

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Miscellaneous Appeal No. 69 of 2002**

Smt. Shobha Bai Wd/o Late Babbar Singh Surujal, R/o Bhelwapadar, Tehsil Kondagaon, District Bastar, (Chhattisgarh).

---- Appellant**Versus**

1. Shishir Shrivastava S/o Shri V.K.Shrivastava, R/o Sargipal, Kondagaon, District Bastar, Chhattisgarh.
2. The Oriental Insurance Co. Ltd. Branch Jagdalpur, District Bastar Chhattisgarh.
3. State of Chhattisgarh, Through the Collector, Jagdalpur, District Jagdalpur, Chhattisgarh.

---- Respondent

For Appellant : Shri Mayank Chandrakar, Advocate.
 For Respondent No. 1 : Shri Sourabh Sharma, Advocate.
 For Respondent No. 2 : Shri H.B.Agrawal, Senior Advocate with Smt. Meera Jaiswal, Advocate.
 For Respondent/State : Ms. Madhunisha Singh, Panel Lawyer.

Hon'ble Shri Deepak Gupta, Chief Justice**Judgment on Board****02/12/2016**

1. In this appeal, the following question arises for determination:

"Whether in view of the insertion of sub-section (3-A) in Section 4-A of the Workmen's Compensation Act, 1923 w.e.f. 08.12.2000 that penalty payable in sub-section (3) of Section 4-A shall be paid to the dependant or claimant, as the case may be, the Commissioner, Workmen Compensation could have directed that the penalty is payable to the State Government and not to the claimants particularly when the impugned award was passed after 08.12.2000."

2. To appreciate this question, it would be apposite to refer to Section 4-A (3A) of the Workmen's Compensation Act, 1923 as it stood prior to its amendment in the year 2000 and thereafter. Prior to it, this clause was amended vide Amendment Act of 46 of 2000 with effect from 08.12.2000. Before amendment, the clause reads thus:

"(3A) The interest payable under sub-section (3) shall be paid to the workman or his dependant, as the case may be, and the penalty shall be credited to the State Government."

Now, after amendment, clause (3A) reads as follows:

"(3A) The interest and the penalty payable under sub-section (3) shall be paid to the workman or his dependant, as the case may be."

3. Admittedly, the accident in this case took place on 01.01.1997 i.e. prior to the date of amendment. However, the award was announced on 15.10.2001 after this amendment had been incorporated and the issue is whether the rights of the parties shall be governed by the law as it stood prior to the amendment or after amendment.

4. A four Judge Bench of the Apex Court in *Pratap Narain Singh Deo v. Shrinivas Sabata* {1976 ACJ 141 (SC)} held as under:

"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 liability 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.

8. It was the duty of the appellant, under Section 4-A(1) of the Act, to pay the compensation at the rate provided by

Section 4 as soon as the personal injury was caused to the respondent. He failed to do so. What is worse, he did not even make a provisional payment under sub-section (2) of Section 4 for, as has been stated, he went to the extent of taking the false pleas that the respondent was a casual contractor and that the accident occurred solely because of his negligence. Then there is the further fact that he paid no heed to the respondent's personal approach for obtaining the compensation. It will be recalled that the respondent was driven to the necessity of making an application to the Commissioner for settling the claim, and even there the appellant raised a frivolous objection as to the jurisdiction of the Commissioner and prevailed on the respondent to file a memorandum of agreement settling the claim for a sum which was so grossly inadequate that it was rejected by the Commissioner. In these facts and circumstances, we have no doubt that the Commissioner was fully justified in making an order for the payment of interest and the penalty."

5. A three Judge Bench of the Apex Court in *Kerala State Electricity Board v. Valsala K.* {AIR 1999 SC 3502} dealt with the question whether the amendments made to Section 4 and 4-A of the Workmen's Compensation Act enhancing the compensation and rate of interest would be attracted to the scheme prior to the amendment. The Apex Court held as under:

"1.The neat question involved in these special leave petitions is whether the amendment of Ss.4 and 4A of the Workmen's Compensation Act, 1923, made by Act No.30 of 1995 with effect from 15-9-1995, enhancing the amount of compensation and rate of interest, would be attracted to cases where the claims in respect of death or permanent disablement resulting from an accident caused during the course of employment, took place prior to 15-9-1995?

2. Various High Courts in the country, while dealing with the claim for compensation under the Workmen's Compensation Act have uniformly taken the view that the relevant date for determining the rights and liabilities of the parties is the date of the accident.

3. A four Judge Bench of this Court in *Pratap Narain Singh Deo v. Srinivas Sabata*, (1976) 1 SCC 289: (AIR 1976 SC 222: 1976 Lab IC 222) speaking through Singhal, J. has held that an employer becomes liable to pay compensation as soon as the personal injury is caused to the workmen by the accident which arose out of and in the course of employment. Thus, the relevant date for determination of the rate of compensation is the date of the accident and not the date of adjudication of the claim."

6. In *The Oriental Insurance Co. Ltd. v. Siby George & Others* {2012 AIR SCW 4348}, the Apex Court held as under:

"7. It is, thus, to be seen that sub-section (3) of section 4-A is in two parts, separately dealing with interest and penalty in clauses (a) and (b) respectively. Clause (a) makes the levy of interest, with no option, in case of default in payment of compensation, without going into the question regarding the reasons for the default. Clause (b) provides for imposition of penalty in case, in the opinion of the Commissioner, there was no justification for the delay. Before imposing penalty, however, the Commissioner is required to give the employer a reasonable opportunity to show cause. On a plain reading of the provisions of sub-section (3) it becomes clear that payment of interest is a consequence of default in payment without going into the reasons for the delay and it is only in case where the delay is without justification, the employer might also be held liable to penalty after giving him a show cause. Therefore, a finding to the effect that the delay in payment of the amount due was unjustified is required to be recorded only in case of imposition of penalty and no such finding is required in case of interest which is to be levied on default per se."

7. In *Oriental Insurance Co. Ltd.* (supra), the observations both in *Pratap Narain Singh Deo* (supra) and *Kerala State Electricity Board* (supra) have been approved and in this view of the matter, the position of law is very clear that the rights of the parties are determined by the law as it stands on the date of the accident and as on that date, the penalty was payable only to the Government.

8. The question is answered accordingly. The appeal filed by the claimant is accordingly rejected.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE