

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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C.M.A.No.148 of 2008

JUDGMENT:

The appellant/second opposite party had preferred this appeal under Section 30 of the Workmen's Compensation Act, 1923 assailing the orders dated 29.12.2007 of the learned Commissioner for Workmen's Compensation and the Assistant Commissioner of Labour-III at Hyderabad in W.C.No.97 of 2005.

2. I have heard the submissions of the learned counsel for the appellant/second opposite party ('the second opposite party', for brevity) and the learned counsel for the 1st respondent/applicant ('the applicant', for brevity). The 2nd respondent/first opposite party is stated to be not a necessary party. I have perused the material record.

3. The basic facts necessary for consideration, in brief, are as follows: -
'The applicant had filed the compensation case claiming compensation of Rs.3,00,000/- under the provisions of the Workmen's Compensation Act, 1923 presently known as Employees' Compensation Act, 1923 ('the Act', for short) contending that he was employed as a driver of the DCM van bearing No.AP10T 0176 of the first opposite party on payment of wages at the rate of Rs.4,000/- per month and that on 28.02.2005 while he was proceeding on the said van from Shadnagar towards Hyderabad and at about 8 PM, when the vehicle reached near Gaganpahad Electric sub-station, one lorry bearing No. APA 8291, which came in the opposite direction, had dashed against the van of the applicant and that in the said accident he had sustained fracture of both bones of right leg and that he was immediately shifted to Smt. Bhagwan Devi Hospital, Hyderabad and that on account of the said injury sustained in the accident, he became totally and permanently disabled and is unable to perform his duties as driver and that on a report given by the driver of the opposite vehicle, the Station House Officer, Rajendranagar police station had

registered a case in Crime No.114 of 2005 and that at the time of the accident, he was aged about 30 years and that the accident had occurred out of and during the course of his employment as a driver on the van of the 1st opposite party which was insured with the 2nd opposite party and that therefore, both the opposite parties are jointly and severally liable to pay the compensation with interest and costs. The first opposite party-cum-owner of the vehicle had remained *ex parte* before the learned Commissioner. The second opposite party having filed a Counter had resisted the claim of the applicant on various grounds. At trial, the applicant and the doctor, who had issued the disability certificate, were examined as AWs1 and 2 and exhibits A1 to A9 were marked on the side of the applicant. No oral or documentary evidence was adduced on the side of the 1st opposite party. RW1 was examined and exhibit B1, the copy of the insurance policy in respect of the DCM van was exhibited on the side of the second opposite party. On merits, the learned Commissioner had awarded a total compensation of Rs.2,14,746/- to the applicant in all recoverable from both the opposite parties and had directed that the said compensation be deposited by means of a demand draft drawn on any Nationalised Bank in favour of the Commissioner for Workmen's Compensation and the Assistant Commissioner of Labour-III, Hyderabad within 30 days from the date of the receipt of a copy of the order. It was further held that on failure to so deposit, the applicant is entitled for interest at 12% per annum on the compensation amount from the date of filing of the application. Aggrieved of the said orders, the second opposite party had preferred this appeal.

4. The learned counsel for the second opposite party would contend as follows: - "The first information lodged by the driver of the opposite lorry would show that the applicant was in a drunken condition and that the accident had occurred due to his rashness and negligence. The applicant did not prove the employee-employer relationship between him and the 1st opposite party. The documents relied upon by the applicant do not establish any such relationship. The learned Commissioner had erred in concluding that exhibit A1, the copy of the FIR, is sufficient to prove the relationship. The

