

SHOBHA & ORS.

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v.

THE CHAIRMAN, VITHALRAO SHINDE SAHAKARI
SAKHAR KARKHANA LTD. & ORS.

(Civil Appeal No. 1860 of 2022)

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MARCH 11, 2022

[M. R. SHAH AND B.V. NAGARATHNA, JJ.]

Employee's Compensation Act, 1923: ss. 4, 4A – Award of compensation under – Entitlement to interest, from the date of the order passed by the Commissioner or from the date of accident – Held: Liability to pay the compensation would arise from the date on which the deceased died for which he is entitled to the compensation, thus, the liability to pay the interest on the amount of arrears/compensation would be from the date of accident and not from the date of the order passed by the Commissioner – On facts, order passed by the High Court directing the employer to pay the interest @ 12% p.a. on the amount of compensation as leviable u/s. 4A(3)(a) from the date of the order passed by the Commissioner is unsustainable and is set aside.

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Allowing the appeal, the Court

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HELD: 1.1 As per Section 4A(1) of the Employee's Compensation Act, 1923 compensation under section 4 shall be paid as soon as it falls due. Therefore, on the death of the employee/deceased immediately, the amount of compensation can be said to be falling due. Therefore, the liability to pay the compensation would arise from the date on which the deceased died for which he is entitled to the compensation and therefore, the liability to pay the interest on the amount of arrears/compensation shall be from the date of accident and not from the date of the order passed by the Commissioner. As per Section 4A(3)(b), if the Commissioner is satisfied that there is no justification for the delay, it can direct the employer, in addition to the amount of the arrears and interest thereon, to pay a further sum not exceeding 50% of such amount by way of penalty. Thus, provision for interest and provision for penalty are different. The

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- A provision for levy of interest would be under Section 4A(3)(a) and the provision for levy of penalty would be under Section 4A(3)(b). While directing the employer to pay the interest from the date of the order passed by the Commissioner, the High Court has not at all considered Section 4A(3)(a) and has considered Section 4A(3)(b) only, which is the penalty provision. The
- B impugned judgment and order passed by the High Court directing the employer to pay the interest @ 12% p.a. on the amount of compensation as leviable under Section 4A(3)(a) from the date of the order passed by the Commissioner, is unsustainable, and is quashed and set aside. The appellants-original claimants would
- C be entitled to the interest @ 12% p.a. on the amount of compensation as awarded by the Commissioner from the date of the incident. [Paras 4.1, 5, 6][765-B-H; 766-B]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1860 of 2022.

- D From the Judgment and Order dated 12.12.2019 of the High Court of Judicature at Bombay, Bench at Aurangabad in F.A. No.3008 of 2017.

Ms. Qurratulain, Shivaji M. Jadhav, Brij Kishor Sah, Aditya Jadhav, Advs. for the Appellants.

- E Samrat Krishnarao Shinde, Sarang Aaradhya, Advs. for the Respondents.

The Judgment of the Court was delivered by

M. R. SHAH, J.

- F 1. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court of Judicature at Bombay, Bench at Aurangabad in First Appeal No. 3008 of 2017 by which the High Court has partly allowed the said appeal preferred by the respondents herein and has ordered that the respondents shall be liable to pay interest @ 12 per cent p.a. as leviable under Section 4A(3) of the Employee's
- G Compensation Act, 1923 (hereinafter referred to as the "Act, 1923") from the date after expiry of period of one month from 25.01.2017 (the date of the order passed by the Commissioner), the heirs of the deceased –labourer working on sugarcane field have preferred the present appeal.

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2. That the deceased was a sugarcane cutting labourer. He was engaged as a labourer by the Labour Contractor for cutting the sugarcane, which was to be supplied to the sugar factory. While cutting the sugarcane, he died of a snake bite. Neither the sugar factory nor the contractor paid the compensation due and payable under the Act, 1923 and therefore the appellants herein – heirs of the deceased filed a claim petition before the Commissioner Workmen's Compensation, Beed being W.M.C. No. 39 of 2011 and claimed Rs. 5 lakhs. By the order dated 25.01.2017, the Commissioner allowed the said application and directed the respondent Nos. 1 to 3 herein jointly and severally to pay the compensation amount of Rs.3,06,180/- alongwith simple interest @ 12% p.a. from the date of accident, i.e., 29.11.2009 till its full realization. The Commissioner also imposed the penalty of 50% on the compensation amount, i.e., Rs. 1,53,090/-.

