

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

MA No. 566/2010
IA No. 823/2010

Reserved on: 07.10.2022
Pronounced on: 09.11.2022

Divisional Manager, JKSFBC Bhaderwah

(Appellant)

Through:- Mr. Vipin Gandotra, Advocate

Versus

Mohammad Sharief

(Respondent)

Through:- Mr. M.P Gupta, Advocate

Coram: HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE

ORDER

1. This case pertains to the ordeal of a poor labourer clamoring for justice since 1998 i.e. for the last about 24 years and the present appeal is pending in this Court for the last more than 12 years.
2. This appeal has been directed against an award dated 28.06.2010 passed by the Commissioner under Workmen's Compensation (Assistant Labour Commissioner) Doda in File No. 54/I, vide which the appellant has been held liable to pay compensation of Rs. 1,32,602/- with interest @ 12 % per annum from the date of accident within 30 days from the date of the award, failing which, the amount has been ordered to be recovered as per Section 31 of the Workmen's Compensation Act.
3. Before a closure look at the grounds urged in the memoranda of appeal, it shall be apt to have an overview of the background facts as emerge from the record giving rise to the appeal on hand.

4. It appears that the respondent met with an accident on 06.07.1998 and received personal injuries while in the employment of the appellant at Pathroo Work in Compartment No. 7, Point No. 2. The respondent was admitted in District Hospital, Doda and is stated to have sustained left knee joint dislocation, cut injuries with multiple body injuries resulting in his permanent disablement. The respondent preferred a claim petition before the Commissioner under Workmen's Compensation Act (Assistant Labour Commissioner) Doda, (for short "ALC"). However, his claim came to be rejected by the ALC vide order dated 29.05.2002, holding that he was not entitled to any compensation as he failed to prove that he met with an accident while under the employment of the appellant.
5. The respondent preferred an appeal against the said rejection of his claim, vide CIMA No. 143/2007 and this Court vide order dated 12.10.2006, holding that ALC Doda returned a perverse finding as he failed to appreciate the evidence in a proper manner and caused substantial miscarriage of justice, set aside the said order of ALC Doda and matter was remanded back for consideration afresh in accordance with law.
6. It is pertinent to mention that this Court while allowing the appeal of the respondent had observed that "the evidence produced by the applicant before the Commissioner, therefore, establishes that the appellant (applicant) was working in the compartment which belongs to the respondent, while working he met with an accident in which he got seriously injured and that has happened while he was in the employment of the respondent". Since the factum of the respondent having served under the employment of the appellant and the accident had already been decided by this Court and the said finding of this Court having not been assailed by

the appellant had attained finality, learned ALC Doda, vide impugned judgment held the respondent entitled to the compensation along with the interest aforesaid.

7. The appellant has questioned the impugned award inter-alia on the grounds that learned ALC Doda has overlooked the provisions of Workmen's Compensation Act and the rules framed thereunder and has passed the impugned award in violation of the principles of Sections 4, 5 & 10 of the Act. According to the appellant, no notice of alleged accident was ever served by the respondent upon it and the impugned award is silent as to the criteria adopted by the authority below for determining the wages of the respondent. It is further submission of the appellant that since the J&K State Forest Corporation, being a necessary party, was not impleaded as a party in the proceedings before the ALC, therefore, appellant could not be fastened with any liability.
8. Mr. M.P Gupta, learned counsel appearing for the respondent had raised a preliminary objection regarding maintainability of the present appeal, in terms of Section 30 of the Workmen's Compensation Act, that no appeal by an employer under Clause (a) would be preferred unless certificate of the Commissioner is filed along with the appeal to the effect that appellant had deposited the amount payable under the order assailed in the appeal. Accordingly, this Court vide order dated 06.05.2022, directed the parties to address arguments on the preliminary objection raised by learned counsel for the respondent.
9. Having heard the rival contentions, I have carefully gone through the material on record as also the law governing the field.