doctor, who had issued exhibit A3-disability certificate, is not the doctor who had treated the applicant. He is not a qualified doctor and, having not treated the applicant, he is not competent to issue the disability certificate. The learned Commissioner erred in taking the disability at 60% in spite of the fact that the doctor had determined the disability at 35%. The learned Commissioner ought not to have relied upon the disability certificate that was issued by a private doctor and not by a Medical Board. The interest awarded at 12% is payable only by the 1st opposite party and under Section 4 of the Act, the employer alone is liable to pay the interest, but, not the insurer. The learned Commissioner had erroneously awarded a huge compensation.” On the other hand, the learned counsel for the applicant while supporting the order of the learned Commissioner had *inter alia* contended that the learned Commissioner properly considered the facts and the evidence on record and had rightly determined that there is employer-employee relationship between the 1st opposite party and the applicant and that the applicant was not in a drunken condition at the time of the accident and that he had sustained injuries in an accident that had occurred out of and during the course of his employment under the 1st opposite party and that the disability that was certified at 35% by the qualified doctor had resulted in 60% loss of earning capacity and that, therefore, the compensation awarded with interest at 12% per annum is just and fair and that there is no merit in the contentions of the insurance company/2nd opposite party and that no substantial questions of law are involved and that the appeal is devoid of merit and is liable to be dismissed. He had also contended that the evidence brought on record would show that the applicant is not in a position to drive the van and that therefore, the loss of earning capacity is 100% though the Commissioner has taken the said percentage of the loss of earning capacity at 60%.

6. In view of the contentions, the points that arise for determination in this appeal are:

1. **Whether there is no employer and employee relationship between the 1st opposite party and the applicant as contended by the 2nd opposite party?**

Whether the applicant was in a drunken condition at the time of the accident and if so, whether the insurer is not liable to pay compensation?

- 2. What was the percentage of physical disability and consequential loss of earning capacity suffered by the applicant? Whether the learned Commissioner erred in determining the loss of earning capacity at 60%?**
- 3. Whether the Commissioner erred in awarding interest at 12% per annum on the compensation amount from the date of the application as contended by the 2nd opposite party? And, whether the Commissioner had erred in fastening liability to pay the compensation with interest on the 2nd opposite party?**
- 4. Whether the order impugned is liable to be set aside in the facts and circumstances urged by the 2nd opposite party?**

7. POINT No.1:

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I have noted the pleadings and the contentions of both the sides and I have given thoughtful consideration to the facts and the evidence brought on record. I have noted the submissions. The case of the applicant is already stated supra, in detail. The applicant as AW1 had deposed in line with his pleadings and had exhibited exhibit A1, the Photostat copy of the FIR, exhibit A2, the original discharge card issued by Smt. Bhagwan Devi Hospital, Hyderabad, exhibit A3, the original disability certificate, exhibit A4, the X ray film, exhibit A5, the Photostat copy of the RC of the van, exhibit A6, the Photostat copy of the permit of the vehicle, exhibit A7, the Photostat copy of the insurance policy, exhibit A8, the Photostat copy of the driving licence and exhibit A9, the original hospital bill. In his cross-examination, AW1 had admitted that on the complaint given by the Mohd. Jaffer (the driver of the opposite lorry), the police had registered a case, but, had stated that he does not know the contents of the FIR and whether it was mentioned in the report that the accident had occurred due to his fault and that he was in a drunken condition. He had admitted that he did not file his original driving licence and the case sheet and had stated that he had lost his original driving licence

