

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

+ FAO 53/2012

% Judgment delivered on: 14.03.2012

NEW INDIA ASSURANCE CO LTD Appellant
Through : Mr D.D. Singh with Mr Navdeep
Singh, Advocates

versus

SUSHILA & ANR Respondents
Through : None

CORAM:
HON'BLE MS. JUSTICE VEENA BIRBAL

VEENA BIRBAL, J.

1. By way of this first appeal under Section 30 of the Employees Compensation Act, 1923 (hereinafter referred to as 'the Act'), challenge is made to the impugned order dated 16.08.2011 by which the Commissioner, Employees Compensation has awarded interest @ 12% p.a. on the amount of compensation of ₹ 4,28,376/- to claimants i.e., respondents 1 to 3 w.e.f. date of accident i.e., 9.9.2003 till its realization.

2. Briefly, the background of the case is as under:-

The respondents 1 to 3/claimants had filed a claim petition under the Act seeking compensation on account of death of Sh. Subhash Chand Verma. Respondent no. 1 is the wife of deceased and respondents no. 2 and 3 are his children. The case of the respondents no. 1 to 3 was that deceased was employed as a 'Driver' on vehicle bearing no. DL-4A-1655 RTV. On

9.9.2003 when he was on duty on the said vehicle and was going from Peera Garhi to Palam Gaon, he noticed some defect in the vehicle. He stopped the vehicle in order to find out the defect. In the meanwhile, deceased was hit by another vehicle as a result of which he sustained injuries on the vital part of the body and died. It was their case that deceased had died in an accident arising out of and in the course of employment. The said claim petition was decided on 13.08.2008 wherein the appellant was directed to pay a sum of ₹4,28,376/- as compensation to respondents 1 to 3. The said amount was deposited by the appellant before the Commissioner on 26.09.2008. After receiving the said amount, the respondents 1 to 3 moved an application under Section 4(A) of the Act claiming interest @ 12% on the awarded amount. The said application was disposed of vide impugned order dated 16.08.2011 by which a direction has been issued to respondent no. 2 to pay interest @ 12% p.a. to the claimants w.e.f. 9.9.2003 till the date of realization of compensation.

3. Aggrieved with the impugned order of award of interest dated 16.08.2011 @ 12% p.a. on the compensation amount from the date of accident, the present appeal is filed.

4. The learned counsel for appellant has contended that the appellant-company is not liable to pay interest. It is further contended that the Commissioner committed error in holding that the interest is payable after 30 days of the date of accident. It is contended that in any event, the interest could not have been awarded. It is contended that even assuming the interest is payable, the same is payable only 30 days after the adjudication by the

Commissioner, Workmen's Compensation and not after 30 days from the date of accident.

5. Section 3 of the Act deals with employer's liability for compensation. Section 3(1) provides that the employer shall be liable to pay compensation if "personal injury is caused to a workman by accident arising out of and in the course of his employment". Section 4 of the Act deals with the amount of compensation to be paid. Under Section 4A(1) of the Act, compensation is to be paid at the rate provided under Section 4 as soon as the personal injury was caused to respondent. Section 4A(3) casts liability to pay interest if any employee defaults in paying compensation due under the Act within one month from the date it fell due.

6. As regards liability of payment of interest is concerned, it has been held by the Apex Court in **Ved Prakash Garg v. Premi Devi and Ors.**; **AIR 1997 SC 3854** that the Insurance Company is liable to pay not only the principal amount of compensation payable by the insurer employer but also interest thereon if ordered by the Commissioner to be paid by the employer. Insurance company is liable to meet claim for compensation along with interest as imposed on insurer employer by the Act on conjoint operation of Section 3 and 4(A)(3)(a) of the Act. The relevant para of the aforesaid judgment is reproduced as under:-

“On a conjoint operation of the relevant schemes of the aforesaid twin Acts, in our view, there is no escape from the conclusion that the insurance companies will be liable to make good not only the principal amounts of compensation payable by insured employers but also interest thereon, if

ordered by the Commissioner to be paid by the insured employers. Reason for this conclusion is obvious. As we have noted earlier the liability to pay compensation under the Compensation Act gets foisted on the employer provided it is shown that the workman concerned suffered from personal injury, fatal or otherwise, by any motor accident arising out of and in the course of his employment. Such an accident is also covered by the statutory coverage contemplated by Section 147 of the M.V. Act read with the identical provisions under the very contracts of insurance reflected by the policy which would made the insurance company liable to cover all such claims for compensation for which statutory liability is imposed on the employer under Section 3 read with Section 4-A of the Compensation Act. All these provisions represent a well-knit scheme for computing the statutory liability of the employers in cases of such accidents to their workmen. As we have seen earlier while discussing the scheme of Section 4-A of the Compensation Act the legislative intent is clearly discernible that once compensation falls due and within one month it is not paid by the employer then as per Section 4-A (3) (a) interest at the permissible rate gets added to the said principal amount of compensation as the claimants would stand deprived of their legally due compensation for a period beyond one month which is statutorily granted to the employer concerned to make good his liability for the benefit of the claimants whose breadwinner might have either been seriously injured or might have lost his life. Thus so far as interest is concerned it is almost automatic once default, on the part of the employer in paying the compensation due, takes place beyond the permissible limit of one month. No element of penalty is involved therein. It is a statutory elongation of the liability of the employer

