

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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C.M.A.No.510 of 2008

JUDGMENT:

Having not been satisfied with the compensation awarded, the appellant/applicant had preferred this appeal under Section 30 of the Workmens' Compensation Act, 1923 assailing the order dated 21.07.1997 in W.C.No.20 of 1995 passed by the learned Commissioner for Workmen's Compensation and the Assistant Commissioner of Labour, Eluru of West Godavari District.

2. I have heard the submissions of the learned counsel for the appellant/applicant ('the applicant', for brevity) and the learned counsel for the 5th opposite party/5th respondent. The respondents 1 to 4 are stated to be not necessary parties. I have perused the material record.

3. The basic facts, in brief, are as follows: - 'The applicant had filed the claim application claiming a compensation of Rs.1,00,000/- under the provisions of the Workmen's Compensation Act presently known as the Employees' Compensation Act, 1923 ('the Act', for short) for the injuries sustained and disability suffered by him due to his involvement in a motor vehicle accident that had occurred out of and during the course of his employment as the driver on the Car bearing Registration no.AIW 5526 of the 4th opposite party, which was insured with the 5th opposite party/the New India Assurance Company Ltd.,. He had *inter alia* urged that his monthly salary was Rs.1,200/- and that he was being paid a daily batta of Rs.25/- and that on 23.04.1994 at about 09.00 am while he was discharging his duty as the driver on the said Car and when he was proceeding from Rajahmundry to Eluru, a Lorry bearing registration number AP 31 T 3367 of the 2nd opposite party, being driven rashly and negligently by its driver/the 1st opposite party, had dashed against his Car and that in that accident he had sustained multiple grievous injuries and suffered consequential permanent partial disability and that the said Lorry was insured with the 3rd opposite party/the

Oriental Insurance Company. The opposite parties 1 and 2 had remained *ex parte* before the learned Commissioner. The 3rd opposite party having filed a Counter had contended that the 4th opposite party is the owner of the Car and also the employer of the applicant and that, therefore, the 4th opposite party is liable to pay the compensation and that opposite parties 1 to 3 viz., the driver, the owner and the insurer of the Lorry are not liable to pay any compensation and that the petition against the said opposite parties is liable to be dismissed as not maintainable. The 4th opposite party having filed a Counter resisted the claim *inter alia* contending that the applicant is a temporary driver and not a permanent driver on the Car and that the applicant was not a monthly wage earner and that he was not informed about the accident. The 5th opposite party having filed a counter had resisted the claim of the applicant on various grounds. At trial, the applicant and a doctor were examined as PWs 1 and 2 and exhibits A1 to A7 were marked on his side. No oral and documentary evidence was adduced on the side of the opposite parties 3 to 5. On merits, the learned Commissioner had awarded a total compensation of Rs.74,127/- to the applicant recoverable jointly and severally from both the opposite parties 4 and 5, who are the insured and the insurer of the Car and had directed them to deposit the same within (30) days from the date of the receipt of a copy of the order. Not having been satisfied with the quantum of compensation awarded, the applicant had preferred this appeal.

4. The learned counsel for the applicant would contend that the applicant had pleaded and also established by adducing necessary evidence that he was earning Rs.1,200/- per month as salary besides Rs.25/- per day as batta at the time of accident and that the learned Commissioner, therefore, ought to have assessed the total wage of the applicant as Rs.1,950/- (Rs.1,200/- + Rs.750/-) but, the Commissioner had wrongly determined the monthly income as Rs.1,000/- and had erroneously awarded a meagre compensation of Rs.74,127/- and that the learned Commissioner ought to have awarded Rs.1,00,000/- as claimed and that the learned Commissioner had erred in not awarding any interest and that the claimant is entitled to interest on the compensation amount from the date of the accident. Therefore, he had

prayed for allowing the appeal and awarding Rs.1,00,000/- with interest as claimed by the applicant. Nonetheless, the applicant did not dispute the percentage of disability as determined by the learned Commissioner, though a ground in that regard was urged in the grounds of appeal, obviously for the reason that the learned Commissioner determined the percentage of disablement despite the fact that the doctor, who treated the applicant and issued the certificate, was not examined.

5. On the other hand, the learned counsel for the 5th respondent/insurance company while supporting the impugned order had inter alia contended as follows: 'The applicant is a temporary driver even as per the contentions of the 4th opposite party, who is the employer-cum-owner of the Car. The Commissioner had properly appreciated the evidence and had rightly determined the wage of the applicant by limiting it to Rs.1,000/- for computation of compensation, in view of the G.O.Ms.No.58, dated 08.04.1991 where under the wage for the driver of a light motor vehicle was fixed as Rs.880/- besides PDA of Rs.318/-; and, Section 4 of the Act, which limits the wage to the amount as determined by the learned Commissioner. No interest is payable and awardable under the provisions of the Act.'

