

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(L) No.4798 of 2019

Bharat Coking Coal Limited, a Company incorporated under the Companies Act, having its head office at Koyla Bhawan, P.O. & P.S. Koyla Nagar, District- Dhanbad, Jharkhand through its Project Officer, NAKC- Shri Sanjay Kumar Singh, Aged about 52 Years, S/o Ram Jee Kumar Singh, P.O. Katras, P.S. Katras, District- Dhanbad, Jharkhand ... Petitioner

Versus

Mularwa Devi, Wife of late Shiv Kumar Bhuiya, R/o Pinalgoria, P.O. Nawagarh, P.S. Baghmara, District- Dhanbad ... Respondent

With
W.P.(L) No.6135 of 2019

Bharat Coking Coal Limited, a Company incorporated under the Companies Act, having its Head office at Koyla Bhawan, P.O. & P.S.- Koyla Nagar, District- Dhanbad (Jharkhand) through its General Manager, Hydro Mining Colliery, Kachchi Balihari, P.B. Area, PO- Kusunda, PS- Putki, District- Dhanbad (Jharkhand) and also through its Project Officer, KB 5/6 Pits Colliery, P.B. Area, Sri Gopal Krishna Mehta, aged about 52 years, son of Sri Harihar Prasad Mehta, residing at Hindi Bhawan, P.O.- Kusunda, P.S.- Kenduadih District- Dhanbad (Jharkhand) ... Petitioner

Versus

1. Sarti Dasi, W/o Late Kinkar Das, R/o Kachchi Balihari, PO- Kusunda, PS- Putki, Dist: Dhanbad, PIN 828116 (Jharkhand)

... Respondent

2. The Project Officer, 5/6 Pit, Hydro Mining Colliery, Kachchi Balihari, P.B. Area, M/s Bharat Coking Coal Limited, PO- Kusunda, PS- Putki, District- Dhanbad, (Jharkhand)

... Performa Respondent

With

W.P.(L) No.99 of 2022

Mularwa Devi, aged about 42 years, W/o Late Shiv Kumar Bhuiya,
R/o Pinalgoria, P.O. Nawagarh, P.S. Baghmara, District- Dhanbad

... Petitioner

Versus

1. M/s Bharat Coking Coal Limited a Company incorporated under the Companies Act, having its head office at Koyla Nagar, P.O. & P.S. Koyla Nagar, District Dhanbad, Jharkhand through its Chairman cum Managing Director, Koyla Nagar, P.O. & P.S. Koyla Nagar, Dhanbad, District- Dhanbad
2. The Project Officer/Chief Manager (Mining), M/s Bharat Coking Coal Limited, Near Akashkinaree Colliery, Govindpur Area No.III, P.O. Katrasgarh, P.S. Katras, District Dhanbad. ... Respondents

For the Petitioners	: Mr. Amit Kr. Das, Advocate Ms. Swati Shalini, Advocate Mr. Kanishka Deo, Advocate (In W.P. (L) No.4798/2019 and 6135/2019) Mr. Lukesh Kumar, Advocate Mr. Om Prakash Singh, Advocate Mr. Vijay Kumar, Advocate (In W.P. (L) No.99/2022)
For the Respondents	: Mr. Amit Kr. Das, Advocate Ms. Swati Shalini, Advocate Mr. Kanishka Deo, Advocate (In W.P. (L) No.99/2022) Mr. Lukesh Kumar, Advocate Mr. Om Prakash Singh, Advocate Mr. Vijay Kumar, Advocate (In W.P. (L) No.4798/2019)

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

By the Court:- Heard the parties.

2. W.P. (L) No.4798 of 2019 and W.P. (L) No.99 of 2022 have been filed in respect of the common judgment passed by Presiding Officer, Labour Court,

Dhanbad in connection with M.J. Case No.35 of 2015 dated 31.01.2019 and W.P. (L) No.6135 of 2019 has common point of law involved and has similar facts, hence, all these writ petitions are disposed of by this common judgment.

