



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

906 FIRST APPEAL NO. 2324 OF 2024

1. Lilabi Ajay Dhakane,
Age:28 Years, Occu. Nil
R/o. Plot No.12(b), 12th scheme,
North side, Shivajinagar, Cidco, Aurangabad
 2. Gaurav S/o. Late Ajay Dhakane
Age:8 Years, Occu. Minor
 3. Atharav S/o. Late Ajay Dhakane
Age:4 Years, Occu. Minor
Appellant Nos.2 and 3 are minors and are
under the guardianship of appellant No.1
R/o. Plot No.12(b), 12th scheme,
North side, Shivajinagar, Cidco, Aurangabad
- ... Appellants**

VERSUS

1. M/s. Indus Towers Ltd. (thr. Its Manager)
2010, E core, IInd Floor, Marvel Edge,
Viman Nagar, Pune 411 014
 2. M/s. Teamlease Services Pvt. Ltd.
(through its Manager), 509 Nucleolus Mall,
Church road Camp, Oppo. Police
Commissioner Office, Pune.
 3. ICICI Lombard General Insurance Company Ltd.
(through its Manager/authorized signatory)
ICICI Lombard House 0 414, Veer Savarkar Marg,
Near Siddhi Temple, Prabhadevo,
Mumbai 400 025.
- ... Respondents**

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Mr. Kawre B. R., Advocate for Appellant.
Mr. Mohit R Deshmukh, Advocate for Respondents.

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CORAM : ROHIT W. JOSHI, J.
DATE : 04 SEPTEMBER 2026

PER COURT :

1. Vide order dated 3/9/2026, the following substantial questions of law were framed in the present appeal, and the parties were put to notice that the appeal would be heard finally at the stage of admission on the said substantial questions of law. Short notice was given for final hearing, since the issues involved are covered by the judgments of the Hon'ble Supreme Court.

2. The present appellant had initiated proceedings under the Employees' Compensation Act, 1923, for payment of compensation on account of the demise of late Ajay Dhakane, husband of appellant No.1 and father of appellant Nos.2 and 3. The said application came to be allowed by the learned Compensation Commissioner of Employees Compensation and Judge, Labour Court – 2, Aurangabad, vide judgment and order dated 10/3/2022. An amount of Rs.8,15,400/- is ordered to be paid towards compensation by the respondent No.1–Employer was directed to pay the said amount. The deceased employee was engaged by the respondent No.1 through the respondent No.2. The learned Compensation Commissioner has held that respondent No.1 is entitled to be indemnified by the respondent No.2. The respondent No.3 - Insurance Company was held liable to the extent of 65% of the amount of compensation. The original claimants have filed the present appeal, being aggrieved by the directions with respect to payment of interest. There is

no direction for payment of interest in the operative order. However, on perusal of paragraphs 26 and 27 of the judgment, it appears that, according to the Tribunal, interest at the rate of 12% per annum would be payable from the date of adjudication, in the event the respondents fail to pay the amount of compensation as adjudicated.

3. In holding so, the learned Commissioner has placed reliance on the judgment of the Hon'ble Supreme Court in the case of **National Insurance Company Limited Vs. Mubasir Ahmed**¹ which is held to be per incuriam of the earlier decision of the Hon'ble Supreme Court in the case of **Pratap Narian Singh Deo Vs. Srinivas Sabata**²., in the judgment of the Hon'ble Supreme Court in the case of **Saberabibi Yakubhai Shaikh & Ors. Vs. National Insurance Company Limited**³. The Hon'ble Supreme Court has categorically laid down in the case of **Saberabibi Yakubhai Shaikh** (supra) that the liability to pay interest arises from the date of accident. The same view has been taken by the Hon'ble Supreme Court in the case of **P. Meenaraj Vs. P. Adigurusamy & Anr**⁴. and **Ajay Kumar Das and Anr. Vs. Divisional Manager & Anr**⁵. The judgment in the case of **Mubasir Ahmed** (supra) taking a similar view that the liability to pay interest arises from the date of adjudication of compensation, has been held to be *per incuriam*.

