THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL MISCELLANEOUS APPEAL No.1088 of 2005

JUDGMENT:

This civil miscellaneous appeal is filed by the applicant under Section 30 of the Workmen's Compensation Act, 1923, challenging the order dated 01.9.2005 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour – 1 Circle, Guntur, (for short, the Commissioner) in W.C. Case No.17 of 2004, wherein and whereby an amount of Rs.1,39,979/- was awarded as against the claim of Rs.3,00,000/-.

2. The parties hereinafter referred to as they were arrayed before the Commissioner, for the sake of convenience.

3. The facts, which are relevant for the disposal of this appeal, are briefly as follows: The opposite party No.1 engaged the applicant as cleaner on his lorry bearing No.ATG 3535. On 25.12.2002, the applicant was proceeding on the lorry from Guntur to Pedanandipadu and when the lorry reached Nagulapadu, the driver of the lorry had driven the same in a rash and negligent manner and dashed against a tree situated on the road margin. Due to the accident, the applicant sustained injuries on left leg and other parts of the body and took treatment as inpatient in Government General Hospital, Guntur. The applicant's left leg was amputated below the knee. By the time of the accident, the applicant was aged about 18 years and used to earn Rs.3,000/- per month as lorry cleaner. Due to the amputation of left leg, the applicant lost his income. The lorry bearing No.ATG 3535, which belongs to opposite party No.1, was insured with opposite party No.2 with effect from 28.11.2002 to 27.11.2003; therefore, opposite party Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.3,00,000/- to the applicant.

4. The opposite party No.1 remained ex parte. The opposite party

No.2 filed counter denying all the averments made in the application including the age and income of the applicant. It is contended that the applicant has to establish that he sustained injuries during the course of employment. The claim of the applicant is on higher side.

5. Basing on the above pleadings, the learned Commissioner framed the following issues:

> (1) Whether the applicant was a workman as per the provisions of the Act and he received personal injuries in an accident arising out of and in the course of his employment?
>
> (2) Amount of compensation payable? and
>
> (3) Who are liable to pay the compensation?

6. During the course of enquiry, on behalf of the applicant, A.Ws.1 to 3 were examined and Exs.A1 to A6 and X1 were marked. On behalf of opposite party Nos.1 and 2, no oral or documentary evidence was adduced.

7. On appraising the oral, documentary evidence and other material available on record, the learned Commissioner arrived at a conclusion that due to amputation of left leg below the knee, the applicant incurred 50% disability and allowed the petition in part by awarding compensation of Rs.1,39,979/-. Feeling aggrieved by the order of the learned Commissioner, the applicant preferred the present appeal.

8. The contention of the learned counsel for the appellant-applicant is two fold:

> (1) The learned Commissioner ought to have assessed the loss of earning capacity of the applicant as 100% instead of 50%; and
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> (2) The learned Commissioner ought to have granted interest on the compensation amount from the date of the accident.

Per contra, learned counsel for the second respondent-opposite party No.2 submitted that even as per the testimony of A.W.2, the petitioner incurred 40% disability and the learned Commissioner basing on the provisions of the Act rightly assessed the loss of earning capacity of the applicant as 50%. He further submitted that the applicant is not entitled to interest on the compensation amount from the date of the accident.

9. Now the points that arise for consideration in this appeal are:

> *(1) Whether the learned Commissioner had committed error while assessing the loss of earning capacity of the applicant as 50%?*
>
> *(2) Whether the learned Commissioner committed error by not granting interest on the compensation amount?*

<u>Point No.1</u>:

10. As per the oral testimony of A.W.3 (owner of lorry bearing No.ATG 3535), by the time of the accident, the applicant was working as cleaner on his lorry. Even as per the testimony of A.W.1, by the time of the accident he was working as cleaner on the lorry bearing No.ATG 3535 belongs to opposite party No.1. In the cross-examination of A.Ws.1 and 3, nothing was elicited to shake their testimony so far as employer-employee relation between opposite party No.1 and the applicant is concerned. Basing on the material available on record, it can be concluded that the applicant was working as cleaner on the lorry bearing No.ATG 3535 belongs to the opposite party No.1 as on 25.12.2002.

