

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.Nos.58 & 60 of 2014

S.Alex	..	Appellant in CMA No.58 of 2014
Arumugam	..	Appellant in CMA No.60 of 2014

-VS-

1.M/s.Saidannaa Enterprises Pvt. Ltd.,
 No.1, Vaigai Nagar, Tambaram West,
 Chennai
 (R1 remained ex parte before the Forum)..1st Respondent in CMA No.58 of 2014
 (R1 remained ex parte before the Forum)

P.Dharmaraj ..1st Respondent in CMA No.60 of 2014
 (R1 remained ex parte before the Forum)

The New India Assurance Co. Ltd.,
 No.2, B.R.Complex,
 Annasalai,
 Chennai-600 002. ..2nd Respondent in CMA No.58 of 2014

The United India Insurance Co. Ltd.,
 A5 and A6, 2nd Floor,
 Appasamy Towers,
 New No.27, Sir Thyagaraya Road,
 Near Old Nagesh Theatre,
 T.Nagar, Chennai-600 017. .. 2nd Respondent in CMA No.60 of 2014

Memorandum of Grounds of Civil Miscellaneous Appeals under Section 30 of the Employees Compensation Act, 1923, against the final awards dated 30.04.2009 & 12.07.2010 made in W.C.Nos.285 of 2008 & 49 of 2009 respectively on the file of the Commissioner for Employees Compensation (Deputy Commissioner of Labour- II), Chennai.

For Appellants	::	M/s.M.Malar
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For Respondents :: Ms.R.Sree Vidhya for R2 in
CMA No.58 of 2014
Mr.J.Micheal Viswasam for R2
in CMA No.128 of 2014
R1 in both appeals remained
ex parte before the Tribunal

JUDGMENT

In both these appeals, a common question of law has arisen as to what is the actual date for accrual of interest on the compensation arrived at under the Employees Compensation Act, whether it falls due after thirty days from the date of accident or only after thirty days from the date of determination/adjudication of the compensation/claim?

2. Heard the learned counsel for the parties.

3. The appellant in C.M.A.No.58 of 2014, Mr.S.Alex, aged about 24 years, was engaged by the first respondent as Loadman in Swaraj Mazda Goods Carrier Van bearing Registration No.TN 22 AD 2812 and while he was on duty on 27.07.2007, the said vehicle met with an accident at GST Road, near Vandalur Railway Gate by the rash and negligent driving of the driver of the vehicle and dashed behind the bus, as a result, he sustained grievous injuries and immediately taken to Chengalpattu Government Hospital and admitted as inpatient from 27.07.2007 to 28.07.2007 and taking treatment as out-patient till date. Therefore he filed the claim petition before the Deputy Commissioner of Labour-II, Chennai in W.C.No.285 of 2008 claiming a compensation of Rs.6,00,000/- on the ground that the accident occurred during the course of his employment. The Deputy

Commissioner of Labour-II, Chennai passed an award on 30.04.2009 directing the second respondent Insurance company, being the insurer of the Swaraj Mazda lorry bearing Registration No.TN 22 AD 2812 owned by the first respondent, to deposit the compensation of Rs.99,609/- within a period of thirty days from the date of receipt of a copy of the award, failing which the second respondent is liable to pay simple interest at the rate of 12% per annum on the compensation amount from the date of accident till the date of deposit.

4. The appellant in C.M.A.No.60 of 2014, Mr.Arumugam, aged about 49 years, was engaged by the first respondent as Construction Labour and while he was on duty on 08.09.2008 at about 4.00 p.m., at IHM Motel, SRM Potheri, he got injury in his working spot. As a result, he sustained grievous injuries all over the body. Therefore, he filed the claim petition before the Deputy Commissioner of Labour-II, Chennai in W.C.No.49 of 2009 claiming a compensation of Rs.6,00,000/- on the ground that the accident occurred during the course of his employment. The Deputy Commissioner of Labour-II, Chennai passed an award on 2.07.2010 directing the second respondent Insurance company, being the insurer of the 1st respondent in Policy No.012601/41/08/00000103 valid from 11.06.2008 to 10.06.2009, to deposit the compensation of Rs.2,38,820/- within a period of thirty days from the date of receipt of a copy of the award, failing which the second respondent is liable to pay simple interest at the rate of 12% per annum on the compensation amount from the date of accident till the date of deposit.

