

AFR

Court No. 3

Case :- WRIT - C No. - 26540 of 2019

Petitioner :- M/S Vasu Infrustructure Private Ltd.

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Akshat Sinha

Counsel for Respondent :- C.S.C.

Hon'ble Dr. Yogendra Kumar Srivastava,J.

1. Heard Sri Akshat Sinha, learned counsel for the petitioner and Sri Mata Prasad, learned Standing Counsel appearing for the respondent nos. 1 and 2.

2. The present petition seeks to challenge the order dated 29.3.2019 passed by the Employees Compensation Commissioner/Assistant Labour Commissioner U.P. Gorakhpur whereby the application filed by the petitioner for recall of the orders dated 5.8.2016 and 28.7.2017 has been rejected.

3. Learned counsel for the petitioner has submitted that the orders dated 5.8.2016 and 28.7.2017 having been passed in proceedings which were exparte the same ought to have been recalled by the Employees Compensation Commissioner and the rejection of the recall application in the said circumstances is erroneous. The counsel for the petitioner has further sought to contend that even on merits the claim made by the claimant respondent was not sustainable.

4. Per contra, learned Standing Counsel appearing for the State respondents has submitted that upon registration of the claim petition as Case No. W.C.C. 2/2015 a registered notice dated 08.01.2016 was duly sent to the petitioner and it was only thereafter on 05.08.2016 that an order was

passed for proceeding exparte. It has also been pointed out that prior to filing of the claim petition the claimant had duly served a registered notice upon the petitioner under Section 10 of the Employee's Compensation Act, 1923¹ and the petitioner had submitted a reply to the same. It is accordingly submitted that the petitioner was fully aware of the proceedings and despite due notice it deliberately allowed the case to proceed exparte and as such there was no sufficient reason made out for the orders to be recalled. As regards the contention sought to be raised by the petitioner on the merits of the claim, it was submitted that in the event the petitioner seeks to challenge the order dated 28.7.2017 awarding compensation on its merits the statutory remedy of filing an appeal under Section 30 of the E.C.Act, 1923 may be availed of.

5. In order to appreciate the rival contentions it may be necessary to advert to the relevant statutory provisions as contained under the E.C.Act,1923 which are being extracted below :-

“3. Employer's liability for compensation.- (1) If personal injury is caused to an employee by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter:

Provided that the employer shall not be so liable --

(a) in respect of any injury which does not result in the total or partial disablement of the employee for a period exceeding three days;

(b) in respect of any injury, not resulting in death or permanent total disablement caused by an accident which is directly attributable to—

(i) the employee having been at the time thereof under the influence of drink or drugs, or

(ii) the wilful disobedience of the employee to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of employees, or

(iii) the wilful removal or disregard by the employee of

1. the E.C.Act, 1923

any safety guard or other device which he knew to have been provided for the purpose of securing the safety of employee.

[(2) If an employee employed in any employment specified in Part A of Schedule III contracts any disease specified therein as an occupational disease peculiar to that employment, or if an employee, whilst in the service of an employer in whose service he has been employed for a continuous period of not less than six months (which period shall not include a period of service under any other employer in the same kind of employment) in any employment specified in Part B of Schedule III, contracts any disease specified therein as an occupational disease peculiar to that employment, or if an employee whilst in the service of one or more employers in any employment specified in Part C of Schedule III for such continuous period as the Central Government may specify in respect of each such employment, contracts any disease specified therein as an occupational disease peculiar to that employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section and, unless the contrary is proved, the accident shall be deemed to have arisen out of, and in the course of, the employment:

[Provided that if it is proved,--

(a) that an employee whilst in the service of one or more employers in any employment specified in

Part C of Schedule III has contracted a disease specified therein as an occupational disease peculiar to that employment during a continuous period which is less than the period specified under this sub-section for that employment; and

(b) that the disease has arisen out of and in the course of the employment, the contracting of such disease shall be deemed to be an injury by accident within the meaning of this section:

[Provided further that if it is proved that an employee who having served under any employer in any employment specified in Part B of Schedule III or who having served under one or more employers in any employment specified in Part C of that Schedule, for a continuous period specified under this sub section for that employment and he has after the cessation of such service contracted any disease specified in the said Part B or the said Part C, as the case may be, as an occupational disease peculiar to the employment and that such disease arose out of the employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section.]]

