HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

CMA.No.870 OF 2015

JUDGMENT:

This appeal is filed aggrieved by the order passed by Commissioner for Workmen's Compensation & Deputy Commissioner of Labour, Nizamabad in not granting interest in respect of compensation granted to the appellant under Workmen's Compensation Act.

Learned counsel for the appellant submits that the appellant is entitled for interest from the date of accident
as per Section 4 (A) of Workmen's Compensation Act
(for short "the Act") and the said section has been interpreted by the Apex Court and held that the claimants are entitled to interest from the date of accident. In support of his contention, he relied upon the judgment of **Oriental Insurance Company Limited v. Siby George and others**[1]**.**

On the other hand, the learned counsel for the respondent No.2-Insurance Company raised an objection that the appeal against the owner is dismissed. As such, the appeal against the Insurance Company is not maintainable.

Learned counsel for the appellant submits that the appeal is maintainable against the Insurance Company inspite of dismissal of appeal against the owner of the vehicle by relying on the Division Bench judgment of this Court in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma and others**[2] and also the judgments of **R.Kamala v. Shaik Mohd.Ghouse and another**[3] and **Pratap Narain Singh Deo v. Srinivas Sabata and another**[4]

Learned counsel for the respondent No.2-Insurance Company by relying on the judgment of **P.J.Narayan v. Union of India and others**[5] submits that when the Insurance policy contains a clause ascertaining provision of interest, the payment of interest cannot be mulcated on the Insurance Company.

Section 4-A (1) and (3) of the Act are as under:

"**4-A. Compensation to be paid when due and penalty for default-**

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

(2) …

(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 percent 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 Gazettee, 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 percent 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 reasonable opportunity to the employer to show cause why it should not be passed.

The issue with regard to payment of interest is no longer *resintegra* in view of the Apex Court judgment in **Oriental Insurance Company Limited v. Siby George and others**[6] by holding that decisions in **National Insurance Company Limited** v. **Mubasir Ahmed**[7] and **Oriental Insurance Company Limited v. Mohd. Nasir**[8], insofar as they take a contrary view to the prior larger Bench decisions in **Pratap Narain Singh Deo, (supra 4) and Kerala SEB v. Valsala K**[9] do not express the correct view and do not make binding precedents and held that the claimants are entitled for grant of interest from the date of accident by invoking Section 4-A of the Act. This was followed by the judgment of **Saberabibi Yakubbhai Shaikh and others v. National Insurance Company Limited and others**[10]. In the said judgment, the Supreme Court held as under:

9. Following the aforesaid judgments, this Court in Oriental Insurance Company Limited versus Siby George and others (supra 4) reiterated the legal position and held as follows: (SCC pp.545-46, paras 11-13):

" The Court then referred to a Full Bench decision of the Kerala High Court in **United India Insurance Co. Ltd. v. Alavi**[11] and approved it insofar as it followed the decision in **Pratap Narain Singh Deo.**

The decision in **Pratap Narain Singh Deo** was by a four-judge Bench and in **Valsala K**. 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 K**. were not brought to the notice of the Court in the two later decisions in **Mubasir Ahmed and Mohd. Nasir.**

In the light of the decisions in **Pratap Narain Singh Deo and Valsala K**., 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 K.** do not express the correct view and do not make binding precedents."

10. In view of the aforesaid settled proposition of law, the appeal is allowed and the judgment and order of the High Court is set aside. The appellants shall be entitled to interest at the rate of 12% from the date of the accident.

In the judgment relied upon by learned counsel for the appellant in **R.Kamala v.Shaik Mohd. Ghouse (supra 3),** this Court held as under:

" The learned counsel for the claimant-appellant contended that as per Section 102 of the Motor Vehicles Act, 1939, which is corresponding to Section

> 155 of the New Act, of 1988, even after the death of the insured, subsequent to the accident and pending the proceedings, the cause of action survives against the insurer and the legal representatives of the insured need not be impleaded as respondents. He further contended that the policy goes with the vehicle and the insurance company cannot take any defence for not impleading the legal representatives of the insured. With these submissions, he sought for allowing of this appeal".

In the said judgment, this Court observed that though the owner of the vehicle died and L.Rs. were not brought on record, the cause of action survives against his estate or against the insurer and even if the appeal is dismissed against insured, the statutory liability of Insurance Company survives.

In the judgment of **Meka Chakra Rao (supra 2)** this Court held in para No.13 as under:

> "Accordingly, the questions 1 and 2 are answered holding that even if the appeal is dismissed against the owner of the vehicle, the question of statutory liability of the Insurance Company survives for consideration and there is no need for the presence of the owner of the vehicle to decide the question of statutory liability of the Insurance Company at the appellate stage in the cases wherever the Tribunal recorded a finding that the accident has taken place due to the rash and/or negligent driving the driver of the motor vehicle and if the said finding is not challenged either by the owner of the vehicle or by the Insurance Company".

In view of the same, the objection raised by the learned counsel for the Insurance Company appears to be erroneous and the same is rejected. In view of law laid down by the Apex Court in the decisions referred to supra, the appellant is entitled for interest @ 12% per annum from the date of accident till the date of realization.

Accordingly, the appeal is allowed. As a sequel to the disposal of this appeal, miscellaneous petitions, if any, pending shall stand closed.

A.RAJASHEKER REDDY,J

04-12-2015
Nvl

[1] (2012) 12 Supreme Court Cases 540

[2] 2001 (1) ALD 453 DB

[3] 2004(2) ALT 8 (DB)

[4] (1976) 1 Supreme Court cases 289

[5] (2006) 5 Supreme Court Cases 200

[6] (2012) 12 Supreme Court Cases 540

[7] (2007) 2 SCC 349

[8] (2009) 6 SCC 280

[9] (1999) 8 SCC 254

[10] (2014) 2 Supreme Court cases 298

[11] (1998) 1 KLT 951