10. Mr. M.P Gupta, learned counsel appearing for the respondent has argued that appellant was directed by learned ALC Doda to deposit the compensation along with interest @ 12 % per annum from the date of accident i.e. w.e.f 06.08.1998 within 30 days from the date of passing of the impugned award and since the appellant has deposited only the compensation amount and not the interest, therefore, the present appeal is not maintainable. He has relied upon ***Director General, BSF and ors. Vs. Mohd. Maqbool Gakdho and ors.*** reported as 2017 (1) JKJ 274, ***M/s L.R Ferro Alloys Ltd. Vs. Mahavir Mahto and anr (decided by Hon'ble Supreme Court on 21.11.2000 in civil appeal No. 150/1999) and Ramakant Rout alias Routray Vs. Prafulla Kumar Dass and anr.*** reported as 1993 ACJ 496.
11. Ex-adverso, Mr. Vipin Gandotra, learned counsel appearing for the appellant would submit that deposition of the amount of interest imposed under Section 4-A of the Workmen's Compensation Act, 1923 (now the Employees' Compensation Act, 1923) [the Act, for short], in addition to the amount of compensation is not a condition precedent for preferring an appeal under Section 30(1) of the Act. According to him, the deposit of the compensation amount only as contemplated under Clause (a) to Section 30(1) of the Act, which deals with an appeal against an order awarding compensation and the deposit of interest amount under Clause (aa) is not sine-qua-non to maintain an appeal as the third proviso to Section 30(1) of the Act mandates the production of certificate of the Commissioner in case of an appeal under Clause (a) to Section 30(1) of the Act. He has relied upon ***United India Insurance Company Vs. Shaik Alimuddin and anr.;*** [1994 (3) ALT 321], ***The Executive Engineer (Electrical), Karnataka***

Electricity Board, Hubli and anr. Vs. Hajarat Ali Mailasab and anr.; [(1999) ACC 377] and Sasa Enterprises Vs. Pramod Kumar; [1(1984) ACC 455].

12. In order to appreciate the contours of controversy at hand, it shall be apt to reproduce the relevant provisions of Section 30 of the Act for the facility of reference. It reads thus:-

“Section 30---(1) An appeal shall lie to the High Court from the following orders of a Commissioner, namely:-

- (a) an order awarding as compensation a lump sum whether by way of redemption of a half-monthly payment or otherwise or disallowing a claim in full or in part for a lump sum;
(aa) an order awarding interest or penalty under section 4A;]**

(b) an order refusing to allow redemption of a half-monthly payment; (c) an order providing for the distribution of compensation among the dependants of a deceased workman, or disallowing any claim of a person alleging himself to be such dependant;

(d) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of sub- section (2) of section 12; or

(e) an order refusing to register a memorandum of agreement or registering the same or providing for the registration of the same subject to conditions:

Provided that no appeal shall lie against any order unless a substantial question of law is involved in the appeal and, in the case of an order other than an order such as is referred to in clause (b), unless the amount in dispute in the appeal is not less than three hundred rupees: Provided, further, that no appeal shall lie in any case in which the parties have agreed to abide by the decision of the Commissioner, or in which the order of the Commissioner gives effect to an agreement come to by the parties:

Provided further that no appeal by an employer under clause (a) shall lie unless the memorandum of appeal is accompanied by a certificate by the Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against.”

13. It is evident from a bare perusal of third proviso to Section 30(1) of the Act that no appeal by an employer under Clause (a) can be preferred unless the memorandum of appeal is accompanied by a certificate by the

Commissioner that the appellant has deposited with him the amount payable under the order appealed against. It is manifest as such, that an appeal by an employer against an award of compensation under Clause (a) of Section 30(1) of the Act is barred unless the memo of appeal is accompanied by a certificate issued by the Commissioner to the effect that the appellant had deposited the amount payable under the order appealed against. A studied analysis of the Act would show that the Act has been enacted to sub-serve the cause of an employee and the legislature in its wisdom has incorporated third proviso to Section 30(1) of the Act against the tendency of an employer to exploit a poor employee by filing an appeal and keeping him engrossed in the litigation, as it happened in the present case.