3. **The facts of W.P. (L) No.4798 of 2019 and W.P. (L) No.99 of 2022 are as follows:-**

The respondent of W.P. (L) No.4798 of 2019 who is the writ petitioner of W.P. (L) No.99 of 2022, filed an application under Section 33 (c) (2) of the Industrial Disputes Act, 1947 against the writ petitioner of W.P. (L) No.4798 of 2019 who is the respondent of W.P. (L) No.99 of 2022 for *ex-gratia* amount on account of death of her husband namely Shiv Kumar Bhuiya who was a permanent employee under the respondent. Shiv Kumar Bhuiya met with an accident and expired on 23.01.2014 in the underground mines in course of his employment. The opposite party before the Labour Court, Dhanbad deposited Rs.6,70,160/- as compensation under Employees Compensation Act, 1923 and further paid an *ex-gratia* amount of Rs.84,600/- apparently under Clause 9.2.6 under Chapter IX of the National Coal Wage Agreement- IX. The applicant before the Labour Court namely Mularwa Devi filed the application claiming Rs.5,00,000/-on the ground that her husband Shiv Kumar Bhuiya died out of fatal mines accident. The Labour Court though in concluding part of paragraph-6 of the judgment found and held that the applicant is entitled for *ex-gratia* amount of Rs.5,00,000/- which payable under Clause 9.2.7 of NCWA-IX besides *ex-gratia* of Rs.84,600/- which has already been paid through cheque to the applicant under Section 33 (C) (2) of the I.D. Act, 1948 but in the operative portion contrary to the finding, observed that the opposite party is at liberty to deduct the amount of *ex-gratia* Rs.84,600/- which has already been

paid to the applicant. Further, the Labour Court directed the opposite party to pay Rs.5,00,000/- as *ex-gratia* as per NCWA-IX to the applicant from the date of death of her husband i.e. on 23.01.2014 with simple interest @ 6% per annum as an arrear within 60 days from passing of the order failing which the opposite party will also be liable to pay arrear amount along with simple interest @ 9% per annum.

4. **The facts of W.P. (L) No. 6135 of 2019 is as follows:-**

Writ Petition No.6135 of 2019 relates to the judgment dated 29.05.2019 passed by the Presiding Officer, Labour Court, Dhanbad in connection with M.J. Case No.03 of 2018. The applicant filed the said M.J. Case No.03 of 2018 claiming *ex-gratia* amount on account of death of her husband namely Kinkar Das who was on duty in night shift at 5/6 pit colliery at underground of Hydro Mining Colliery and during his work, suffered from heart attack and consequently died. The applicant filed a case for seeking compensation on account of death of Kinkar Das. The court passed an order in favour of the applicant holding that the deceased died in an accident arising out and in course of his employment. Consequent upon filing of the Execution Case bearing No.77 of 2016 for implementation of the award in Workman Compensation Case No.04 of 2012, the opposite party deposited the awarded amount. The petitioner of M.J. Case No.03 of 2018 further made the prayer for payment of special relief/ *ex-gratia* amount of Rs.5,00,000/- to her and by the said judgment impugned in W.P. (L) No.6135 of 2019, the Presiding Officer, Labour Court, Dhanbad directed payment of Rs.5,00,000/- as *ex-gratia* as per NCWA to the applicant from the date of death of her husband i.e. on 30.04.2011 with simple interest @ 6% per annum as an arrear within 60 days

from passing of the order failing which the opposite party will also be liable to pay arrear amount along with simple interest @ 9% per annum from the expiry of 60 days.

5. **Contention of the parties:-**

W.P. (L) No.4798 of 2019 and W.P. (L) No.6135 of 2019 have been filed by the writ petitioner-company with a prayer for setting aside the judgment dated 31.01.2019 passed in M.J. Case No.35 of 2015 and judgment dated 29.05.2019 passed in M.J. Case No.03 of 2018 respectively whereby and where under the learned Presiding Officer, labour court has allowed the application filed by the respondent of those two writ petitions and directed the writ petitioner to pay Rs.5,00,000/- along with simple interest @ 6% per annum.

6. W.P. (L) No.99 of 2022 has been filed by the applicant of M.J. Case No.35 of 2015 with a prayer for issue of writ of certiorari for quashing the part of the order dated 31.01.2019 passed in M.J. Case No.35 of 2015 passed by the Presiding Officer, Labour Court, Dhanbad whereby and where under the Labour Court has given liberty to the respondent/opposite party to deduct *ex-gratia* payment of Rs.84,600/- from the awarded amount.