[(2A) If an employee employed in any employment

specified in Part C of Schedule III contracts any occupational disease peculiar to that employment, the contracting whereof is deemed to be an injury by accident within the meaning of this section, and such employment was under more than one employer, all such employers shall be liable for the payment of the compensation in such proportion as the Commissioner may, in the circumstances, deem just.]

[(3) The Central Government or the State Government, after giving, by notification in the Official Gazette, not less than three months' notice of its intention so to do, may, by a like notification, add any description of employment to the employments specified in Schedule III and shall specify in the case of employments so added the diseases which shall be deemed for the purposes of this section to be occupational diseases peculiar to those employments respectively, and thereupon the provisions of sub-section (2) shall apply, in the case of a notification by the Central Government, within the territories to which this Act extends or, in case of a notification by the State Government, within the State as if such diseases had been declared by this Act to be occupational diseases peculiar to those employments.]

(4) Save as provided by sub-sections (2), (2A) and (3) no compensation shall be payable to an employee in respect of any disease unless the disease is directly attributable to a specific injury by accident arising out of and in the course of his employment.

(5) Nothing herein contained shall be deemed to confer any right to compensation on an employee in respect of any injury if he has instituted in a Civil Court a suit for damages in respect of the injury against the employer or any other person; and no suit for damages shall be maintainable by an employee in any Court of law in respect of any injury--

(a) if he has instituted a claim to compensation in respect of the injury before a Commissioner; or

(b) if an agreement has been come to between the employee and his employer providing for the payment of compensation in respect of the injury in accordance with the provisions of this Act.

[(4). **Amount of compensation.**- (1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely:--

(a) where death results from the injury : an amount equal to fifty per cent. of the monthly wages of the deceased employee multiplied by the relevant factor;

or an amount of one lakh and twenty thousand rupees, whichever is more;

(b) where permanent total disablement results from the injury : an amount equal to sixty per cent. of the monthly wages of the injured employee multiplied by the relevant factor; or an amount one lakh and twenty thousand rupees], whichever is more;

[Provided that the Central Government may, by notification in the Official Gazette, from time to time, enhance the amount of compensation mentioned in clauses (a) and (b).]

Explanation I.--For the purposes of clause (a) and clause (b), "relevant factor", in relation to a [an employee] means the factor specified in the second column of Schedule IV against the entry in the first column of that Schedule specifying the number of years which are the same as the completed years of the age of the [employee] on his last birthday immediately preceding the date on which the compensation fell due.

(c) where permanent partial disablement result from the injury: (i) in the case of an injury specified in Part II of Schedule I, such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury; and

(ii) in the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury;

Explanation I.--Where more injuries than one are caused by the same accident, the amount of compensation payable under this head shall be aggregated but not so in any case as to exceed the amount which would have been payable if permanent total disablement had resulted from the injuries.

Explanation II.--In assessing the loss of earning capacity for the purpose of sub-clause (ii), the qualified medical practitioner shall have due regard to the percentages of loss of earning capacity in relation to different injuries specified in Schedule I;

(d) where temporary disablement, whether total or partial, results from the injury : a half monthly payment of the sum equivalent to twenty-five per cent. of monthly wages of the employee, to be paid in accordance with the provisions of sub-section (2).

[(1A) Notwithstanding anything contained in sub-section (1), while fixing the amount of compensation payable to a an employee is respect of an accident occurred outside India, the Commissioner shall take into account the amount of compensation, if any, awarded to such employee in accordance with the law of the country in

which the accident occurred and shall reduce the amount fixed by him by the amount of compensation awarded to the employee in accordance with the law of that country.]

[(1B) The Central Government may, by notification in the Official Gazette, specify, for the purposes of sub-section (I), such monthly wages in relation to an employee as it may consider necessary.]

(2) The half-monthly payment referred to in clause (d) of sub-section (1) shall be payable on the sixteenth day --

(i) from the date of disablement where such disablement lasts for a period of twenty-eight days or more, or

(ii) after the expiry of a waiting period of three days from the date of disablement where such disablement lasts for a period of less than twenty-eight days; and thereafter half-monthly during the disablement or during a period of five years, whichever period is shorter:

Provided that--

(a) there shall be deducted from any lump sum or half-monthly payments to which the employee is entitled the amount of any payment or allowance which the [employee] has received from the employer by way of compensation during the period of disablement prior to the receipt of such lump sum or of the first half-monthly payment, as the case may be; and

(b) no half-monthly payment shall in any case exceed the amount, if any, by which half the amount of the monthly wages of the [employee] before the accident exceeds half the amount of such wages which he is earning after the accident.