in the accident. He had admitted that he has not filed any document to show that AW2, the doctor, had treated him and also that he did not file any document to show that his employment was terminated by the 1st opposite party. He had denied the suggestion that he had filed the claim on fabricated documents. From a reading of the evidence of AW1, it appears that it is not even suggested to him that he was not employed under the 1st opposite party. Even RW1, the officer of the 2nd opposite party in his evidence has stated that AW1, the driver, was in a drunken condition as per the contents of the FIR and that therefore, the company is not liable to pay any compensation though there is valid policy under exhibit B1. Thus, on a careful consideration of the evidence, it is clear particularly from the contents of the FIR that the applicant was discharging duty as the driver on the DCM van at the time of the accident and that there is employer-employee relationship between him and the 1st opposite party. Though exhibit A1, the certified copy of the FIR on a perusal would show that a case was registered under Section 337 of the IPC immediately after the accident, the fact remains that the first information was lodged by one Mr. Jaffer, the driver of the opposite vehicle by showing the applicant as an accused. The said informant was not examined. Exhibit A2, the discharge summary issued by Smt. Bhagwan Devi Hospital on a perusal would show that the applicant was admitted on the same day i.e., on 28.02.2015 after sustaining injuries in a road traffic accident and that he had sustained comminuted fracture of both bones of right leg middle 1/3rd and that he was treated for the said injuries in the said hospital and was discharged on 02.03.2005. Exhibit A8 is the Photostat copy of his driving licence, which authorised him to drive the light motor vehicles and heavy goods vehicles. Therefore, the evidence of AW1, which is well corroborated by the content of the above documents, would lay bare the employer-employee relationship between the 1st opposite party and the applicant and that the applicant had sustained injuries in an accident which had occurred while he was driving the subject van of the 1st opposite party i.e., out of and during the course of his employment under the 1st opposite

party. Though it is mentioned in the FIR that the applicant was in a drunken condition and that his van had hit another vehicle and he had caused the accident, except an averment in the FIR that he was in a drunken condition, no other evidence was produced by the 2nd opposite party to prove as to whether the contents of the said FIR insofar as the averment that the applicant was in a drunken condition is correct. There is nothing on record to show as to what was the percentage of alcohol content in the blood of the applicant. There is also no evidence to show that the influence of alcohol was such that it prevented the applicant from driving the van at the relevant time. Even the discharge card does not show that he was in a drunken condition at the time of his admission into the hospital. Therefore, merely on the basis of an averment in the FIR that the applicant was in a drunken condition, no inference can be drawn that he was intoxicated and was under the influence of alcohol and was incapable of driving at the time of the accident. Therefore, this Court holds that the applicant was in a drunken condition cannot be accepted. Having thus carefully analysed the facts and the evidence this Court holds that there is employer and employee relationship between the 1st opposite party and the applicant and that the applicant was not in a drunken condition at the time of the accident and that the accident had occurred out of and during the course of the employment of the applicant as the driver on the van of the 1st opposite party. The point is accordingly answered.

8. POINT No.2:

8.1 Coming to the percentage of physical disability and the consequential percentage of loss of earning capacity said to have been suffered by the applicant, it is necessary to refer to the evidence of the doctor, AW2. He had testified that he is a qualified medical practitioner and that at the relevant time, he was working as a Civil Surgeon, Specialist Orthopaedic in Area Hospital, Golconda of Hyderabad and that he is competent to issue disability certificates and that on 28.11.2005 the applicant came to him with his discharge card issued by Smt. Bhagwan Devi Hospital and that he had

examined him clinically and had advised him to have a fresh x ray for radiological examination and that on examination of the applicant he had found post-traumatic fracture of both bones of upper 1/3rd of right leg and that the said comminuted fracture resulted in mal-union of the fractured bones of the right leg with 1 inch shortening and deformity at fracture site. He had further testified that because of the mal-union of the fractured bones, there is one inch shortening of right leg and that the applicant is not in a position to walk without the help of a stick and cannot drive a vehicle in future and cannot use his right leg for driving and that he is incapacitated to discharge his duties as in the past. He had assessed the disability at 35% basing on Mc Bride Scale. According to him, the disability is permanent and partial. Be it noted that it is first contended by the learned counsel for the 2nd opposite party that the doctor not being a member of the Medical Board and not being a doctor who had treated the applicant is not qualified and competent to issue the disability certificate. He had placed reliance on a decision in **Raj Kumar v. Ajay Kumar**^[1]. The provision of Section 2(i) of the Act, which reads as follows:

2(i) “qualified medical practitioner” means any person registered under any Central Act, Provincial Act, or an Act of the Legislature of a State providing for the maintenance of a register of medical practitioners, or, in any area, where no such last-mentioned Act is in force, any person declared by the State Government, by notification in the Official Gazette, to be qualified medical practitioner for the purposes of this Act.