7. A similar matter was before a co-ordinate Bench of this Court in W.P. (L) No.6969 of 2017. The coordinate bench disposed of the same vide order dated 19.06.2023, paragraphs-23, 27, 28 and 29 of which read as under:-

"23. This Court finds that as per the provision of NCWA and the circular quoted above, it has been specifically provided that in any mine accident arising out and in course of employment, ex-gratia amount of Rs.5 lakhs would be payable in addition to the amount payable under Workmen's Compensation Act, 1923. Admittedly, in the instant case, the workman had fell into the mine and before he could come out of the underground mine, he was brought dead back to the surface. This Court is of the considered view that once the entitlement under the Workmen's Compensation Act was found payable for the death of the employee which

occurred in the mine on account of falling into the mine, the payment of additional ex-gratia amount stood crystallized and payable and could have been directed to be paid by passing an order under Section 33-C(2) of the Industrial Disputes Act, 1947. The impugned order is in consonance with the law laid down by the Hon'ble Supreme Court as discussed above.

27. *So far as the payment of interest is concerned, the learned court below has directed for payment of simple interest @ 6% from the date of death till the date of actual payment within 60 days from the date of the order and on default interest @ 9% has been directed to be paid from the date of expiry of 60 days. As per the provisions of Industrial Disputes Act, Section 33C deals with recovery of money from an employer which becomes due from the employer under a settlement or under an award. Such provision is without prejudice to any other mode of recovery and if the appropriate government is satisfied that the money is so due, a certificate is to be issued for the amount to the Collector who is to proceed to recover the amount in the same manner as an arrear of land revenue. Sub-Section 2 of Section 33C of the Act further provides that if a question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question is to be decided by the labour court. This Court finds that provisions of Section 33C deals with recovery of money which has already been quantified or if so required, capable of being computed by the labour court and is in the nature of execution proceedings.*

28. *This Court is of the considered view that there is no scope for passing an order for payment of interest over and above whatever is due under the settlement or over and above whatever is due as per the award. If the settlement or award provides for payment of interest, the same would be computed in terms of Section 33C, but the court would have no jurisdiction to direct payment of any amount over and above whatever is computed as per the settlement or as per the award.*

29. *The award of interest by the learned labour court in the instant case is not arising out of any settlement or award and even as per the learned counsel for the Respondent No.1, interest has been awarded only as a part of equitable relief. This court is of the considered view that the learned court below had no jurisdiction to award any interest in equity as it was bound to determine and quantify payable amount only in terms of the pre-existing right on the basis of any award or settlement. In absence of any such pre-existing right to claim any interest on ex-gratia amount of Rs.5 lakhs in terms of the aforesaid provisions of National Coal Wage Agreement and the circular, which is the basis of the claim, the award of interest by the learned court below on payment of ex-gratia amount of Rs.5 lakhs is wholly without jurisdiction and is accordingly not sustainable in the eyes of law. Accordingly, the impugned order directing payment of interest in exgratia amount of Rs.5 lakhs is set-aside. However, in case the computed amount is sought to be recovered*

through any certificate proceedings, the statutory interest, as applicable to the certificate proceedings will be payable in accordance with law."

The said judgment passed by the co-ordinate Bench has not been challenged as yet, hence, the same has reached finality.

8. In view of the admitted facts of W.P. (L) No.4798 of 2019 and W.P. (L) No.6135 of 2019, the undisputed fact remains that the writ petitioners of these writ petitions have already been paid the workman compensation amount to the respondent of those two writ petitions. The undisputed fact remains that the both the deceased workmen in respect of death of whom inside the mines, the *ex-gratia* amount is claimed by their respective spouses, died insides the mines obviously in an accident during the course of their employment. In view of the judgment of the co-ordinate Bench whereby it has in no uncertain manner been held by the co-ordinate Bench that once entitlement under workman compensation act was found payable for the death of the employee which occurred in the mines, the payment of additional *ex-gratia* amount became crystalized and payable and this court is in agreement with the same, thus, this Court do not find any merit in the contention of the petitioners of these two writ petitions to find any fault with the Labour Court, Dhanbad in awarding *ex-gratia* amount of Rs.5,00,000/- but so far as interest part is concerned, as has been observed by the co-ordinate Bench of this Court in the said W.P. (L) No.6969 of 2017 as Section 33 (c) (2) of the Industrial Disputes Act do not empower the labour court to award interest over and above what is due under the settlement to the workman and the settlement undisputedly do not provide for awarding any interest. So, certainly, the Labour Court, Dhanbad erred by awarding the interest over the *ex-gratia* amount of Rs.5,00,000/-. So,