Explanation.--Any payment or allowance which the employee has received from the employer towards his medical treatment shall not be deemed to be a payment or allowance received by him by way of compensation within the meaning of clause (a) of the proviso.

[(2A) The employee shall be reimbursed the actual medical expenditure incurred by him for treatment of injuries caused during course of employment.]

[(3) On the ceasing of the disablement before the date on which any half-monthly payment falls due there shall be payable in respect of that half-month a sum proportionate to the duration of the disablement in that half-month.]

[(4) If the injury of the employee results in his death, the employer shall, in addition to the compensation under sub-section (1), deposit with the Commissioner a sum of not less than five thousand rupees for payment of the same to the eldest surviving dependant of the employee towards the expenditure of the funeral of such employee or where the employee did not have a dependant or was not living with his dependant at the time of his death to

the person who actually incurred such expenditure.]

[Provided that the Central Government may, by notification in the Official Gazette, from time to time, enhance the amount specified in this sub-section.]

[(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.

(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.

[(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--

(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

(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:

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.

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.]

(10). **Notice and claim.**- (1) No claim for compensation shall be entertained by a Commissioner unless notice of the accident has been given in the manner hereinafter provided as soon as practicable after the happening thereof and unless the claim is preferred before him within two years of the occurrence of the accident or in case of death within two years from the date of death:

Provided that where the accident is the contracting of a disease in respect of which the provisions of sub-section

(2) of section 3 are applicable, the accident shall be deemed to have occurred on the first of the days during which the employee was continuously absent from work in consequence of the disablement caused by the disease:

[Provided further that in case of partial disablement due to the contracting of any such disease and which does not force the employee to absent himself from work, the period of two years shall be counted from the day the employee gives notice of the disablement to his employer:

Provided further that if a employee who, having been employed in an employment for a continuous period, specified under sub-section (2) of section 3 in respect of that employment, ceases to be so employed and develops symptoms of an occupational disease peculiar to that employment within two years of the cessation of employment, the accident shall be deemed to have occurred on the day on which the symptoms were first detected:]

[Provided further that the want of or any defect or irregularity in a notice shall not be a bar to the entertainment of a claim]—

(a) if the claim is preferred in respect of the death of an employee resulting from an accident which occurred on the premises of the employer, or at any place where the employee at the time of the accident was working under the control of the employer or of any person employed by him, and the employee died on such premises or at such place, or on any premises belonging to the employer, or died without having left the vicinity of the premises or place where the accident occurred, or

(b) if the employer or any one of several employers or any person responsible to the employer for the management of any branch of the trade or business in which the injured employee was employed had knowledge of the accident from any other source at or about the time when it occurred:]

Provided further that the Commissioner may entertain and decide any claim to compensation in any case notwithstanding that the notice has not been given, or the claim has not been preferred, in due time as provided in this subsection, if he is satisfied that the failure so to give the notice or prefer the claim, as the case may be, was due to sufficient cause.

(2) Every such notice shall give the name and address of the person injured and shall state in ordinary language the cause of the injury and the date on which the accident happened, and shall be served on the employer or upon any one of several employers, or upon any person responsible to the employer for the management of any branch of the trade or business in which the injured

workman was employed.

[(3) The State Government may require that any prescribed class of employers shall maintain at their premises at which employees are employed a notice book, in the prescribed form, which shall be readily accessible at all reasonable times to any injured employee employed on the premises and to any person acting bona fide on his behalf.

(4) A notice under this section may be served by delivering it at, or sending it by registered post addressed to, the residence or any office or place of business of the person on whom it is to be served, or, where a notice-book is maintained, by entry in the notice-book.]”

6. From a reading of the aforementioned statutory provisions it may be noticed that the provisions under Section 3 provide for employer's liability for compensation in a case if personal injury is caused to an employee by accident arising out of and in the course of his employment. The amount of compensation is to be assessed as per terms of Section 4. Furthermore in terms of Section 4A it has been provided that compensation under Section 4 is to be paid as soon as it falls due and even 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 is to 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. Subsection (3) of Section 4A mandates that 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 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 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.