- 14.** Clause (aa) was inserted by the Amending Act of 1859 w.e.f 01.06.1959. There has been no corresponding amendment in the third proviso with respect to an appeal under Clause (aa) that the amount of interest and penalty is also to be deposited with the Commissioner at the time of filing of the appeal. In my view, the corresponding amendment has not been introduced in the third proviso with the sole intention that the employer/appellant, at least is made to deposit the compensation amount in order to avoid and obviate the sufferings of an employee otherwise it would have been very easy for an employer to harass the employee first by preferring an appeal and then procrastinate the payment of even the compensation amount due to endless execution proceedings. It is for this reason that the appellant is obliged to first pay the compensation amount due under the order, obtain a certificate from the authority concerned and

the said certificate is required to be filed at the time of presentation of the appeal.

15. Therefore, the appellant is required to deposit the amount of compensation, if an appeal is preferred against an order awarding as compensation a lump sum under Clause (a) of Section 30(1) of the Act and there is no such requirement in case of an appeal against an order awarding interest or penalty under Section 4(A) of the Act. It is manifest, as such, that deposit of the amount is required to be made of the compensation awarded under Clause (a) when an appeal is filed and there is no requirement to deposit the amount of interest or penalty under Clause (aa) of Section 30 (1) of the Act, even in case of a composite award awarding compensation under Section 30(1) (a) and Section 30(1)(aa) of the Act awarding the interest or penalty.
16. The case cited at bar by learned counsel for the respondent is distinguishable from the facts and circumstances attending the present case.
17. Mr. Gandotra, learned counsel for the appellant has rightly submitted that since the issue with respect to the maintainability of appeal on account of non-deposit of the amount of interest or penalty within the meaning of Clause (aa) of Section 30 (1) under third proviso of the Act was neither canvassed nor considered and addressed by this Court in ***Director General, BSF and ors. (supra)***, therefore, the said judgment is of no avail to the respondents.
18. The reliance placed by Mr. Gupta, learned counsel for the respondent on ***M/s L.R Ferro Alloys Ltd.(supra)*** is also misplaced as the solitary issue before Hon'ble Supreme Court was whether the entire liability including penalty and interest was to be reimbursed by the Insurance Company, and

Hon'ble Supreme Court has ruled that payment of interest and penalty are though distinct liabilities under the Act, but the liability to pay interest is part and parcel of legal liability to pay compensation. The issue discussed in the preceding para was not subject matter of dispute before Hon'ble Supreme Court in the said case.

19. Learned counsel for the respondents has also replied upon ***Ramakant Rout alias Routray(Supra)*** and in fact the observation of the High Court of Orissa is a complete answer to the objection raised by learned counsel for the respondent. High Court of Orissa in the said case has clearly held that in case of a composite award under Section 30(1)(a) and Section 30 (1)(aa) of the Act, if the appellant confines himself to the imposition of penalty only, no certificate would be required. However, if the award is assailed on both the grounds, the certificate with respect to the payment of compensation under Section 30(1)(a) of the Act would be a condition precedent to prefer an appeal, but no certificate with respect to the penalty envisaged under Section 30 (1) (a) of the Act would be necessary. Relevant extract of the judgment, relied by learned counsel for the respondent is as below:-

“A situation may arise, as in this case, where the award is composite being one under [Section 30\(1\)\(a\)](#) and [Section 30\(1\)\(aa\)](#) of the Act. In such a case, if the appellant confines himself to the imposition of penalty only, no certificate would be necessary. If, however, the entire award on both the grounds would be assailed, a certificate relating to the amount which is the compensation under [Section 30\(1\)\(a\)](#) of the Act would be required and no certificate for the amount of penalty would be necessary. Where the Com-missioner, who passed the award, does not accept partial payment to grant certificate or refuses to grant a certificate, this Court can be moved in the pending appeal in respect of the same and appropriate direction can be issued to the Commissioner in the event the assertions are accepted”.