W.P. (L) No.4798 of 2019 and W.P. (L) No.6135 of 2019 is disposed of by modifying the judgment dated 31.01.2019 passed in M.J. Case No.35 of 2015 and judgment dated 29.05.2019 passed in M.J. Case No.03 of 2018 so far as it relates to awarding of interest @ 6% per annum from the death of respective workmen and in default interest of 9%; by quashing the said portion of the judgment and it is made clear that the respondents of the said two writ petitions who are the respective applicants in M.J. Case No.35 of 2015 and M.J. Case No.03 of 2018 will be entitled to *ex-gratia* payment of Rs.5,00,000/- only.

9. So far as W.P. (L) No.99 of 2022 is concerned, learned counsel for the petitioner of this writ petition draws the attention of this Court towards Clause 9.2.6 and 9.2.7 of NCWA which read as under:-

9.2.6 *In addition to the compensation payable under the Workmen's Compensation Act, an exgratia amount of Rs.84,600/- in case of death or permanent total disablement resulting on account of accident arising out of and in course of employment will be paid. It will be effective from 01.02.2012.*

9.2.7 *As announced by the Hon'ble Minister of State for Coal on Coal India Foundation Day on 1.11.2007 at Kolkata, an amount of Rs.5 lakhs shall be paid to the next kin of any employee dying out of fatal mine accident.*

and submits that Clause 9.2.6 provides for an *ex-gratia* amount of Rs.84,600/- in case of death or permanent total disablement resulting on account of accident arising out of and in course of employment will be paid and it is effective from 01.02.2012 and the same is in addition to the compensation payable under the Workman Compensation Act.

10. It is next submitted by the learned counsel for the petitioner that Clause 9.2.7 is an independent clause having no link with Clause 9.2.6 and according to Clause 9.2.7, an amount of Rs.5,00,000/- shall be paid to the next kin of any

employee dying out of fatal mine accident and undisputedly in view of the judgment passed by a co-ordinate Bench in W.P. (L) No.6969 of 2017, the accident in which the husband of writ petitioner died was a fatal mine accident, hence the writ petitioner is entitled to payment of Rs.5,00,000/- in addition to the *ex-gratia* payment of Rs.84,600/- and this has rightly been held by the Presiding Officer, Labour Court, Dhanbad in the concluding part of the paragraph-6 of the impugned judgment also but in the operative portion, the Presiding Officer, Labour Court, Dhanbad erred and passed a contrary order by giving liberty to the respondent of this writ petition to deduct Rs.84,600/- already paid to the writ petitioner.

11. Learned counsel for the respondent of W.P. (L) No.99 of 2022 though opposed the prayer but could not justify that the amount of Rs.5,00,000/- as mentioned in Clause 9.2.6 is not in addition to the *ex-gratia* amount as mentioned in Clause 9.2.7.

12. Considering the aforesaid facts, this Court is of the considered view that since Clause 9.2.6 and 9.2.7 are two independent clauses and in fact the Labour Court in its finding in the concluding part of paragraph-6 of the impugned judgment has even arrived at such a conclusion but having erred in the operative portion of the said judgment under the heading order by giving liberty to the respondent of this writ petition to realize the said amount of Rs.84,600/- from the amount of Rs.5,00,000/- payable to the writ petitioner, accordingly, the said portion of the order dated 31.01.2019 by which liberty has been given to the respondent of this writ petition to deduct the amount of *ex-gratia* of Rs.84,600/- already paid to the applicant, is quashed and set aside.

13. It is made clear that the respondents of these writ petitions have to pay an amount of Rs.5,00,000/- to the writ petitioner in addition to the amount of *ex-gratia* of Rs.84,600/- and the impugned judgment is modified to the aforesaid extent only.

14. Accordingly, all these writ petitions stand disposed of.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 27th of February, 2024
AFR/ Animesh