The said provision makes it obvious that any Civil Surgeon and a registered medical practitioner like AW2 is competent to issue a disability certificate certifying the disability.

8.2 Coming to the percentage of earning capacity determined at 60% by the learned Commissioner, the learned counsel had placed reliance on **Raj Kumar** case (1 supra) and also an unreported decision of this Court in **The United India Insurance Co., v. S.K. Razak and another [CMA.Nos.235, 250 and 251 of 2005 dated 27.02.2015]**. In **Raj Kumar’s** case (1 supra), the Supreme Court had explained the distinction between ‘physical disability’ and ‘functional disability’ and had enumerated the principles governing the

determination of the loss of earning capacity and loss of future earnings resulting from the permanent disability arising from injuries. The enumerated principles are as follows:

“We may now summarise the principles discussed above:

- (i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.**
- (ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).**
- (iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.**
- (iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.”**

In the S.K.Razak's case (unreported and referred to supra) the facts of the decided cases show that this Court having regard to the facts and evidence on record did not accept the loss of earning capacity assessed at 100% by the learned Commissioner in the batch of three appeals. The percentages in this cited case were fixed having regard to the facts and the evidence in the batch of cases. The decision in **S.Suresh v. Oriental Insurance Co.Ltd., and Another**^[2] was not brought to the notice of this Court in S.K.Razack's case (unreported). In the decision in **S.Suresh v. Oriental Insurance Co.Ltd., and Another** (2 supra), the facts disclose that the claimant in that case who was of 25 years of age and earning Rs.4,000/- per month besides daily allowance had suffered permanent disability which prevented him from engaging him in the job of driver, which he used to do earlier. In this cited case, evidence was brought on record that he had suffered 93% permanent

disability in his right leg and he will not be able to do the job of a driver or any other job because he will not be able to stand or walk without support; therefore, the Commissioner came to the conclusion that the claimant's right leg up to the knee having been amputated, he has suffered a loss of 100% of his earning capacity as a driver. In this background the correctness of the said finding was questioned on the ground that as per the Schedule to the Act, loss of a leg on amputation amounted to a 50% reduction in the earning capacity, and the High Court had reduced the compensation by 50%. Then, the correctness of that judgment was questioned mainly on the ground that the claimant being a lorry driver, the loss of his right leg *ipso facto* meant a 'total disablement' as understood in terms of Section 2(1)(l) of the Act and as such the compensation payable to the claimant had to be computed on that basis. In support of the plea, reliance was placed on a four-Judge Bench decision of the Supreme Court in ***Pratap Narain Singh Deao v. Srinivas Sabata and Another [(1976) 1 SCC 289]***. In that case, a carpenter had suffered amputation of his left arm from the elbow. The Supreme Court held that this amounted to a total disability as the injury was of such a nature that the claimant had been disabled from all work which he was capable of performing at the time of the accident. In the light of the above facts and the legal position urged before the Hon'ble Supreme Court, the Supreme Court held as follows:

'In our view, the ratio of the said judgment is squarely applicable to the facts at hand. We are of the opinion that on account of amputation of his right leg below knee, he is rendered unfit for the work of a driver, which he was performing at the time of the accident resulting in the said disablement. Therefore, he has lost 100% of his earning capacity as a lorry driver, more so, when he is disqualified from even getting a driving licence under the Motor Vehicles Act.'

In ***New India Assurance Company Ltd., Secunderabad v. Abdul Khader Jilani @ Jilani and another***^[3], a Division Bench of this Court clarified that the Court's discretion is not controlled by the entries contained in Parts 1 and II of Schedule I.