7. The Workmen's Compensation Act, 1923² was enacted as a piece of welfare legislation for the purposes of providing social security to employees in a situation of growing complexity of industry with the increasing use of machinery and consequent danger to workmen along with their comparative poverty rendering them vulnerable.

8. In order to appreciate the scheme of the Act, the statement of objects and reasons of the statutory enactment may be referred to. For ease of reference the relevant extract from the statement of objects and reasons is being reproduced herein under :-

“The growing complexity of industry in this country, with the increasing use of machinery and consequent danger to workmen, along with the comparative poverty of the workmen themselves renders it advisable that they should be protected as far as possible, from hardship arising from accidents. A legislation of this kind helps to reduce the number of accidents in a manner that cannot be achieved by official inspection, and to mitigate the effect of accidents by provision for suitable medical treatment, thereby making industry more attractive to labour and increasing its efficiency. The Act provides for cheaper and quicker disposal of disputes relating to compensation through special tribunals than possible under the civil law.”³

9. The W.C.Act, 1923 has undergone several amendments in order to widen its scope and in terms of the amending Act 45 of 2009 the long title and the provisions of the Act have been amended so as to substitute “workman”

2. the W.C.Act, 1923

3. Gazette of India, 1922, Part V, p.313

by the “employee”.

10. The object of the Act as reflected from the statement of objects and reasons is to protect the workmen from the hardship arising from accidents occurring during the course of employment. The benefits so conferred are aimed to give an increased sense of security to the workmen as an ameliorative measure so as to render industrial life more attractive and increase the availability, productivity and efficiency of labour.

11. The objects of the E.C.Act, 1923 came up for consideration in the case of **Oriental Insurance Co. Ltd. Vs. Mohd. Nasir and Ors.**⁴, and after taking notice of the statutory provisions contained therein it was held that the Act is a beneficial legislation in so far as it provides for payment of compensation to workmen employed by the employers and accordingly the provisions therein are to be liberally construed keeping in mind the legislative intent with a view to give effect to its objects.

12. The E.C.Act, 1923 being thus a piece of social security and welfare legislation with its dominant purpose to protect the employees, the provisions of the Act have to be interpreted so as to subserve the object of the legislation which is to make the employer responsible for the loss caused to the employee by injuries or death arising out of and in the course of employment.

13. The provisions under the Act provide for necessary measures to protect the employees and their dependents from the hardships arising from the accidents occurring during the course of employment and with this object in mind the rights of the employees are to be generously

4. (2009) 6 SCC 280

treated while applying the statutory provisions so as to ensure a speedy and efficient mechanism for determination and payment of compensation as per the provisions of the Act.

14. Applying the rule of beneficial construction, the provisions of the E.C. Act, 1972 are to be interpreted so as to give them a wide meaning rather a restrictive meaning which may negate the very object of the enactment. A beneficial legislation, it is well settled, as to be construed in its correct perspective so as to fructify the legislative intent underlying its enactment.

15. In construing a remedial statute courts are to give it the widest amplitude which its language would permit. The principle of applying a liberal construction to a remedial legislation has been emphasised in the **Construction of Statutes by Crawford**⁵ pp. 492-493 in the following terms:-

“...Remedial statutes, that is, those which supply defects, and abridge superfluities, in the former law, should be given a liberal construction, in order to effectuate the purposes of the legislature, or to advance the remedy intended, or to accomplish the object sought, and all matters fairly within the scope of such a statute be included, even though outside the letter, if within its spirit or reason.”

16. To a similar effect is the observation made by **Blackstone in Construction and Interpretation of Laws**⁶, by stating as under:-

“It may also be stated generally that the courts are more disposed to relax the severity of this rule (which is really a rule of strict construction) in the case of statutes obviously remedial in their nature or designed to effect a beneficial purpose.”

17. In the context of beneficial construction as a principle of interpretation, it has been observed in **Maxwell on The**

5. The Construction of Statutes by Earl T. Crawford

6. Construction and Interpretation of Laws by Blackstone

Interpretation of Statutes⁷ as follows:-

“...where they are faced with a choice between a wide meaning which carries out what appears to have been the object of the legislature more fully, and a narrow meaning which carries it out less fully or not at all, they will often choose the former. Beneficial construction is a tendency, rather than a rule.”