5.Learned counsel for the appellant made reliance on Section 4(A)(3) of the Employees Compensation Act, 1923, which reads as under:-

"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;"

6.Therefore, when the above Section 4(A) was inserted with effect from 01.06.1959, it goes without saying that the injured has successfully made out his case for payment of compensation awarded by the Commissioner under the Employees Compensation Act, hence, it is not open to the employer or Insurance Company to pay compensation with interest only from the date of award and not after 30 days from the date of injury. This has been candidly explained by the Hon'ble Division Bench of this Court in the case of **N.Ganesan v. Thilagavathi and others, 2010 (2) TN MAC 80 (DB)**, following the Larger Bench of the Apex Court in **Pratap Narain Singh Deo v. Srinivas Sabata and another, (1976) 1 SCC 289**, making it clear that interest for compensation would accrue 30 days after the date of accident and not from the date of quantification of the order passed by the Commissioner under Employees Compensation Act. In this context, it is pertinent to refer the relevant paragraphs of the judgment of a Hon'ble Division Bench of this Court in the case of **N.Ganesan v. Thilagavathi and others, 2010 (2) TN MAC 80**, has held as follows:

"20. The Hon'ble Supreme Court of India in the decision reported in Pratap Narain Singh Deo's case , 1976 (1) SCC 829 (Four Judges Bench), has specifically formulated an issue and held that *"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 6.5.1969 under Section 19."*

21. In Ved Prakash Garg v. Premi Devi and others, 1998 ACJ 1 (SC) (Two Judges Bench) the attention of the Hon'ble Supreme Court of India was not drawn to the Pratap Narain Singh Deo's case. However, the Hon'ble Supreme Court of India on the facts of the said case, held that *"the Respondent-Insurance Company will be liable to pay the compensation with interest at 6% per annum thereon from the date of the accident till the date of payment to the claimants"*.

22. In a subsequent decision reported in 2000 ACJ page 5 (Three Judges Bench) (cited supra), the Hon'ble Supreme Court of India, has taken into consideration Pratap Narain Singh Deo's case and also the Judgment of the Full Bench of the Kerala High Court reported in United India Insurance Co. Ltd., v. Alavi 1998 ACJ 1048, and approved the view taken by the Kerala High Court and held that *"the amount of*

compensation under Workmen's Compensation Act is payable on the date of accident and not the amount of compensation payable on account of the amendment made in 1995, which is relevant".

23. It is pertinent to point out at this juncture that the attention of the Hon'ble Supreme Court of India was not drawn to Pratap Narain Singh Deo's case and Kerala Electricity Board's case (cited supra) while rendering its verdict in the decisions reported in National Insurance Co.Ltd. v. Mubasir Ahmed and another, 2007 (1) TN MAC 214 : 2007 ACJ 845 and Kamala Chaturvedi v. National Insurance Co. & others, and in 2009 (1) TAC page 1. In the above said two decisions it has been held that "*unless adjudication is done, the question of compensation becoming due does not arise and therefore, it cannot be the date of accident and it has to be taken to be the date of adjudication of the claim*".

24. It is a settled position of law and as held by the Hon'ble Supreme Court of India in decisions reported in Union of India v. K.S.Subramanian, 1977 (1) LLJ 5 (SC) and State of Uttar Pradesh v. Ram Chandra, 1977 (1) LLJ 200, that "the proper course for a High Court is to try to find out and follow the opinions expressed by Larger Benches of the Supreme Court in preference to those expressed by smaller Benches of the Court".

25. By applying the above ratio, we are of the considered opinion that the attention of the Hon'ble Supreme Court of India was not drawn to the Larger Bench decisions reported in Pratap Narain Singh Deo

v. Srinivas Sabata and another, 1976 (1) SCC 289 and Kerala State Electricity Board v. Valsala K., 2000 ACJ 5 (SC) while deciding the cases reported in 2000 ACJ 845 and Kamala Chaturvedi v. National Insurance Co. and others, 2009 (1) TAC 1.

26. The learned Judge of this Court in the decision reported in Marimuthammal @ Marimuthu and another v. R.P.P.Construction (P) Ltd., Chennai and others, 2007 (2) TN MAC 98 : 2007 (5) MLJ 1059 and A.Chairmen v. A.Thirumeni & another, 2008 (1) TN MAC 38, after taking into consideration the above cited Larger Bench decision of the Hon'ble Supreme Court of India, has correctly held that "*the interest on compensation is payable 30 days after the date of the accident in which workman sustained injuries resulting in death*".

