IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2016

CORAM

THE HON'BLE MR.JUSTICE **G.CHOCKALINGAM**

C.M.A.NPD.No.866 of 2004

1. Pethakkottai Simmachalam
2. Pethakkottai Dilleswari (Minor)
3. Pethakkottai Manikandan (Minor)

(Minor 2 and 3 appellants are represented
by father next friend first appellant herein. ..
Appellants/Applicants

.. Vs ..

1. Kannan
2. United India Insurance Co. Ltd., (T.P. Cell),
   No.38, Anna Salai,
   Chennai - 600 002.

3. The Chairman and Managing Director,
   United India Insurance Co. Ltd.,
   24, Whites Road, Chennai.

4. United India Insurance Company,
   No.730, 2nd Main Floor,
   Anna Salai, Chennai - 600 006. .. Respondents/Opposite Parties

Prayer: Civil Miscellaneous Appeal filed under Section 30 of Workmen's Compensation Act, against the order dated 14.09.2003 passed in

W.C.No.102 of 2002, by the Commissioner for Workmen's Compensation - II/Deputy Commissioner of Labour-II, Chennai - 6.

For Appellants	: Mr.UM.Ravichandran
For R-1	: Served
For R-2	: Mr.C.R.Krishnamoorthy
For RR-3 & 4	: Mr.C.Ramesh Babu

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JUDGMENT

This civil miscellaneous appeal is directed against the order dated 14.09.2003 passed in W.C.No.102 of 2002 by the Commissioner for Workmen's Compensation-II/Deputy Commissioner of Labour-II, Chennai - 6.

2. Heard the learned counsel appearing for the appellants and the learned counsel appearing for the respondents 2 to 4.

3. The learned counsel for the appellants would mainly contend that the Commissioner for Workmen's Compensation II/Deputy Commissioner of Labour-II, Chennai - 6, has not awarded interest as per Section 4-A of the Workmen's Compensation Act, 1923 (hereinafter

referred to as the Act). It is further contended that as per the policy, the fourth respondent/insurance company is liable to pay compensation to the claimants from the date of the order alone. It is also contended that the Commissioner for Workmen's Compensation II/Deputy Commissioner of Labour-II, Chennai - 6, ought to have allowed interest and ought to have directed the fourth respondent herein/insurance company to pay interest for the damages fell due. But the Commissioner for Workmen's Compensation II, wrongly disallowed the interest. Hence, the order passed by the Commissioner for Workmen's Compensation II/Deputy Commissioner of Labour-II, Chennai, has to be set aside and the civil miscellaneous appeal has to be allowed. In support of his contention, the learned counsel for the appellants has relied on a decision of the Hon'ble Supreme Court reported in ***(2014) 2 Supreme Court Cases, 298 (Saberabibi Yakubbahai Shaikh and others Vs. National Insurance Company Limited and others).***

4. The learned counsel appearing for the respondents 2 to 4 has also conceded that with regard to the claim of interest, the argument

of the learned counsel for the appellants has to be sustainable and the learned counsel appearing for the respondents 2 to 4 also admitted the legal position that according to Section 4-A of the Act and the principles laid down by a division bench of this Court ***in C.M.A.Nos.823 of 2001 and etc., batch, (N.Ganesan Vs. Tmt. Thilagavathi and another)***, interest has to be allowed.

5. In this case, it is useful to refer Section 4-A of the Workmen's Compensation Act, 1923, which reads as follows:-

> "**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) In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts, and such payment shall be deposited with the Commissioner or made to the workman, as the case may be, without prejudice to the right of the workman to make any further claim.
>
> [(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.

Explanation.- For the purposes of this sub-section, "scheduled bank" means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934 .

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

6. The Division Bench of this Court, in the case of N.Ganesan Vs. Tmt. Thilagavathi and another, in C.M.A.Nos.823 of 2001 and etc., batch referred to above, at paragraph No.27, has held as follows:-

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

i.The word falls dueμ 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 Honble Supreme Court of India reported in 1976(1) SCC 289 in Pratapp Narain Singh Deo v. Srinivas Sabata and another and 2000 ACJ page 5(SC) Kerala State Electricity Board vs. Valsala.K, 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 Workmens Compensation.

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

iii.The Registry is directed to list these appeals for final disposal before the concerned Portfolio Judge."

7. The learned counsel for the appellants would contend that even though so many points are raised in the appeal, he only contested on the ground of awarding of interest alone. As per the principles laid down by this Court in the above stated case, it is well settled law that interest for compensation amount would accrue a month after the date of accident and not from the date of quantification/orders passed by the Commissioner for Workmen's Compensation II. In this case, the Commissioner for Workmen's Compensation-II/ Deputy Commissioner of Labour-II, Chennai, only directed the fourth opposite party/Insurance company to deposit a

sum of Rs.3,45,021/- (Rupees Three Lakhs Forty Five Thousand and Twenty one only) in the Court within 30 days from the date of receipt of copy of that order failing which, interest at the rate of 12% per annum shall be recovered from the fourth opposite party from the date of accident till the date of deposit. The citation reported in ***(2014) 2 Supreme Court Cases, 298 (Saberabibi Yakubbahai Shaikh and others Vs. National Insurance Company Limited and others)*** relied on by the learned counsel for the appellants is squarely applicable to the facts of the present case.

8. Considering the facts and circumstances of the case, this Court is of the considered view that the Commissioner for Workmen's Compensation II/Deputy Commissioner of Labour-II, Chennai, mis considered the legal position and the principles laid down by the Division Bench of this Court. Hence, this Court is of the considered view that the order passed by the Commissioner for Workmen's Compensation II/Deputy Commissioner of Labour-II, Chennai, has to be modified.

9. In the result, this Civil Miscellaneous Appeal is partly allowed and modified as follows:-

> The fourth respondent herein/insurance company is directed to pay interest at the rate of 12% per annum for the amount due after the expiry of one month from the date of the accident i.e., from 13.03.2002 till the date of deposit. In other respects, the order passed by the Commissioner for Workmen's Compensation II/Deputy Commissioner of Labour-II, Chennai, is confirmed. No costs.

15.11.2016

Internet : Yes
Jrl

To

1. The Commissioner for Workmen's Compensation-II,
   Deputy Commissioner of Labour-II, Chennai - 6.

2. United India Insurance Co. Ltd., (T.P. Cell),
   No.38, Anna Salai,
   Chennai - 600 002.

3. The Chairman and Managing Director,
   United India Insurance Co. Ltd.,
   24, Whites Road, Chennai.

4. United India Insurance Company,
   No.730, 2nd Main Floor,
   Anna Salai, Chennai - 600 006.

G.CHOCKALINGAM, J.

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