8.3 Further, in the decision in **N. Sree Ramulu and others v. B. Lakshmi**

Narayana (died) and others ^[4] this Court considered the following question:

"Having regard to the nature of the injury suffered by the claimants in these cases, whether the Commissioner for Workmen's Compensation erred in not holding that the claimants should be deemed to have suffered "total disablement" as defined in Section 2(1)(l) of the Workmen's Compensation Act, 1923 (presently known as the Employees' Compensation Act, 1923) (for short "the Act") and award compensation to them on the said basis?" While answering the said question this Court had considered the provisions of law and also the decisions of the Supreme Court and had culled out the following principles:

25. The following principles can be culled out from the above decisions of the Supreme Court and this Court:

(a) All injuries or permanent disabilities arising from injuries do not result in loss of earning capacity.

(b) Where permanent partial disablement results from an injury and the said injury is specified in Schedule I, it would be covered by Section 4(1)(c)(i) of the Act. In such a case, the workman would be entitled to such percentage of 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;

(c) Where permanent partial disablement results from an injury and the injury is not specified in Schedule I, it would be covered by Section 4(1)(c)(ii) of the Act. In such a case, the workman would be entitled to such percentage of compensation which would have been 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.

(d) In assessing loss of earning capacity in a case of permanent partial disablement resulting from an injury not specified in the Schedule I, 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.

(e) The opinion of the medical practitioner as to the percentage of loss of earning capacity would be normally binding on the court where permanent partial disablement results from an injury not specified in Schedule I.

(f) The importance of medical evidence is only in case where disablement in performing duties which the workman was performing earlier cannot be decided without the aid of medical evidence. In case where it can be so decided with or without medical evidence (like amputation of limbs), medical evidence is not relevant and the question of the victim not suffering specified injuries is also not relevant.

(g) Loss of earning capacity is not a substitute for percentage of physical disablement and is only one of the factors taken into account.

(h) The loss of earning capacity arising from a permanent disability may be different from the percentage of permanent disability. Equating the percentage of loss of earning capacity to the percentage of permanent disability would result in the award of either too low or too high a compensation. What requires to be assessed is the effect of permanent disability on the earning capacity of the injured. This involves ascertainment of what activities the claimant can carry on in spite of permanent disability and what he could not do as a result of the permanent disability; ascertainment of his avocation, profession and nature of work before the accident and also his age; and finding out whether he is totally disabled from earning any kind of livelihood (or) whether in spite of permanent disability, he can still effectively carry on the activities and functions, which he was earlier carrying on (or) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood. In para. 14 of Raj Kumar (17 supra) and in para. 8 of Mohan Soni (25 supra) appropriate guidance is available.

(i) The doctor who treated an injured claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard to the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Commissioner/Court with reference to the evidence in entirety.

(j) Where a claimant is a workman who suffered injuries in an accident and his employer either provides for pension after retiring the workman on the grounds of medical invalidation or the dependants of the claimant are given appointment on compassionate grounds, he has a duty to disclose these facts and they would have a material bearing on the ascertainment of the percentage of loss of earning capacity.

(k) It is a question of fact in each case whether there is

permanent total disablement on account of the injuries suffered by the claimant. In a given case, the loss of earning capacity caused by an injury can amount to 100% disablement. But, if the injured claimant is in a position to earn a living by doing a job other than the one which he was doing at the time of his accident, he cannot be said to have suffered 100% disability.

(I) Any scaling down of the compensation should require something more tangible than a hypothetical conjecture that notwithstanding the disability, the victim could make up for the loss of income by changing his vocation or by adopting another means of livelihood. The party advocating for a lower amount of compensation for that reason must plead and show before the Tribunal that the victim enjoyed some legal protection (as in the case of persons covered by the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995) or in case of the vast multitude who earn their livelihood in the unorganized sector by leading cogent evidence that the victim had in fact changed his vocation or the means of his livelihood and by virtue of such change he was deriving a certain income.

