

UNREPORTABLE

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

FAO No.327/2008

Date of Decision: January 14, 2010

ORIENTAL INSURANCE COMPANY LTD Appellant
Through Mr. Tarkeshwar Nath, Advocate

versus

BIBI NAGMA & ORS Respondents
Through Mr. Naresh M Sinha, Advocate
for respondents No.1 & 2.
Mr. Gaurang Kanth, Ms. Biji Rakesh
and Ms. Jyoti Dastidar, Advocates
for respondent No.3.
Mr. Narain Bhatia, Advocate
for respondent No.4.

CORAM:
HON'BLE MISS JUSTICE REKHA SHARMA

1. Whether the reporters of local papers may be allowed to see the judgment? No
2. To be referred to the reporter or not? No
3. Whether the judgment should be reported in the 'Digest'? No

REKHA SHARMA, J. (ORAL)

One Tabrej Alam was working as a labourer with respondent No.3, namely, M/s. Delhi Power Company Limited through respondent No.4 – M/s. Pranav Nirman who was a contractor engaged by respondent No.3. On September 24, 1998 at 2.30 a.m. while the said Tabrej Alam was sleeping along with other labourers beside a wall of the Delhi Power Company Limited which was newly built at Village Gamri, the wall collapsed resulting in his death. His widow Bibi Nagma and his minor son Master Ramjan @ Mithoo filed a claim

before the Commissioner under the Workmen's Compensation Act, 1923. By an order dated January 22, 2008, the Commissioner held the claimants entitled to compensation amounting to Rs.2,01,532/- along with interest @ 12% per annum with effect from October 24, 1998 till realization.

The appellant in the present appeal, namely, the Oriental Insurance Company Limited admitted before the Commissioner that the contractor M/s Pranav Nirman had taken an insurance policy from it under the Workmen's Compensation Act in respect of the workmen engaged by it in the construction activity. Based on the admission so made, the appellant was directed to indemnify the insured under the admitted terms of the policy. Ignoring the fact that the appellant was held liable to pay the awarded amount owing to its admission, it preferred an appeal in this Court against the order dated January 22, 2008 which was disposed of by an order dated May 22, 2008. A perusal of the order of May 22, 2008 goes to show that the appellant in the appeal before this Court resiled from its earlier stand that the contractor had taken the insurance policy from it and instead stated that it was the Delhi Power Company Limited which had taken the insurance policy for its employees and hence, it was contended that the appellant was not liable to pay compensation as determined by the Commissioner on account of the death of an employee engaged by the contractor. In view of the submission so made, this Court remanded back the case to the Commissioner for determining the liability of the appellant vis-à-vis the insured. The relevant paragraph of the judgment dated May 22, 2008 where the

aforementioned submission of the appellant finds mention runs as under:-

“It is appellant’s case that Delhi Power Company Ltd. had taken out a policy of insurance through it in respect of its employees and none else. It is urged that the deceased workmen were employees of respondent No.4, a contractor engaged by Delhi Power Company Ltd. and in respect of the death of said workers, the insurance cover could not be used to make appellant liable to satisfy the claims under the Workmen’s Compensation Act.”

Interestingly, when the matter came before the Commissioner after the remand, the appellant once again changed its stand as to who was the insured. This time, it was stated that it was the contractor who had taken the insurance policy under the Workmen’s Compensation Act and that the stand before the High Court that the Delhi Power Company Limited had taken the insurance policy, was inadvertently taken. In view of this changed stand of the appellant, the Commissioner passed an order dated July 28, 2008 and thereby reiterated its earlier order dated January 22, 2008 awarding the same compensation amounting to Rs.2,01,532/- along with simple interest @ 12% per annum with effect from October 24, 1998.

The Insurance Company has once again come in appeal before this Court. This time the challenge is to the order dated July 28, 2008.

From what has been noticed above one finds that the Insurance Company had been shifting its stand with regard to who was insured with it. Initially, before the Commissioner it admitted that the insurance cover was taken from it by the contractor but subsequently, in the appeal before this Court it took the plea that it was not the

contractor but the Delhi Power Company Limited which was insured with it. When in view of its' said stand the matter was remanded back to the Commissioner, it went back to its initial stand that it was the contractor and not the Delhi Power Company Limited which was insured with it. In view of the flip-flop and the latest stand of the appellant, the very basis on which the case was remanded back fell through and nothing was left for the Commissioner to decide regarding the liability of the Insurance Company. Therefore, I find no infirmity in the order holding the appellant liable to pay the awarded amount to the claimants. This, however, is not the end of the matter. The question still remains, whether the appellant is liable to pay interest as awarded by the Commissioner?

It is submitted by the learned counsel for the appellant that the liability of the Insurance Company to pay interest begins after 30 days of the passing of the award. In support, reliance has been placed upon a judgment of the Supreme Court in the case of ***National Insurance Co. Limited Versus Mubasir Ahmed and Another***, reported in (2007) 1 SCC (L&S) 643. The relevant paragraph of the judgment reads as under:-

“Interest is payable under Section 4-A(3) if there is default in paying the compensation due under this Act within one month from the date it fell due. The question of liability under Section 4-A was dealt with by this Court in *Maghar Singh Versus Jashwant Singh*. By amending Act 30 of 1995, Section 4-A of the Act was amended, inter alia, fixing the minimum rate of interest to be simple interest @ 12%. In the instant case, the accident took place after the amendment and, therefore, the rate of 12% as fixed by the High Court cannot be faulted. But the period as fixed by it is wrong. The starting point is on completion of one month from the date on which it fell due. Obviously it cannot be the date of accident. Since

no indication is there as to when it becomes due, it has to be taken to be the date of adjudication of the claim. This appears to be so because Section 4-A(1) prescribes that compensation under Section 4 shall be paid as soon as it falls due. The compensation becomes due on the basis of adjudication of the claim made. The adjudication under Section 4 in some cases involves the assessment of loss of earning capacity by a qualified medical practitioner. Unless adjudication is done, question of compensation becoming due does not arise. The position becomes clearer on a reading of sub-section (2) of Section 4-A. It provides that provisional payment to the extent of admitted liability has to be made when employer does not accept the liability for compensation to the extent claimed. The crucial expression is "falls due." Significantly, legislature has not used the expression "from the date of accident". Unless there is an adjudication, the question of an amount falling due does not arise."

Having regard to the aforementioned judgment of the Apex Court, I modify the award and hold that the interest as awarded by the Commissioner shall be payable to the claimants from the expiry of 30 days from the date of the first award of the Commissioner dated January 22, 2008. The appellant shall pay the compensation along with interest to the claimants within one month.

The appeal is disposed of. Dasti.

REKHA SHARMA, J.

JANUARY 14, 2010
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