1 2007 (2) SCT 224

2 (1976) 1 SCC 289

3 (2014) 2 SCC 298

4 Civil Appeal No.209 of 2022, decided on 6 January 2022

5 Civil Appeal No.447 of 2022, decided on 24 January 2022

4. In the light of the Larger Bench decision in the case of **Pratap Narian Singh Deo** (supra) the first substantial question of law will have to be answered by holding that respondent No.1 and respondent No.3 are liable to make payment of interest on the amount of compensation awarded from the date of demise, i.e., 15/5/2017.

5. It is clarified that respondent No.3 - Insurance Company shall indemnify the respondent No.1 only to the extent of 65% of the amount of compensation as awarded by the learned Compensation Commissioner, without interest.

6. The learned Compensation Commissioner shall compute the amount of interest payable in accordance with the instant judgment, having regard to the deposit that is made by respondent No.1 with the learned Compensation Commissioner.

7. As regards the second substantial question of law, the learned advocate for the appellants vehemently argues that the learned Compensation Commissioner has erred in making payment for penalties conditional only in the event of default on the part of respondent No.1 to deposit the amount of compensation within a period of one month from the date of decision. The learned advocate contends that liability to pay compensation arises as on the date of demise, and as such, the liability to pay penalty will arise in the event the amount of compensation is not

paid within a period of one month from the date of demise.

8. Learned Advocate therefore argues that the operative order with respect to direction for payment of penalty needs to be modified by directing respondent No.1 to pay the said amount, since admittedly, within a period of one month from the date of demise, the amount of compensation was not paid.

9. *Per contra*, learned advocate for respondent No.1 places reliance in the case of **The managing Director, Kunnel Engineers and Contractors Pvt. Ltd. Vs. The Divisional Manager, The New India Assurance Company Ltd. & Anr⁶**. to contend that the claim for penalty could not have been adjudicated simultaneously with the claim for award of compensation. The learned advocate argues that it is incumbent upon the learned Compensation Commissioner to issue a separate notice with respect to penalty proposed to be imposed. He contends that the said procedure was not followed, as a consequence of which prejudice caused to respondent No.1, who was not able to justify its stand and offer an appropriate explanation against the imposition of penalty.

10. Having regard to the decision in the case of **The managing Director, Kunnel Engineers and Contractors Pvt. Ltd.** (supra), in the considered opinion of this Court, the learned Compensation Commissioner will have

6 Civil Appeal No.8064 of 2011, dated 3 May 2023

to be directed to reconsider the issue of payment of penalty by issuing a show cause notice to respondent No.1-Employer in this regard.

11. It also needs to be held that the the conclusion drawn by the learned Compensation Commissioner that the liability to pay penalty would arise only if the compensation is not deposited within a period of one month from the date of adjudication of the compensation case, is erroneous. The liability to pay penalty arises in the event of failure to deposit/pay the amount of compensation within a period of one month from the date on which the compensation falls due, i.e., from the date of accident/demise.

12. In the light of the reasons recorded above, the operative Clause - 4 in the judgment and order dated 10/3/2022 passed by the learned Commissioner for Employees' and Judge, Labour Court – 2, Aurangabad, in application WCA (C) No.6 of 2018, is set aside. The case is remitted to the learned Commissioner for Employees' Compensation for redetermining the question of penalty after issuance of notice to respondent No.1-Employer. The appellants and respondent No.1 shall appear before the learned Commissioner for Employees' Compensation on 1/10/2026. On that date, or thereafter, the learned Commissioner of Compensation shall issue notice with respect to penalty upon respondent No.1 and thereafter decide the issue with respect to liability to pay

penalty.

13. In the event, respondent No.1 does not appear before the Compensation Commissioner as directed by this Court, it will be deemed that the notice has been duly served upon respondent No.1.

14. The learned Compensation Commissioner can decide the issue *ex parte* in the event the respondent No.1 does not appear before it on 1/10/2026 or on further dates that may be fixed by the learned Compensation Commissioner.

[ROHIT W. JOSHI, J.]