11. As per the recitals of Exs.A1 and A2 (copies of F.I.R. and wound certificate), the applicant sustained injuries while travelling in the lorry bearing No.ATG 3535 as cleaner. The recitals of Exs.A2 and X1 (wound certificate and case sheet) clearly reveals that the applicant had taken treatment in Government General Hospital, Guntur (GGH) from 25.12.2002 to 05.2.2003. The oral testimony of A.W.2 (Doctor) coupled with Exs.A2 and X1 reveals that the left leg of the applicant was amputated below the knee.

12. As per the testimony of A.W.2 (Doctor) the applicant incurred 40% functional disability due to amputation of left leg below the knee. It is an admitted fact that the applicant was working as cleaner on the lorry bearing No.ATG 3535 as on the date of the accident. As per Part-II of the Schedule-I under the Act, in case of amputation below the knee, the percentage of loss of earning capacity is 50%. The learned Commissioner basing on the provisions of the Act, rightly assessed the loss of earning capacity of the applicant.

13. The contention of the learned counsel for the applicant is that the applicant is incapacitated to earn anything due to the amputation of his left leg below the knee. Therefore, the loss of earning capacity of the applicant should have been taken as 100% instead of 50% as assessed by the Commissioner. The loss of earning capacity of a workman in respect of scheduled injuries is covered by Part I and Part II of Schedule I of the Act. If the permanent or partial disability sustained by the workman falls within the ambit of Part I and/or Part II of Schedule I of the Act, there is no difficulty in fixing the loss of earning capacity. If the permanent or partial disability sustained by the workman falls outside the purview of Schedule I of the Act, the Court has to take meticulous care while assessing the loss of earning capacity of the workman in order to strike the balance between the employer and the employee. If the Court has not meticulously scrutinized the medical evidence available on record while assessing the loss of earning capacity, there is likelihood of financial loss either to the employer or to the insurer. If the approach of the Court is pedantic, certainly, the same would deprive the workman his legitimate share of compensation. The compensation awarded by the Commissioner shall not be either a bonanza or too low. The Court has to keep in mind the object with which the Workmen's Compensation Act was enacted. The approach of the Court shall be to achieve the object with which the Act was enacted. It is needless to say that the

Workmen's Compensation Act is a piece of beneficial legislation to safeguard the interest of the workman who sustained injuries in an accident arising out of and in the course of his employment. Suffice it to say that a functional disability sustained by the workman cannot be equated with the loss of earning capacity in each and every case. While assessing the loss of earning capacity of a workman basing on the functional disability sustained by him, the Court has to take into consideration the age, avocation and dependency of the applicant apart from chance of getting of similar type of employment in future with same wages. The possibility of getting the job of cleaner by the applicant is completely ruled out because of amputation of his left leg below knee. It is a known fact that a person, who is capable of climbing the vehicles, will only be engaged as a cleaner. By any stretch of imagination, it cannot be presumed that the applicant can discharge duties of cleaner on any type of motor vehicles. For better appreciation of the rival contentions, it is apposite to extract hereunder Section 2(l) of the Act.

> 2(l). "*total disablement*" means such disablement, whether of a temporary or permanent nature, as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement:
>
> Provided that permanent total disablement shall be deemed to result from every injury specified in Part I of Schedule I or from any combination of injuries specified in Part II thereof where the aggregate percentage of the loss of earning capacity as specified in the said Part II against those injuries, amounts to one hundred per cent or more.

