person cannot be the same if it is paid today in the same figure of currency notes. It is for the purpose of meeting the reality that the Central Government

changed the figures.

The unjust consequence resulting from the interpretation which the Division Bench placed can be demonstrated in another plane also. If a person who sustained injury in a railway accident or in an untoward incident was disabled from making an application immediately and he makes the application after a few years hence,is he to get the compensation in terms of the money value which prevailed on the date of the accident? Suppose a Tribunal wrongly dismissed a claim after a few years of filing the application and the claimant approaches the High Court in appeal. As it happens quite often now, some High Court could take up such an appeal only after the lapse of many years and if the appeal is decided in favour of the claimant after so many years, what a pity if the amount awarded is only in terms of the figure indicated on the date of the accident.

From all these, we are of the definite opinion that the Claims Tribunal must consider what the Rules prescribed at the time of making the order for payment of the compensation.

In view of authoritative pronouncement made by this Court under similar circumstances, the present appeal has to be allowed by setting aside the impugned judgment of the High Court. Consequently we direct the Railway Administration to pay to the appellants a total sum of Rs. 4 lakhs instead of Rs. 2 lakhs as awarded within a period of three months from the date of this judgment with interest as awarded by the High Court. If the amount of Rs. 2 lakhs as awarded by the Tribunal has already been paid, the appellants would be entitled to interest on the balance amount of Rs. 2 lakhs from the date of the petition till the actual payment and not on the whole amount as awarded by us. The appeal is allowed accordingly.

11. In Rathi Menon Vs. Union of India, the Apex Court in paragraph 30 of the report held as under :

From all these, we are of the definite opinion that the Claims Tribunal must consider what the Rules prescribed at the time of making the order for payment of compensation.

12. From the aforesaid pronouncement, it is clear that by making enhancement in monthly wages in Explanation II of Section 4, the intention of the legislation was not to make a discrimination between the victims who suffered injury before 8.12.2000 and those who suffered after the substitution made in Explanation II of Section 4, i.e., 18.12.2000. The law is well-settled that provision existing at the time of making the order for compensation is to be applied. The Tribunal has rightly applied the factor of 209.92 treating the wages of the appellant as Rs. 2,000.

13. Thus, the Tribunal while passing the impugned judgment has considered the Rules existing at the relevant time to promote justice. We may add that construction of the rule which promotes justice and prevents miscarriage has to be preferred. In

other words, the interpretation, which is more in consonance with the object of the Act and for the benefit of the person for whom the Act or the provision has been inserted in an Act, should be preferred meaning thereby the liberal and not the literal interpretation should be given.

14. In view of the above, we find no infirmity or illegality in the impugned award. Consequently, the first appeal from order is dismissed.