

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 291 of 2010

1. Hirau Ram Khiladi, aged about 50 years, S/o late Bhikhur Ram Khiladi
2. Devnarayan, aged about 19 years, S/o Hirau Ram Khiladi
3. Ku.Kusum @ Dhaneshwari, aged about 16 years, D/o Hirau Ram Khiladi,
4. Ku.Duleshwari D/o Hirau Ram Khiladi, aged about 14 years.
5. Ku. Durga @ Bhuneshwari D/o Hirau Ram Khiladi, aged about 11 years

Appellant No. 3,4 and 5 (minor) through legal guardian, father Hirau Ram Khilai,
All R/o Village-Mahkakala, Post-Pahdor, PS-Utai, tahsil-Patan, Distt. Durg (CG).

... Appellants

Versus

1. Mangal Ram Satnami, aged about 35 years S/o not known R/o Village Deurjhal, Post Patora, PS Utai, Tahsil Patan, Distt. Durg (CG).
2. Ashok Singh S/o Dr.Jai Narayan Singh,R/o Smriti Nagar, Street No.7,block-648Q, PS -Supela, Bhili, Distt.-Durg
3. Samleshwari Mineral Through Managing Director, R/o B-648, street No.37, Smriti Nagar Bhilai, Distt.-Durg.
4. The National Insurance Company Limited Regd. Office-3, midiltan Street Post Box No.9229, colcatta, through Divisional Manager, Divisional Office, Akash Ganga Parishar Supela Bhilai,distt.-Durg

... Respondents

For Appellants	:	Shri CK Sahu, Advocate.
For Respondent No.1&3	:	None.
For Respondent No.2	:	Shri P. Acharya, Advocate.
For Respondent No.4	:	Shri Dashrath Gupta, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

06.10.2016

1. The present is an appeal preferred under section 30 of the Workmen's Compensation Act, 1923 (for short WC Act) seeking for enhancement of compensation awarded by the Commissioner for Workmen, Labour Court, Durg (for short, the Commissioner) in Claim Case No.93/WC Act/Fatal/2007 dated 20.10.2009.

2. The relevant facts for consideration of the appeal is that, deceased Jalwantin Bai on 10.03.2007 met with an accident and on account of the said accident she succumbed to the injuries that she had sustained. She was aged about 35 years at the time of accident and was earning Rs. 100/- per day. The claimants No.1 to 5 are stated to have moved an application under WC Act for compensation before the Labour Court, Durg which was registered as Claim Case No. 93/WC Act/Fatal/2007.
3. During the course of hearing, the evidences were recorded on behalf of the contesting parties and after considering the evidence, the Commissioner, vide order date 20.10.2009 held that the claimants are entitled for compensation for an amount of Rs.1,39,312/-. The Commissioner accordingly ordered the said amount to be paid by the respondent No.4/Insurance Company as the vehicle involved in the accident was insured with the respondent No.4/Insurance Company. The Commissioner, however, for the purpose of grant of interest had ordered that in the event if the insurance company failed to make payment within a period of 30 days from the date of award, the award amount shall carry interest @ 10 percent per annum from the date of application. It is this award dated 20.10.2009 which is under challenge in this appeal.
4. This court on 05.07.2010 had framed the following two substantial questions of law :

“(I) Whether the Tribunal has committed an error of law by not awarding interest @ 12% per annum from the date the amount had fallen due for payment?

(II) Whether award of penalty at 40% of the awarded amount without assigning any reason is justified?”

5. So far as the issue No.2 as regards the amount of default is concerned, this court is of the opinion that as per Section 4A(3)(b) of the WC Act, the amount of default which is payable to the claimants would be, if there is no justification for the delay in payment of compensation by the employer/Insurance Company, the claimants shall be entitled for the default which may not exceed 50 percent of the amount of compensation. This by itself gives a clear indication that it is not 50 percent which is fixed, but it can be extended up to 50 percent and not more than that. In the given facts and circumstances of the case, if the Commissioner has awarded 40 percent as penalty, the same cannot be said to be contrary or bad in law in any manner. Therefore, this court is of the opinion that the award of penalty does not warrant any interference at this juncture.

6. So far as the first question of law framed is concerned, whether the Commissioner has committed an error of law by not awarding the interest per annum from the date the amount had fallen due, a similar issue came up before the Division Bench of this Court in the case of Smt. P. Narayanamma Vs. General Manager, South East Central Railway, Bilaspur, reported in 2013(2) CGLJ 410 (DB) wherein the court found that once when the claimants are entitled for the

compensation, it becomes due from the date of incident/accident. However, the WC Act prescribes that the said amount of compensation payable to a person under the WC Act is to be deposited within a period of 30 days from the date it fell due, which in the instant case would be 30 days from 10.03.2007 i.e. it would fall due on 10.03.2007 onwards. There is no reason whatsoever for the parties not to have provided the compensation to the dependents of the deceased by 10.04.2007.