14. A perusal of the above section, at a glance, clearly demonstrates that while assessing the total disablement of the workman, the Court has to taken into consideration the description of injury as specified in Part I and Part II of Schedule I of the Act. Section 3 of the Act deals with the liability of the employer to pay compensation. Section 4 of the Act contemplates quantification of compensation. The Parliament in its wisdom incorporated Section 2 (l) of the Act with a laudable object to protect the interest of workman who sustained disability of such nature

which falls outside the purview of Part I and Part II of Schedule I of the Act. Undoubtedly, the applicant was incapacitated for performing the duties of cleaner as he used to discharge prior to the accident. In such circumstances, whether the court has to assess the loss of earning capacity of the applicant as 100% or 50%. In order to resolve the issue, this court is placing reliance on the decision of this court in **N.Sree Ramulu v B.Lakshmi Narayana (died) and others**[1].

> 33. CMA No.335 of 2002:
> The claimant/appellant was working as a lorry cleaner on the lorry of the 1st respondent and he received injuries on 11.06.2000 when he was covering the load on the lorry with a tarpaulin and fell down from the lorry on account of rain and sustained injuries to his right leg, left shoulder and multiple injuries all over his body. AW.2, the medical practitioner who treated him stated that the claimant suffered injuries of dislocation of left shoulder and left body of his scapula, 1, 2, 3 metatarsals of right foot and fracture of ulna styloid right side of wrist apart from facial nerve palsy. He assessed the disability of the claimant at 45% and stated that he cannot work as lorry cleaner; he cannot walk properly as there is malunion in the foot on account of metatarsal fracture; he cannot hold objects with right hand because of stiffness of wrist; and cannot chew properly because of facial nerve palsy. The Commissioner assessed the loss of earning capacity at 45% and awarded compensation on the said basis.
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> As the injuries suffered by the claimant in the accident are such that he can no longer work as a lorry cleaner, walk properly or walk long distances, cannot hold objects with right hand because of stiffness of wrist and also cannot chew properly because of facial nerve palsy, it would be difficult for him to secure any employment. Therefore, the loss of earning capacity ought to have been taken as 100% by the Commissioner. Therefore, the order dt.15.12.2001 in W.C. No.22 of 2000 of the Commissioner for Workmen's Compensation and Asst. Commissioner for Labour-I, Guntur, is set aside. Compensation shall be assessed and paid to the appellant on the basis that his loss of earning capacity is 100%. The appeal is accordingly allowed. No costs.

The facts of the case on hand are almost identical to the facts of the case cited supra.

15. Having regard to the facts and circumstances of the case and also the decision cited supra, I am of the considered view that due to the amputation of the left leg below knee, the applicant is totally incapacitated to attend the duty as a cleaner on the lorry, which he was attending by the time of the accident, and thereby he lost the future earning capacity to the extent of 100%. I am fully agreeing with the submission made by the learned counsel for the appellant that the learned Commissioner has committed error while assessing the loss of earning capacity of the applicant as 50%.

16. By the time of the accident, the applicant was aged about 18 years. For the age of 18 years, the factor to be applied is 226.38. The learned Commissioner has rightly taken the monthly wages of the applicant as Rs.2,057/- in view of G.O.Ms. No.30, dated 22.7.2000. Thus the loss of earnings for which the applicant entitled to is as follows:

Rs.2,057 X 60/100 X 226.38 = Rs.2,79,398/-.

Besides the same, the applicant is entitled to Rs.280/- towards cost of stamps. In all, the applicant is entitled to a total compensation of Rs.2,79,678/-. Accordingly, point No.1 is answered.

Point No.2:

17. Admittedly, the learned Commissioner has not awarded interest on the amount of compensation. The contention of learned counsel for the appellant is that the Commissioner ought to have awarded interest from the date of the accident in view of Section 4A(3)(a) of the Act.

> **Section 4A. Compensation to be paid when due and penalty for default:-**
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> (3) Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, to 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;

A perusal of the above provision, at a glance, mandates that the Commissioner has to award interest on the amount of compensation fell due. But, the question that arose is '*which is the date it falls due*' to pay compensation. For better appreciation of the rival contentions, it is not out of place to extract hereunder the relevant portion of Section 3 of the Act.