to make good the principal amount of compensation within permissible time-limit during which interest may not run but otherwise liability of paying interest on delayed compensation will *ipso facto* follow. Even though the Commissioner under these circumstances can impose a further liability on the employer under circumstances and within limits contemplated by Section 4-A (3) (a) still the liability to pay interest on the principal amount under the said provision remains a part and parcel of the statutory liability which is legally liable to be discharged by the insured employer. Consequently such imposition of interest on the principal amount would certainly partake the character of the legal liability of the insured employer to pay the compensation amount with due interest as imposed upon him under the Compensation Act. Thus the principal amount as well as the interest made payable thereon would remain part and parcel of the legal liability of the insured to be discharged under the Compensation Act and not de hors it. It, therefore, cannot be said by the insurance company that when it is statutorily and even contractually liable to reimburse the employer *qua* his statutory liability to pay compensation to the claimants in case of such motor accidents to his workmen, the interest on the principal amount which almost automatically gets foisted upon him once the compensation amount is not paid within one month from the date it fell due, would not be a part of the insured liability of the employer. No question of justification by the insured employer for the delay in such circumstances would arise for consideration. It is of course true that one month's period as contemplated under Section 4-A (3) may start running for the purpose of attracting interest under sub-clause (a) thereof in case where provisional payment has to be made by the insured

employer as per Section 4-A (2) of the Compensation Act from the date such provisional payment becomes due. But when the employer does not accept his liability as a whole under circumstances enumerated by us earlier then section 4-A(2) would not get attracted and one month's period would start running from the date on which due compensation payable by the employer is adjudicated upon by the Commissioner and in either case the Commissioner would be justified in directing payment of interest in such contingencies not only from the date of the award but also from the date of the accident concerned. Such an order passed by the Commissioner would remain perfectly justified on the scheme of Section 4-A (3) (a) of the Compensation Act.”

7. In **L.R. Ferro Alloys Ltd. vs. Mahavir Mahto and Anr.;** MANU/SC/2475/2000 Supreme Court held that if an amount of compensation is not deposited within a period of one month, the insurance company shall be liable to reimburse the owner only the amount of compensation with interest therefrom but not the penalty imposed on insurer-employer for default of payment of amount.

8. A similar question about the liability of payment of interest as has been raised in the present appeal has been dealt in the judgment of Supreme Court in **Kamla Chaturvedi vs. National Insurance Company & Ors.;** 2009 (1) SCC 487 wherein reference has been made to **Ved Prakash Garg vs. Premi Devi and Ors.;** AIR 1997 SC 3854 and **New India Assurance Co. Ltd. vs. Harshadbhai Amrutbhai Modhiya;** MANU/SC/8127/2006.

9. While noting the judgment of **New India Assurance Co. India Ltd.** (supra) in **Kamla Chaturvedi** (supra), Supreme Court observed that in the said case direction of payment of interest by insurance company was held to be non sustainable. The Supreme Court found that as a matter of fact, a contract in the said case itself provided that the interest and/or penalty imposed on the insurer on account of his/her failure to make payment of amount payable under the Act is not to be paid by insurance company. In **Kamla Chaturvedi** (supra) it is held as under:-

“..... In the instant case the position is different. The accident in question arose on account of vehicular accident and provisions of MV Act are clearly applicable. We have gone through the policy of insurance and we find that no such exception as was the case in New India Assurance Co.’s case was stipulated in the policy of insurance. Therefore, the Insurance Company is liable to pay the interest.”

10. In the present case, terms and conditions of policy of insurance have not been placed on record by the appellant either before this court or before the Commissioner. Accident is admitted. Appellant has paid the principal amount of compensation as awarded by the Commissioner to the respondents under the policy of insurance. As held in the cases discussed above, insurance company is liable to pay the interest on the amount of compensation on account of delay of deposit in the same.

11. The other question which arises for consideration is whether the interest would be payable 30 days after adjudication by the Commissioner, Workmen’s Compensation or 30 days after the date of accident.

12. The Supreme Court in **Pratap Narain Singh Deo vs. Srinivas Sabata and Anr.; (1976) 1 SCC 289** it has been held that the liability arises as soon as personal injury is caused to the workman and employer has to pay the compensation in accordance with Section 4 of the Act, the failure to pay entails liability to pay interest and penalty under Section 4A of the Act. The relevant para of the judgment is reproduced as under:-

“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. He failed to do so. What is worse, he did not even make a provisional payment under Sub-section (2) of Section 4 for, as has been stated, he went to the extent of taking the false pleas that the respondent was a casual contractor and that the accident occurred solely because of his negligence. Then there is the further fact that he paid no need to the respondent’s personal approach for obtaining the compensation. It will be recalled that the respondent was driven to the necessity of making an application to the Commissioner for settling the claim, and even there the appellant raised a frivolous objection as to the jurisdiction of the Commissioner and prevailed on the respondent to file a memorandum of agreement settling the claim for a sum which was so grossly inadequate that it was rejected by the Commissioner. In these facts and circumstances, we have no doubt that the Commissioner was fully justified in making an order for the payment of interest and the penalty.”

13. The judgment relied upon by the learned counsel for the appellant i.e. **National Insurance Co. Ltd. vs. Mubasir Ahmed & Ors.; 2007 (2) SCC**

349 to contend that the interest becomes payable not from the date of accident but after one month of adjudication by the Commissioner is of no help to appellant as the said decision is by the two Judge Bench of the Supreme Court and does not refer to the decision of **Pratap Narain** (supra) which has been delivered by the four Judge Bench of the Supreme Court.

In view of the above discussion, there is no reason to interfere with the impugned judgment wherein interest @ 12% has been awarded to the respondents from 9.9.2003. The appeal is accordingly dismissed.

VEENA BIRBAL, J

MARCH 14, 2012

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