27. In the result, the reference is answered as follows:-

i. The word "falls due" occurring under Section 4-A of the Workmen's Compensation Act, 1923 in the light of the ratio laid down in the Larger Bench decision of the Hon'ble Supreme Court of India reported in Pratap Narain Singh Deo v. Srinivas Sabata and another, 1976 (1) SCC 289 and Kerala State Electricity Board vs. Valsala.K, 2000 ACJ 5 (SC), means that interest for compensation amount would accrue 30 days after the date of the accident and not from the date of quantification/ orders passed by the Commissioner for Workmen-s Compensation.

(emphasis supplied)

ii. The decisions rendered by the Single Bench of this Court in the decisions reported in Marimuthammal @ Marimuthu and Another v. R.P.P.Construction (P) Ltd., Chennai and others, 2007 (2) TN MAC 98 : 2007 (5) MLJ 1059; A.Chairmen v. A.Thirumeni & another, 2008 (1) TN MAC page 38 had laid down the correct proposition in consonance with the ratio laid down by the Larger Bench of the Hon'ble Supreme Court of India in the above cited decisions."

7. Learned counsel for the respondent would fairly submit that there was a contract of insurance policy entered into between the employer and the Insurance Company absolutely making it clear that the employer is not liable to pay compensation for the injuries sustained by their employees, in the event of any accident that took place inside premises/establishment during the course of employment. Therefore, when there was a clear policy condition excluding the payment of interest, the arguments advanced by the learned counsel for the appellant that a direction should be given to pay interest after 30 days from the date of injury cannot be accepted.

8. This Court is not able to find any merit in the said arguments, for the reason that this argument was not pleaded before the Tribunal. Since no plea was taken by the Insurance Company before the Tribunal stating that there was an exclusion clause in the policy, it is not open to raise the same before this Court. Therefore, this Court finds no substance in the contention made by the Insurance Company herein.

9. In the light of the well settled legal position, it is made clear that the interest on the compensation amount would accrue thirty days after the date of accident and not from the date of quantification/orders passed by the Commissioner for Employees Compensation. In fact, while considering a similar issue in C.M.A.No.2733 of 2015 dated 30.11.2015 (Ravichandran v. Sadiq Hussain and others), I have also held that the interest at the rate of 12% per annum on the compensation shall accrue after thirty days from the date of accident until the date of deposit.

10. Coming to the cases on hand, Mr.S.Alex, the appellant in C.M.A.No.58 of 2014, had sustained injuries during the course of employment on 27.07.2007 and the award came to be passed on 30.04.2009 in W.C.No.285 of 2008. Learned counsel for the second respondent has submitted that after receipt of the copy of the award, the compensation of Rs.99,609/- was deposited before the Deputy Commissioner of Labour-II, Chennai during August, 2009. So far as Mr.Arumugam, the appellant in C.M.A.No.60 of 2014, is concerned, he sustained the injuries during the course of employment on 08.09.2008 and the award came to be passed on 12.07.2010 in W.C.No.49 of 2009. Learned counsel for the second respondent has submitted that the compensation of Rs.2,38,820/- was deposited on 22.04.2013 before the Deputy Commissioner of Labour-II, Chennai.

11. In the light of the above settled legal position, this Court hereby directs the second respondent Insurance company in each case to deposit the interest at the rate of 12% per annum on the compensation awarded to the

appellant/claimant after thirty days from the date of accident till the date of deposit i.e., from 27.07.2007 in the case of Mr.S.Alex, the appellant in C.M.A.No.58 of 2014 and from 08.09.2008 in the case of Mr.Arumugam, the appellant in C.M.A.No.60 of 2014, to the credit of the W.C.Nos.285 of 2008 & 49 of 2009 respectively on the file of the Deputy Commissioner of Labour-II, Chennai within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, it is open to the appellant/claimant in each case to withdraw the entire amount with accrued interest by moving appropriate application before the lower authority. With the above modification, the civil miscellaneous appeals are disposed of accordingly. No costs.

Index : yes/no

04.11.2016

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To

1. The Deputy Commissioner of Labour-II
Commissioner for Employees Compensation
Chennai
2. The Section Officer, V.R. Section,
High Court, Madras.

T.RAJA, J.

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