3. Employer's liability for compensation:-

(1) If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter.

A perusal of the above Section at a glance mandates that the employer shall pay compensation to the workman if the workman sustained injuries in an accident arising out of and in the course of employment. Section 3 of the Act mandates that compensation shall be paid as soon as the workman sustains personal injury. The crucial question to be addressed is when the compensation fell due. A perusal of various provisions of the Act clearly indicates that the employer has to pay compensation to the workman on sustaining injuries by the workman. While deciding the said issue, four-Judge Bench of Hon'ble apex Court in **Pratap Narain Singh Deo v Srinivas Sabata**[2] held as follows:

7. Section 3 of the Act deals with the employer's liability for compensation. Sub-section (1) of that section 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". It was not the case of the employer that the right to compensation was taken away under sub-section (5) of Section 3 because of the institution of a suit in a civil court for damages, in respect of the injury, against the employer or any other person. The employer therefore became liable to pay the compensation as soon as the aforesaid personal injury was caused to the workman by the accident which admittedly arose out of and in the course of the employment. It is therefore futile to contend that the compensation did not fall due until after the Commissioner's order dated May 6, 1969 under Section 19. What the section

> provides is that if any question arises in any proceeding under the Act as to the ability of any person to pay compensation or as to the amount or duration of the compensation it shall, in default of agreement, be settled by the Commissioner. There is therefore nothing to justify the argument that the employer's liability to pay compensation under Section 3, in respect of the injury, was suspended until after the settlement contemplated by Section 19. The appellant was thus liable to pay compensation as soon as the aforesaid personal injury was caused to the appellant, and there is no justification for the argument to the contrary.

From the above decision, it is clear that the liability of employer to pay compensation to the injured workman or kith and kin of the workman died out of and in the course of employment.

18. In **Oriental Insurance Co. Ltd v Siby George & Sons**[3], while dealing with the question, "*what is the point in time from which interest would be payable*", it was held as follows:

> 9. Now, coming back to the question when does the payment of compensation fall due and **what would be the point for the commencement of interest**, it may be noted that neither the decision in *National Insurance Co. Ltd., v Mubasir Ahmed*, (2007) 2 SCC 349, nor the one in *Oriental Insurance Co. Ltd., v Mohd. Nasir, (2009) 6 SCC 280,* can be said to provide any valid guidelines because both the decisions were rendered in ignorance of earlier larger Bench decisions of this Court by which the issue was concluded. As early as in 1975 a four-Judge Bench of this Court in *Pratap Narain Singh Deo* v. *Srinivas Sabata*, (1976) 1 SCC 289) directly answered the question.

19. In **Oriental Insurance Co. Ltd., v Bashaboina Bakkamma**[4]**,** as to payment of interest for pre-adjudicated period, a learned Single Judge of this court held as follows:

> The Act contemplates payment of compensation by the employer even without a formal adjudication. It is only when the employer disputes the liability on any ground that a need for adjudication arises under Section 19. The Act also contemplates payment of the amount to the extent of admitted liability by the employer within or i.e. month from the date it falls due. In the event there is no dispute regarding the accident or the nature and extent of liability, the amount of compensation as claimed by the workman becomes payable