2.1 Feeling aggrieved and dissatisfied with the order passed by the Commissioner, Workmen's Compensation, Beed dated 25.01.2017, respondent Nos. 1 to 3 herein filed the First Appeal No. 3008 of 2017 before the High Court. By the impugned judgment and order the High Court has though dismissed the appeal insofar as the amount of compensation awarded by the Commissioner is concerned, however, has set aside the penalty and modified the interest awarded @ 12% p.a. from the date of incident and has directed that the interest @ 12% p.a. shall become payable from the period after expiry of one month from 25.01.2017.

2.2 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the high Court restricting the interest @ 12% p.a. from the date after expiry of period of one month from 25.01.2017, the original claimants have preferred the present appeal.

3. We have heard the learned counsel for the respective parties at length.

4. While holding that the claimants shall be entitled to interest @ 12% p.a. from the date after expiry of a period of one month from 25.01.2017, the High Court has considered Section 4A(3)(b) only which deals with imposition of penalty. However, the High Court has not noted and/or considered Section 4A(3)(a) of the Act, 1923, which deals with award of interest when the employer is in default. Section 4A reads as under:-

A **“4A. Compensation to be paid when due and penalty for default.-** (1) Compensation under section 4 shall be paid as soon as it falls due.

B (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 extent of liability which he accepts, and, such payment shall be deposited with the Commissioner or made to the employee, as the case may be, without prejudice to the right of the employee to make any further claim.

C (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 shall-

D (a) direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve per cent. per annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government by notification in the Official Gazette, on the amount due; and

E (b) if, in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears and interest thereon, pay a further sum not exceeding fifty per cent. of such amount by way of penalty:

F Provided that an order for the payment of penalty shall not be passed under clause (b) without giving a reasonable opportunity to the employer to show cause why it should not be passed.”

G Explanation.-For the purposes of this sub-section, “scheduled bank” means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934).

(3A) The interest and the penalty payable under sub-section (3) shall be paid to the employee or his dependant, as the case may be.”

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4.1 Thus, from Section 4A of the Act, 1923 compensation under Section 4 shall be paid as soon as it falls due. It can be seen that the liability to pay the interest on the amount of compensation due and payable would be under Section 4A(3)(a) and the penalty would be leviable under Section 4A(3)(b). As per Section 4A(3)(a), the employer shall pay, in addition to the amount of the arrears, simple interest thereon @12% p.a. or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified on the amount due. As per Section 4A(1) compensation under section 4 shall be paid as soon as it falls due. Therefore, on the death of the employee/deceased immediately, the amount of compensation can be said to be falling due. Therefore, the liability to pay the compensation would arise immediately on the death of the deceased. Even as per Section 4A(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 extent of liability which he accepts, and, such payment shall be deposited with the Commissioner or made to the employee, as the case may be, without prejudice to the right of the employee to make any further claim. Therefore, the liability to pay the compensation would arise from the date on which the deceased died for which he is entitled to the compensation and therefore, the liability to pay the interest on the amount of arrears/compensation shall be from the date of accident and not from the date of the order passed by the Commissioner. As per Section 4A(3)(b), if the Commissioner is satisfied that there is no justification for the delay, it can direct the employer, in addition to the amount of the arrears and interest thereon, to pay a further sum not exceeding 50% of such amount by way of penalty. Thus, provision for interest and provision for penalty are different. As observed hereinabove, the provision for levy of interest would be under Section 4A(3)(a) and the provision for levy of penalty would be under Section 4A(3)(b). While directing the employer to pay the interest from the date of the order passed by the Commissioner, the High Court has not at all considered Section 4A(3)(a) and has considered Section 4A(3)(b) only, which is the penalty provision.

5. Under the circumstances, the impugned judgment and order passed by the High Court directing the employer to pay the interest on the amount of compensation as leviable under Section 4A(3)(a) from the date of the order passed by the Commissioner, i.e., 25.01.2017 is unsustainable.

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- A 6. In view of the above and for the reasons stated above, the present appeal succeeds. The impugned judgment and order passed by the High Court insofar as awarding the interest @ 12% p.a. after the period of expiry of one month from 25.01.2017, is hereby quashed and set aside and it is observed and held that the appellants herein – original claimants shall be entitled to the interest @ 12% p.a. on the amount of compensation as awarded by the Commissioner from the date of the incident i.e., 29.11.2009.
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Present appeal is allowed accordingly. However, in the facts and circumstances of the case, there shall be no order as to costs.

Nidhi Jain

Appeal allowed.