Further, in this cited decision, while deciding the claim in CMA no. 2197 of 2003 keeping in view the above principles of law, this Court had noted that the applicant in that case had suffered fracture of both bones of left leg above knee and that amputation was done for the right thigh and that fixation was done for fracture of left leg and that the applicant was not fit to drive a vehicle and had then proceeded to hold that the loss of earning capacity was 100% and that the Commissioner had erred in granting the compensation on the basis that the loss earning capacity of the claimant was 80%.

8.4 The law is thus well settled that the loss of earning capacity arising from a permanent disability may be different from the percentage of permanent disability; and, if the percentage of permanent disability is to be taken as the percentage of loss of earning capacity it may result in award of either too low or too high a compensation as the Supreme Court in Raj Kumar's case has pointed out that the same permanent disability may result in different percentages of loss of earning capacity in different persons depending on the nature of profession, occupation or job, age, education and

other factors. In view of the settled legal position, the contention of the second opposite party that the percentage of loss of earning capacity has to be determined only at 35% as per the provisions of the Act cannot be countenanced. Dealing with the aspect as to whether the Commissioner was correct in assessing the loss of earning capacity at 60%, the evidence of AW2 is already extracted supra. According to his version, PW1 cannot drive a vehicle with the same competence with which he was earlier driving as he is incapacitated for the work which he was capable of performing at the time of the accident on account of the disability of permanent and partial nature suffered by him. Having regard to the injuries sustained and the resultant disability suffered, it has to be held that the learned Commissioner is justified in determining the loss of earning capacity at 60% in the facts and circumstances of the case. The point is accordingly answered.

9. POINT No.3:

Insofar as the interest and the rate of interest awarded on the compensation amount by the learned Commissioner, the learned counsel for the second opposite party would contend that the applicant is entitled to interest only from the date of the order of the Commissioner and that the interest awarded at 12% per annum is high and excessive. In support of the said contention, he had placed reliance on the decisions in (i) National Insurance Company Ltd. V. Mubasir Ahmed and another [2007(2) SCC 349] and (ii) Oriental Insurance Company Limited v. Mohd. Nasir and another [2009 (6) SCC 280]. On the other hand, the learned counsel for the applicant while submitting that the interest granted by the learned Commissioner is just and proper and that it is in accordance with law had placed reliance on a decision in **The Oriental Insurance Company Ltd., v. Siby George and others** ^[5].

9.1 Section 4A of the Workmen's Compensation 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 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.”

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.

9.2 Further, in the decision in **Siby George** (5 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.” Therefore, in view of the settled legal position, the order of the learned Commissioner awarding interest at 12% per annum from 13.04.2005 till the date of realisation cannot be said to be not in accordance with law.

10. Admittedly, there is a valid insurance policy in respect of the subject vehicle at the relevant time; and, the said policy was valid and was in force at the time of the accident is not in dispute; and by the said policy, the risk of the applicant is, therefore, covered in the facts and circumstances of the case. Therefore, the insurance company cannot disown its liability. Hence, this Court finds that the insurance company is liable jointly and severally along with the first opposite party to pay the total compensation with interest and hence, the learned commissioner was right in fastening the liability on the 2nd opposite party/insurer. The point is answered accordingly.

11. POINT No.3:

I have gone through the impugned order. For the reasons assigned and the findings recorded under the points supra, this Court finds that the order impugned does not suffer from any infirmities calling for any interference. Viewed thus, this Court finds no merit in the appeal.

12. In the result, the appeal is dismissed, however, in the facts and circumstances, without costs.

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

M. SEETHARAMA MURTI, J

05th August, 2015
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- [\[1\]](#) 2011 ACJ 1
- [\[2\]](#) 2010 ACJ 497
- [\[3\]](#) 2007(4) ALT 607 (DB)
- [\[4\]](#) 2013 (5) ALD 249
- [\[5\]](#) 2012 ACJ 2126