20. It is manifest from the case law relied by learned counsel for the respondent that the requisite certificate envisaged under third proviso of

Section 30 (1) of the Act is not a condition precedent to maintain an appeal against an award of interest under Clause (aa) of Section 30 (1) of the Act.

21. A similar view has been expressed by different High Courts of the country including *Sasa Enterprises (supra)*, *United India Insurance Company (supra)* and *the Executive Engineer (Electrical), Karnataka Electricity Board (Hubli) (supra)*, the case law cited by learned counsel for the respondent. The relevant extract of *United India Insurance Company (supra)* runs as below:-

“Learned Counsel for the respondent has also pointed out that clause (a) to Section 30(1) of the Act deals with an appeal against an order awarding compensation and clause (aa) deals with an order awarding interest or penalty under Section 4-A and therefore contended that if the Insurance Company is aggrieved by an order of the Commissioner awarding interest or penalty under Section 4-A and wants to file an appeal against the order under Clause(aa) and that amount has also to be deposited. But the third proviso to Section 30(1) reads that no appeal by an employer under Clause (a) shall lie unless the memorandum of appeal is accompanied by a Certificate by the Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against. Clause (aa) was inserted by the Amending Act 8 of 1959 with effect from 1-6-1959. But in the third proviso there is no amendment with regard to an appeal under clause (aa) also that the said amount has to be deposited with Commissioner. Since the third proviso reads that the deposit has to be made to the compensation awarded under Clause (a) when an appeal is filed, I am unable to agree with the contention of the learned counsel for the respondent that the Insurance Company has to deposit the penalty and interest also which is awarded under Clause (aa). I agree with the view expressed by the Division Bench in *Kap Steel Ltd. (supra)*, and hold that the Insurance Company is not liable to deposit the penalty and interest also at the time of filing the appeal. I therefore, overrule the objection of the learned Counsel for the respondent that the appeal is not maintainable for non-compliance of the third proviso to Section 30(1) of the Act”.

22. Relevant extract of para 13 of the *Sasa Enterprises* reads as follows:-

“The claim for interest, therefore, stands entirely on a different footing than the claim for compensation itself. The third proviso, therefore, only requires payment of such amount only as may have been awarded by way of compensation in a lump sum. But it does not include the amount which is payable by way of interest over it. It also does not include the amount of costs that may be awarded by the Commissioner for which a separate provision is to be found in Section 26 of the Act. For strict compliance to the third proviso to Section 30(1) only that amount need be deposited as has been awarded within the meaning of sub-Clause (a) of the section. In my opinion, therefore, the amount of Rs. 9, 650 deposited by the applicant

was sufficient compliance and it cannot be urged that the amount deposited was in any way deficient”.

23. Same principle has been followed in the *Executive Engineer (Electrical), Karnataka Electricity Board (Hubli) (supra)*.
24. Considered thus, there is no room for doubt that an appeal by an employer against an award of compensation under Clause (a) of Section 30 (1) of the Act is barred unless memo of appeal is accompanied by a certificate issued by Commissioner to the effect that the appellant had deposited the amount payable under the order appealed against. However, no such certificate is required if an employer prefers to question the award of interest or penalty and in case a composite award both under Section 30(1)(a) and section 30(1)(aa) of the Act, is assailed, the certificate with respect to the payment of compensation under Section 30(1)(a) of the Act would suffice and no certificate relating to the payment of interest or penalty under Section 30 (1) (aa) of the Act, would be required.
25. Having regard to what has been discussed above, the objection raised by learned counsel for the respondent is overruled. The appeal is required to be considered and decided on merits.
26. Put up for arguments on 12.12.2022.

Jammu
09.11.2022
Eva

(Rajesh Sekhri)
Judge

Whether the order is reportable?
Whether the order is speaking?

Yes.
Yes.