

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Miscellaneous Appeal No.511 of 2008

JUDGMENT:

This appeal by the appellant/2nd opposite party under Section 30 of the Workmen's Compensation Act, 1923 presently known as Employees' Compensation Act ('the Act', for short) is directed against the order dated 20.08.2003 of the learned Commissioner for Workmen's Compensation and the Assistant Commissioner of Labour, Circle I, Ranga Reddy District in WCNo.25 of 1998 (F).

2. I have heard the submissions of the learned counsel for the appellant/2nd opposite party ('the 2nd opposite party', for brevity) and the learned counsel for the respondents 1 to 3/applicants. The appeal against the 4th respondent/1st opposite party was dismissed for default. I have perused the material record.

3. The case of the applicants, in brief, is as follows: - 'The first applicant is the mother, the 2nd applicant is the unmarried sister and the 3rd applicant is the handicapped brother of the deceased Ismail Sharif. The deceased was a driver on the Tractor bearing registration No.AP 28 T 1113 of the 1st opposite party, which was insured with the 2nd opposite party. On the date of accident, he had proceeded on that tractor as a driver to the agricultural lands of one Chintakindi Manaaiah. While he was driving the tractor loaded with manure and, on the way, when the tractor had reached a steep place in the fields, the tyre of the tractor had burst and as a result he had fallen down from the tractor; and, thereafter the tractor had over turned and fell upon him; and, on that he had succumbed to the injuries sustained in the said accident. On a report the Station House Officer, Bantaram had registered a case in Crime No.30 of 1997. Therefore, the applicants are entitled to claim compensation from both the opposite parties who are jointly and severally liable.'

4. The 1st opposite party having filed a counter had admitted the

employee and employer relationship between the deceased and himself and also the manner of accident and the death of the deceased out of and during the course of his employment as driver on his tractor.

5. The 2nd opposite party filed a counter denying totally the various averments in the claim application of the claimants and its liability to pay the compensation.

6. At trial, the applicants 1 and 2 were examined as AWs1 and 2 and exhibits A1 to A7 were marked. No oral evidence was adduced on the side of the opposite parties. However, exhibit R1-the copy of the policy was marked.

7. On merits, the learned Commissioner had awarded a total compensation of Rs.3,24,735/- to the applicants recoverable jointly and severally from both the opposite parties, who are the insured and the insurer of the tractor; and had directed them to deposit the same within (30) days from the date of the receipt of a copy of the said order. Therefore, the aggrieved 2nd opposite party is before this Court.

8. The learned counsel for the 2nd opposite party would contend as follows: - 'The learned Commissioner was incorrect in treating the deceased as a driver and in making the 2nd opposite party liable to pay the compensation. The learned Commissioner ought to have seen that there is no employee and employer relationship between the deceased and the 1st opposite party. The learned Commissioner ought to have dismissed the claim against the 2nd opposite party as the 2nd opposite party cannot be made liable in a case where the deceased cannot be treated as an employee within the provisions of the Act. The learned Commissioner grossly erred in making the 2nd opposite party liable to pay interest at 12% per annum and the said direction is against the law laid down by the Supreme Court.'

9. Per contra, the learned counsel for the applicants would contend as follows: 'The learned Commissioner had framed appropriate issues and had

accurately considered the facts and properly appreciated the evidence. The learned Commissioner had answered the issues by recording well reasoned findings and after adverting to the ratios in various decisions. The learned Commissioner had rightly held that the deceased is an employee of the 1st opposite party within the meaning of the provisions of the Act. The compensation awarded with interest is just and fair. The contentions of the 2nd opposite party in this appeal are devoid of merit and contrary to settled legal position.'

10. The learned counsel for the 2nd opposite party would mainly contend that the applicants did not sufficiently prove the employee and employer relationship between the deceased and the 1st opposite party and that the interest awarded at 12% per annum from the date of the accident is on the higher side and is contrary to law.

11. To begin with, PW1 had deposed in line with the pleaded case and exhibited exhibit A1, the copy of the FIR and exhibit A2, the copy of the inquest report. The contents therein fully corroborate the version of the applicants. No rebuttal evidence was adduced by the 2nd opposite party. The 1st opposite party, in his pleadings had also supported the case of the applicants in all respects. In view of the evidence of PWs1 and 2, which is well corroborated by the contents of the crime records and which is unrefuted, this Court is satisfied that the learned Commissioner is justified in holding that there is employee and employer relationship between the deceased and the 1st opposite party.

12. Insofar as the interest and the rate of interest awarded on the compensation amount by the learned Commissioner, the learned counsel for the 2nd opposite party would contend that the applicants are entitled to interest only from the date of the order of the Commissioner and not from the date of the accident 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 applicants while submitting that the interest granted by the learned Commissioner is just and proper and that it is in accordance with the law had placed reliance on a decision in **The Oriental Insurance Company Ltd., v. Siby George and others**^[1].

13. 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 interest at 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.

14. Further, in the decision in Siby George (1 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 on the compensation amount from the date of the accident cannot be said to be not in accordance with law.

15. Viewed thus, this Court finds that there is no merit in this appeal and therefore, the appeal is liable to be dismissed.

16. In the result, the appeal is dismissed. No costs.

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

M. SEETHARAMA MURTI, J

17th July, 2015
Vjl

[\[1\]](#) 2012 ACJ 2126