> instantly, i.e., immediately after the accident. In case where the liability is not wholly admitted and is partly disputed, still the amount of compensation to the extent of admitted liability becomes payable instantly, i.e., immediately upon the occurrence. It is only when liability is disputed in whole or in part requiring ascertainment off the amount payable, the adjudication by the Commissioner becomes necessary and the amount so ascertained falls due upon such adjudication. In the event of default in payment of the said amount so ascertained after adjudication within one month that interest at the prescribed minimum rate of 12 per cent becomes payable from the date on which the said period of one month expires. The compensation becoming payable immediately after the accident is contemplated under the Act and it was so held in Pratap Narain Singh Deo's case (supra). The same does not have any conflict with the proposition that interest in terms of Section 4-A(3) of the Act at the prescribed minimum rate of 12 per cent becomes payable in the event of default from the date of expiry of the period of one month stipulated under Section 4-A(3). The two propositions are distinct and different. Insofar the interest for the post-adjudication period is concerned, the same is duly taken care of by the provisions of Section 4-A(3). However, there is no specific provision providing for payment of interest for pre-adjudication period in the Workmen's Compensation Act.

20. As per the principle enunciated in the case cited supra, the claimant is statutorily entitled to simple interest at 12% per annum on the compensation under Section 4A(3)(a) of the Act.

21. In **Patalapati Venkatanarasayyamma** v **Susarla Subbalaxmi**[5] this Court held as under:

> 12. I have, therefore, no hesitation to hold that the liability arises as soon as it falls due, i.e., on the workman sustaining injury or death having occurred in an accident arising out of and during the course of his employment. The power of the Commissioner under Section 10-A is in the nature of machinery to determine the liability, arises only when the employer disputes the liability or the quantum. If the employer commits default in the payment thereof, the discretion given to the Commissioner springs from Section 4-A(3) on his finding that there is unjustified delay in payment of compensation to direct payment of simple interest at 6 per cent from the date of injury or death. In this case, the Commissioner has narrated various circumstances and the litigious conduct of the appellant to evade payment of compensation is writ large. The Commissioner is justified in law to award interest from the date of the death of the deceased-workman, Narayana Rao.

22. In **Maghar Singh v Jashwanth Singh**[6] the Hon'ble apex Court held as under:

> 7. In the result, we allow this appeal, set aside the orders of the courts below and hold that the appellant is entitled to compensation of Rs.24,000 with interest at the rate of 9% per annum from the date of accident i.e. 26-7-1984 till the date of recovery or actual payment. We direct the respondent to deposit the amount in the Court of Senior Sub-Judge, Sangrur, within three months from today, failing which the appellant will be entitled to recover the same in accordance with law. There will be no order as to costs.

23. In **Midicharla Ramanamma v V.Naga Pratap**[7] this Court held as under:

> 10. In my considered opinion though some time limit is specified under Section 10 of the Act the cause of action to be reckoned accrues as on the date of accident only. Hence the claimants in such case are entitled to claim interest from the date of accident till the date of realisation. Hence in view of what had been discussed above the appellants are entitled to interest of 9% per annum from the date of accident till the date of realisation and order of the Court below is modified accordingly.

24. From the above three decisions, the legal position that emerges is that the applicant is entitled for interest from the date of the compensation fell due and the owner of the accident vehicle i.e., employer is liable to pay compensation to the applicant from the date of the accident. A fascicular reading of Section 4A(3)(a) of the Act enjoins the Commissioner to grant interest on the compensation from the date of the accident.

25. Having regard to the facts and circumstances of the case, I am of the considered view that the learned Commissioner has committed error by not granting interest on the compensation awarded. The applicant is entitled for the interest at 12% per annum from the date of the accident till the date of deposit. Accordingly, the point is answered.

26. In the result, the appeal is allowed, enhancing the compensation

from 1,39,979/- to Rs.2,79,678/-. The opposite party Nos.1 and 2 are jointly and severally liable to pay the same with interest at 12% per annum from the date of the accident till the date of realization. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

T.SUNIL CHOWDARY, J

Date: 17.7.2015.
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[1] 2013 (5) ALD 249

[2] (1976) 1 SCC 289

[3] (2012) 12 SCC 540 = 2012 (2) ACJ 691 SCC pp. 291-92

[4] 2011 (3) TAC 256

[5] 1986 ACJ 526 (A.P)

[6] 1998 (9) SCC 134

[7] 2003 (1) ALD 594