

AFR

Court No. - 37

Case :- FIRST APPEAL FROM ORDER No. - 1596 of 2020

Appellant :- Shri Balak Ram

Respondent :- National Insurance Company Ltd. And Another

Counsel for Appellant :- Sanjay Singh, Amrendra Nath Rai

Counsel for Respondent :- Radhey Shyam, Pankaj Rai

Hon'ble Dr. Kaushal Jayendra Thaker, J.

1. Heard learned counsel for the parties and perused the judgment and order impugned.

2. This appeal at the behest of the claimant challenges the judgment and order dated 31.8.2020 passed by Employee Compensation Commissioner/Assistant Labour Commissioner, Bareilly (hereinafter referred to as 'Commissioner') in Case No.19/E.C.A./2018 awarding a sum of Rs.8,19,069/- with interest at the rate of 12% from the date of its order.

3. Learned counsel for the appellant challenges the order on a limited question of law namely whether default of employer in paying due compensation under the Workmen's Compensation Act, 1923 (hereinafter referred to as 'Act') within one month from the date it fell due, entitles the claimant to 12% interest over the entire amount assessed as compensation in Claims proceeding under Section 4A of the Act and from what date.

4. It is submitted by Sri Pankaj Rai, learned counsel for the respondent that reason for granting interest from the date of order seems to be delay caused by the claimant. Submission of Sri Pankaj Rai is very attractive but no reasons appear to have been assigned by the learned Commissioner.

5. Recently, this Court in First Appeal From Order No. **(Sanju Kushwah Vs. Vimal Kumar Verma and another)** decided on 3.12.2020, has held as under:

*"5. I am pained to pen down that the Workmen's Commissioner in Uttar Pradesh are time and again to be conveyed that they are supposed to follow the statute under which they are functioning. I am supported in my view by the Judgments rendered by Supreme Court in **Oriental Insurance Company Vs. Siby George and others, 2012(4) T.A.C. 4 (SC); Civil Appeal No. 7470 of 2009 North East Karnataka Road Transport Corporation Vs. Smt. Sujatha decided on 2.11.2018; and Civil Appeal No. 10018 of 2017, Smt. Surekha and others Vs. the Branch Manager, National Insurance Company Ltd. decided on 3.8.2017** which holds that Insurance*

Company has to be made liable and further the relevant date from when the interest would be payable is decided therein, namely, one month of the date, it accrues.

6. Learned counsel Sri S.K. Mehrotra tried to point out that the Judgment is just and proper, however, I am not convinced as the statute demands that the claimant becomes entitled to interest within a period of one month from the date the amount accrues to him. In our case, the amount accrued to him one month after the accident took place, i.e., 25.10.2017 and the owner Vimal Kumar Verma, who was insured by the respondent no.2 did not make the payment.

7. In view of the aforesaid, Judgment and award impugned herein is modified. If the Insurance Company has not yet deposited the amount, it shall deposit the amount with interest at the rate of 12% from one month from the date of accident, i.e., 25.11.2017."

6. In view of the above, this appeal is partly allowed. The judgment and award of the learned Commissioner shall stand modified to the extent that the insurance company shall deposit the amount with interest from one month from the date of accident, i.e. 3.12.2017.

7. It goes without saying that once the amount is deposited, the Commissioner shall disburse the same and the Insurance company shall not deduct TDS as against the settled principles of law.

8. Despite directions of this Court, it appears that the learned Commissioner is not following the dictate of the legislation. Hence, explanation of learned Commissioner be called for as to why without assigning reasons, she had granted interest from the date of order.

9. This Court is thankful to both the learned Advocates for ably assisting this Court. A copy of this order be sent to the learned Commissioner below calling for his remarks.

10. The matter be placed before the undersigned on 15.1.2021 perusing the remarks of the undersigned.

Order Date :- 8.12.2020

DKS