(2003) 97 FLR 563 : (2003) 3 MPHT 269

Madhya Pradesh High Court (Indore Bench)

Case No: Miscellaneous Appeal No. 1314 of 2001

Shri Ram Dal Mills and Others		APPELLANT
	Vs	
Rama		RESPONDENT

Date of Decision: Feb. 25, 2003

Acts Referred:

- Workmens Compensation Act, 1923 - Section 30, 4, 4A, 4A(3)

Citation: (2003) 97 FLR 563 : (2003) 3 MPHT 269

Hon'ble Judges: A.K. Gohil, J

Bench: Single Bench

Advocate: Pankaj Bagdiya, for the Appellant; C.S. Ahirwar, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

A.K. Gohil, J.
The appellant has filed this appeal u/s 30 of the Workmen Compensation Act, against the award dated 7-6-2002, passed by the Commissioner, Workmen Compensation, Indore, in W.C. Case No. 10/93 NF, granting compensation to the claimant/respondent, to the tune of Rs. 39,846/- with interest @ 6% p.a. from the date of accident till payment. The learned Commissioner has also imposed penalty @ 25% of the compensation. Respondent also filed cross-objection.

2. Brief facts of the case are that respondent Rama was working as a daily wages labourer in the appellant"s Dal Mill. He was engaged for polishing pulses. On 12-11-92, during his duty hours, when he was putting the pulses in the machine, his hand was crushed by the machine, as a result of which he received injury in the hand. Thereafter, he was referred to the hospital and the matter was also reported to the police and FIR was lodged. He was getting Rs. 30/- per day as wages. The claim was contested and

witnesses were examined. After appreciating the evidence on record the learned Commissioner accepted the medical evidence and has held that the claimant suffered 40% disability in the hand and after applying formula prescribed in the Act, worked out a total compensation of Rs. 39,846/- with interest and penalty, against which the owner of the Mill has filed this appeal.

3. I have heard Shri Pankaj Bagdiya for the appellants and Shri Ahirwar for the respondent and perused the record.

4. Submission of Shri Bagdiya is that as per the statement of Dr. Vijay Kumar Jain (P.W. 4) the permanent disability is not upto 40%, but is upto 10 to 12%, for the loss of working capacity of the hand. His further submission is that the Tribunal has wrongly awarded compensation which is on the higher side and has also awarded penalty, without any notice or opportunity of hearing to the appellants, while notice is mandatory u/s 4A of the Workmen Compensation Act. Learned Counsel for the respondent supported the award and further pressed cross-objection and prayed for enhancement of the award.

5. From the evidence on record it is clear that the hand of Rama was crushed in the machine during the course of his employment and the same was totally damaged. The hand was taken out from the machine after stopping it and opening the same. As per the evidence of Dr. Vijay Kumar Jain (P. W. 4), on 10-11-92 Rama was admitted in a private hospital and on 17-11-92, without intimation he himself left the hospital. Subsequently, he was again examined by the doctor on 15-5-95. His X-ray was also taken. In the opinion of doctor there may be variations in the disability, but the claimant and other witnesses have categorically stated that his hand is damaged and he is not in a position to work with the hand. Therefore, it appears that looking to the evidence on record the Tribunal has rightly awarded a compensation of Rs. 39,846/-, on the basis of the injury received by the respondent. No doubt, there is variation in the percentage of the disability, but when the hand of a worker has become totally damaged, then the same should be treated as loss of hand and also loss of his working capacity.

6. Thus it is held that the Tribunal has rightly awarded compensation of Rs. 39,846/-, after assessing the same on the basis of given formula in the Workmen Compensation Act. I do not find that any case of involvement of any substantial question of law is involved in the appeal for consideration by this Court. It can be held that it is a case based on the question of fact relating to the assessment of evidence on record. Therefore, I do not find any scope for interference in the finding of fact recorded by the Commissioner for Workmen Compensation. Accordingly, there is no merit in this appeal so far as the question of assessment of compensation is concerned. The interest awarded is not proper, it should be @ Rs. 12% p.a. instead of 6%. Therefore, it is modified and enhanced from 6% to 12% p.a. on the sum assessed.

7. The Commissioner for Workmen Compensation has also awarded penalty upto 25% on the aforesaid amount. It is true that u/s 4A of the Act the penalty can only be awarded

after giving a show-cause notice as to why it should not be passed and after providing reasonable opportunity to the employer. For considering this objection of the employer, I have perused the claim petition as well as statements of the parties and also the order-sheets maintained by the Commissioner for Workmen Compensation. The claimant has not claimed any penalty. The Commissioner for Workmen Compensation has also not given any notice to the employer before imposing penalty. The proviso of Sub-section (3) of Section 4A is a mandatory provision and without meeting the compliance of the same penalty cannot be imposed without giving show cause-notice and also without providing reasonable opportunity of hearing to the employer.

8. Admittedly, in this case the Commissioner for Workmen Compensation has not complied the mandatory provision of law, therefore, I find that the Commissioner has wrongly imposed penalty without following due procedure of law and, as such, to this extent this appeal deserves to be allowed and it is held that the claimant is not entitled for any amount of penalty. Accordingly, the impugned award is modified to the extent that the respondent/claimant shall not be entitled to recover the amount of penalty, as has been imposed by the Commissioner for Workmen Compensation. As regards cross-objection, learned Counsel for the respondent could not satisfy me as to how and on what basis the amount of award is liable to be enhanced, therefore, the cross-objection is also dismissed.