18. Further, in the same treatise, in the context of industrial legislation, it has been stated as follows:-

“Industrial legislation provides a fruitful field for the application of the tendency towards beneficial construction...”

19. The principle of applying a liberal construction to a labour welfare legislation was emphasised in the case of **The Workmen of M/s Firestone Tyre & Rubber Company of India Pvt. Ltd. Vs. The Management & Ors.**⁸ where in the context of the provisions of the Industrial Disputes Act, 1947, it was observed as follows:-

“35. ...We are aware that the Act is a beneficial piece of legislation enacted in the interest of employees. It is well settled that in construing the provisions of a welfare legislation, courts should adopt, what is described as a beneficent rule of construction. If two constructions are reasonably possible to be placed on the section, it follows that the construction which furthers the policy and object of the Act and is more beneficial to the employees, has to be preferred...”

20. The mode of interpretation of a social welfare legislation, in the context of the provisions of the Industrial Employment (Standing Orders) Act, 1946, came up for consideration in the case of **B.D. Shetty & Ors. Vs. CEAT Ltd. & Anr.**⁹, and it was held as follows:-

“12. ...a beneficial piece of legislation has to be understood and construed in its proper and correct perspective so as to advance the legislative intention underlying its enactment rather than abolish it. Assuming two views are possible, the one, which is in tune with the

7. Maxwell on the Interpretation of Statutes, 12th Edition by P. St. J. Langan

8. (1973) 1 SCC 813

9. (2002) 1 SCC 193

legislative intention and furthers the same, should be preferred to the one which would frustrate it.”

21. The principle of applying a liberal construction to a beneficial legislation having a social welfare purpose was reiterated in the context of the Payment of Gratuity Act, 1972 in the case of **Allahabad Bank & Anr. Vs. All India Allahabad Bank Retired Employees Association**¹⁰, and it was observed as follows:-

“16. ...Remedial statutes, in contradistinction to penal statutes, are known as welfare, beneficent or social justice oriented legislations. Such welfare statutes always receive a liberal construction. They are required to be so construed so as to secure the relief contemplated by the statute. It is well settled and needs no restatement at our hands that labour and welfare legislation have to be broadly and liberally construed having due regard to the directive principles of State policy. The Act with which we are concerned for the present is undoubtedly one such welfare oriented legislation meant to confer certain benefits upon the employees working in various establishments in the country.”

22. A similar view was taken with regard to adopting the beneficial rule of construction in respect of social welfare legislation, in the case of **Jeewanlal Ltd. & Ors. Vs. Appellate Authority under the Payment of Gratuity Act & Ors.**¹¹, wherein it was stated as follows:-

“11. In construing a social welfare legislation, the court should adopt a beneficent rule of construction ; and if a section is capable of two constructions, that construction should be preferred which fulfils the policy of the Act, and is more beneficial to the persons in whose interest the Act has been passed...”

23. Reference may also be had to the case of **Bharat Singh Vs. Management Of New Delhi Tuberculosis Centre, New Delhi & Ors.**¹², where purposive interpretation safeguarding the rights of have-nots was preferred to a literal construction in interpreting a welfare legislation, and it was

10. (2010) 2 SCC 44

11. (1984) 4 SCC 356

12. (1986) 2 SCC 614

held as follows:-

“11....the court has to evolve the concept of purposive interpretation which has found acceptance whenever a progressive social beneficial legislation is under review. We share the view that where the words of a statute are plain and unambiguous effect must be given to them. Plain words have to be accepted as such but where the intention of the legislature is not clear from the words or where two constructions are possible, it is the court's duty to discern the intention in the context of the background in which a particular Section is enacted. Once such an intention is ascertained the courts have necessarily to give the statute a purposeful or a functional interpretation. Now, it is trite to say that acts aimed at social amelioration giving benefits for the have-nots should receive liberal construction. It is always the duty of the court to give such a construction to a statute as would promote the purpose or object of the Act. A construction that promotes the purpose of the legislation should be preferred to a literal construction. A construction which would defeat the rights of the have-nots and the underdog and which would lead to injustice should always be avoided...”