6. Therefore, the two questions, which fall for consideration in this appeal are –

- i. **What is the amount of compensation to which the applicant is entitled to?**
- ii. **Whether the Commissioner had committed an error in not awarding interest on the compensation amount as contended by the applicant? And, if so, what is the date from which interest is awardable on the compensation amount?**

7. **POINT No.1:**

The basic facts are already stated supra, in detail. The 1st question is as to whether the learned Commissioner was right in determining the wage of the applicant at Rs.1,000/- per month by following the terms of the G.O. and the provisions of law, which are applicable. The applicant did not file any appointment letter or wage slip in support of his contention that he was a

permanent driver and was drawing Rs.1,200/- per month besides batta of Rs.25/- per day at the time of the accident. The employer-cum-owner/4th opposite party had categorically pleaded that the applicant is a temporary driver on his Car. In the absence of any reliable evidence on the side of the applicant, the learned Commissioner had rightly determined the wage for computation of compensation by limiting it to Rs.1,000/- by following the terms of the G.O and the provisions of law, which are applicable. Therefore, this Court finds no reason to interfere with the wage component that was determined and applied in the formula for determining the compensation. The point is accordingly answered against the applicant.

8. POINT No.2:

8.1 Insofar as the interest to be awarded on the compensation amount and the rate of interest, the learned counsel for the applicant had contended that the applicant is entitled to interest on the compensation amount from the date of the accident and that in this case, no interest was awarded on the compensation amount granted and that therefore, it is just and fair to award interest at 9% per annum simple from the date of the accident till the date of deposit or payment or realization of the compensation amount. Per contra, the learned counsel for the 5th respondent had first contended that no interest is awardable under law and that therefore, the order of the Commissioner is correct; he had next alternately contended that interest, if any, to be awarded is awardable from the date of the order of the learned Commissioner. He had finally contended that interest is awardable only from the date of the application, in case, the second/alternate contention is unacceptable. He had placed reliance on a decision in **Manju Sarkar and others v. Mabish Miah and others**^[1] in support of the alternate contention that interest is awardable from the date of the claim petition but not from the date of the accident. On the other hand, the learned counsel for the applicant had placed reliance on a decision in **The Oriental Insurance Company Ltd., v. Siby George and others**^[2].

8.2 In the light of the contentions of both the sides, it is necessary to refer to Section 4A of the Act, which deals with ‘compensation to be paid, when due and penalty for default’ reads as under:

4-A: Compensation to be paid, when due and penalty for default:

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(1) compensation under Section 4 shall be paid as soon as it falls due.

(2) xxx

(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 schedule 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.”

Under the said provision, the Commissioner is empowered to direct that the employer shall in addition to the arrears pay 12% 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.

8.3 Further, in the decision in Siby George (2 supra), the Hon’ble Supreme Court considered the following question: ‘When does the payment of compensation under the WC Act, 1923 become due and consequently what is the point in time from which interest would be payable on the amount of compensation as provided under Section 4(a)(3) of the Act?’ The Hon’ble Supreme Court having considered the legal position and the ratios in the precedents had held as under: **“The decisions in Pratap Narain Singh Deo was by a four Judge Bench and in Valsala by a three Judge Bench of this Court. Both the decisions were, thus, fully binding on the Court in Mubasir Ahmed and Mohd.Nasir, each of which was heard by two judges. But, the earlier decisions in Pratap Narain Singh Deo and Valsala were not brought to the notice of the Court in the two latter**

decisions in Mubasir Ahmed and Mohd. Nasir. In the light of the decisions in Pratap Narain Singh Deo and Valsala, it is not open to contend that the payment of compensation would fall due only after the Commissioner's order or with reference to the date on which the claim application is made. The decisions in Mubasir Ahmed and Mohd.Nasir insofar as they took a contrary view to the earlier decisions in Pratap Narain Singh Deo and Valsala do not express the correct view and do not make binding precedents." From the ratio in the decision, it is clear that the employer becomes liable to pay the compensation as soon as the personal injury was caused to the workman by the accident, which arose out of and in the course of employment. Hence, interest is payable from the date of the accident and the relevant date for determination of the rate of compensation is the date of accident and not the date of adjudication of the claim. Therefore, in view of the larger Bench decision of the Supreme Court, wherein the legal position was settled, the contention of the applicant that the applicant is entitled to grant of interest at 9% per annum simple on the compensation amount from the date of the accident (23.04.1994) till date of deposit or realization is having acceptable merit and therefore, this Court holds that the order impugned needs modification in regard to grant of interest by awarding interest as indicated above from the date of the accident. The point is answered accordingly in favour of the applicant/appellant.

9. In the result, the appeal is allowed in part, without costs and the order impugned is confirmed insofar as the quantum of compensation that was awarded, however, interest at 9% per annum simple is granted on the awarded compensation amount from the date of the accident till date of deposit or realization. The 5th respondent is accordingly directed to deposit before the authority concerned the amount due towards interest by way of banker's cheque/demand draft in the name of the applicant within two months from the date of receipt of a copy of this judgment. The 5th respondent is also directed to deposit the compensation amount as awarded by the learned Commissioner, if not already deposited.

Miscellaneous petitions, if any, pending in this appeal shall stand closed.

M. SEETHARAMA MURTI, J

23rd June, 2015
Vjl

[\[1\]](#) 2014 ACJ 1927

[\[2\]](#) 2012 ACJ 2126