7. The respondent deliberately and unnecessarily raised a dispute so far as the entitlement is concerned and the dispute ultimately could be decided only vide the impugned order dated 20.10.2009. Therefore, once when the dues has got finalized on 20.10.2009, the amount would definitely be payable from the date it fell due i.e. 10.04.2007 onwards.
8. The Division Bench in the said judgment, referring to some of the decisions of the Supreme Court in paragraphs 10 & 11 has held as under :

“10. The question, as to when the compensation becomes payable under the Act or in other words, when it falls due for being paid to employee concerned by his employer as provided in Section 4-A remains no longer res integra and stands already decided by four Judges Bench decision of the Supreme Court in the case reported in Pratap Narain Singh Deo (Supra). It is in this case, justice Shinghal, speaking through the Bench has held that an employer primarily becomes liable to pay compensation as soon as the personal injury is caused to the workman by the accident which arose out of and in the course of the employment. This is what was held by the Supreme Court in this case:

“It is wrong to contend that the compensation had not fallen due until it was settled by the Commissioner under Section 19 by his impugned order dated May 6, 1969. The employer became liable to pay the compensation as soon as the personal injury was caused to the workman by the accident which admittedly arose out of and in the course of employment. There was no suspension of the compensation pending settlement. It was the duty of the appellant under Section 4A(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”

11. This view was reiterated by a three Judges Bench's decision of the Supreme Court in Kerala State Electricity Board and another Vs. Valsala K. and another, by following words:

3. A four judge Bench of this Court in Pratap Narain Singh Deo v. Srinivs Sabata and Anr. speaking through Shinghal. 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.

5. Our attention has also been drawn to a judgment of the Full Bench of the Kerala High Court in United India Insurance Co. Ltd. v. Alavi (1998) 1 KLT 951 (FB) wherein the Full Bench precisely considered the same question and examined both the above noted judgments. It took the view that the injured workmen becomes entitled to get compensation the moment he suffers personal injuries of the types contemplated by the provisions of the Workmen's Compensation Act and it is the amount of compensation payable on the date of the accident and not the amount of compensation payable on account of the amendment made in 1995, which is relevant. The decision of the Full Bench of the Kerala High Court, to the extent it is in accord with the judgment of the larger bench of this Court in Pratap Singh Narain Singh Deo v.

Srinivas Sabata and Anr. (supra) lays down the correct law and we approve it.”

9. Further, relying upon the decision of Supreme Court in case of Oriental Insurance Co. Ltd. Vs. Siby George, the Division Bench again held in paragraphs 14 & 15 as under:

“14. In the light of the law laid down by the Supreme Court in Oriental Insurance Co. Ltd. Vs. Siby Geogre (Supra) the legal position on the issue that emerges is that the law laid down by the Supreme Court in Pratap Narain Singh Deo and in Valsala K. continuous hold the filed and not the view laid down in Mabasir Ahmed and Mohd. Nasir. In other words, the binding precedent on the issue in question would be the law laid down in Pratap Narain and Valsala K. and not what is laid down in Musabir Ahmed and Mohd. Nasir, which is declared as per incurium.

15. The law laid down in Pratap Narain Singh Deo and Valsala K. (Supra) is that employer becomes liable to pay compensation as soon as the personal injury is caused to the workman in the accident which arise out of and in the course of employment and therefore the relevant date for payment of the compensation and for payment of interest upon it, if the compensation is not paid within one month from the date of accident, would be the date of accident and not the date of award of Commissioner. It is ruled that liability to pay interest at the rate of 12% on the sum in terms of the Section 4A(3) of the Act would accrue from the date of accident itself if the sum is not paid by the employer within one month from the date of accident.”

10. In the light of the decision of Division Bench of this court, this court is also of the opinion that in the instant case also since the accident took place on 10.03.2007 and the amount payable to the claimants should have been paid by 10.04.2007. As the amount was not paid by the employer/insurance company by the said date, the interest on

the amount payable would definitely accrue from the date of accident itself which in the instant case would be 10.03.2007.

11. Accordingly, the question No.1 framed by this court on 05.07.2010 is answered in the affirmative holding that the Commissioner has committed an error of law in not awarding the interest from the date it fell due. The award of the Commissioner stands modified to the extent that the amount of compensation payable to the claimants would carry interest as awarded by the Commissioner from the date of accident i.e. 10.03.2007 onwards and the said amount be payable by the respondent No.4/Insurance Company. Respondent/ Insurance Company is further directed to calculate the amount of interest payable to the claimants and deposit the same within a period of two months from the date of passing of this order.
12. Accordingly, the appeal is allowed to the above extent. No order as to costs.

Sd/-
(P. Sam Koshy)
JUDGE