24. The aforementioned position of law has been discussed in recent judgments of this Court in **U.P.S.R.T.C. Thru Its R.M. Vikasnagar Kanpur Vs. State Of U.P. And 3 Others¹³** and **Nagar Nigam Gorakhpur Thru Nagar Ayukt Vs. Suresh Pandey And 2 Others¹⁴**.

25. In the case at hand the facts as reflected from the order dated 28.7.2017 indicate that the Employees Compensation Commissioner has duly taken note that before filing of the claim petition the requisite notice of claim under Section 10 had been duly served upon the petitioner-employer and upon registration of the claim also a registered notice dated 8.1.2016 had been sent to the petitioner and only thereafter the order dated 5.8.2016 was passed directing the case to proceed exparte. It was subsequent thereto that the Employees Compensation Commissioner upon taking into consideration the facts of the case and the evidence on

13. (Writ - C No. - 6971 of 2017, decided on 28.08.2019)

14. (WRIT - C No. - 45310 of 2017, decided on 12.09.2019)

record had proceeded to allow the claim petition of the claimant respondent.

26. The order dated 29.3.2019 passed upon the recall application filed by the petitioner also takes note of the fact that prior to filing of the claim petition the claimant had served a registered notice under Section 10 upon the petitioner-employer and in response to the same a reply had also been submitted by the employer admitting the factum of employment of the claimant with the petitioner. The order also records that after filing of the claim petition and despite issuance of notice the petitioner did not appear and allowed the case to proceed ex parte and only after passing of the order dated 28.7.2017 awarding compensation and upon issuance of a show cause notice dated 9.12.2017 pursuant thereto the petitioner-employer filed the recall application. The Employees Compensation Commissioner has accordingly drawn an inference that the petitioner deliberately wanted to linger the proceedings and in the facts of the case where the claimant had suffered 100% disability and was not in a position to contest the proceedings further, taking into considering the larger interest of justice the recall application has been rejected.

27. The aforementioned order passed by the Employees Compensation Commissioner can also not be faulted with for the reason that E.C.Act, 1923 is a piece of social security legislation providing for a speedy and efficient machinery for determination and payment of compensation to the employees. It may also be taken note of that as per the provisions under Section 4A compensation is to be paid as soon as it falls due. In this regard reference may be had to the judgment in the case of **Pratap Narain Singh Deo Vs.**

Srinivas Sabata and Ors.¹⁵, wherein it was held that compensation becomes payable on the date of the accident and not on the date of determination of the amount thereof. The relevant observations made in the judgment are as follows:-

“7. Section 3 of the Act deals with the employer's liability for compensation. Sub-section (1) of that section, provides that the employer shall be liable to pay compensation if "personal injury is caused to a workmen by accident arising out of and in the course of his employment". It was not the case of the employer that the right to compensation was taken away under Sub-section (5) of Section 3 because of the institution of a suit in a civil court for damages, in respect of the injury, against the employer or any other person. The employer therefore become liable to pay the compensation as soon as the aforesaid personal injury was caused to the workmen by the accident which admittedly arose out of and in the course of the employment. It is therefore futile to contend that the compensation did not fall due until after the commissioner's order dated May 6, 1968 under Section 19. What the section provides is that if any question arises in any proceeding under the Act as to the liability of any person to pay compensation or as to the amount or duration of the compensation it shall, in default of agreement, be settled by the commissioner..

8. It was the duty of the appellant, under Section 4A(1) of the Act, to pay the compensation at the rate provided by Section 4 as soon as the personal injury was caused to the respondent..”

28. Counsel appearing for the petitioner has not been able to dispute the facts of the case and also the legal position, as referred to above, and has not been able to point out any material error or irregularity in the order passed by the Employees Compensation Commissioner/Assistant Labour Commissioner U.P. Gorakhpur rejecting the recall application so as to warrant interference in exercise of powers in writ jurisdiction under Article 226 of the Constitution of India.

29. The writ petition lacks merit and is accordingly

15. (1976) 1 SCC 289

dismissed.

30. It is however made clear that this Court has not adjudicated on the merits of the claim which has been allowed by the Employees Compensation Commissioner in proceedings under the E.C.Act, 1923 and the dismissal of the writ petition would not preclude the petitioner from taking recourse to other remedies which may be available to it under law.

Order Date :- 23.9.2019

Pratima

(Dr.Y.K.Srivastava,J.)