

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 1254 of 2009**

M/s Dev Sri Agrotech Pvt Ltd. Rice Mill, Dhamtari, through its Manager/Director Shri Neeraj Kumar Lunkad, son of late Keshari Mal Lunkad, aged 41 years, R/o Ranabandha Chowk, Dhamtari (CG).

---- Appellant**Versus**

1. Shri Baijnath Netam son of Limturam, aged 45 years.
2. Smt. Balmati W/o Baijanth aged about 40 years.
Both Caste Gond, R/o Vill.-Bhandar-Bandi, Tah.-Farasgaon, Distt.-Bastar.
3. Shri Kantilal Lunkad S/o Late Keshari Mal Lunkad, R/o Arjuni, Dhamtari, Partner-Dev Sri Agrotech Rice Millers Pvt. Ltd. Dhamtari
4. Shri Rajendra Kumar @ Raju Lunkad S/o Late Keshari Mal Lunkad, R/o Arjuni, Dhamtari, Surya Rice Mill Dhamtari.
5. New India Insurance Co.Ltd. Raipur through its Branch Manager, New India Insurance Co.Ltd.Near Jhankar Talkies, Jagdalpur.

---- Respondents**MAC No. 1499 of 2009**

The New India Insurance Co.Ltd. Raipur through its Branch Manager, New India Insurance Co.Ltd.Near Jhankar Talkies, Jagdalpur.

---- Appellant**Versus**

1. Baijnath Netam son of Limaturam, aged 45 years.
2. Smt. Balmati W/o Baijanth aged about 40 years.
Both are Gond by caste, R/o Vill.-Bhandar- Vandi, Tah.-Farasgaon, Distt.-Bastar.
3. M/s Dev Sri Agrotech Pvt Ltd. Rice Mill, Dhamtari, through its Manager/Director Shri Neeraj Kumar Lunkad, son of late Keshari Mal Lunkad, aged 41 years, R/o Ranabandha Chowk, Dhamtari (CG).
4. Kantilal Lunkad S/o Late Keshari Mal Lunkad, R/o Arjuni, Dhamtari, Partner-Dev Sri Agrotech Rice Millers Pvt. Ltd. Dhamtari
5. Rajendra Kumar @ Raju Lunkad S/o Late Keshari Mal Lunkad, R/o Arjuni, Dhamtari, Surya Rice Mill Dhamtari.

---- Respondents

For Insurance Company	:	Shri Dashrath Gupta, Advocate.
For Claimant	:	Shri BD Guru, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy**Judgment On Board****10.10.2017**

1. By this common judgment both the appeals are being disposed of as common facts are involved in these appeals arise out of the same

accident.

2. These are two appeals assailing the award dated 01.09.2009 passed by the Commissioner for Workmen Compensation, Labour Court, Jagdalpur (in short the Commissioner), in case No.B-78-W.C. Act/Fatal/2008. Vide the impugned award the Commissioner has awarded compensation of Rs.3,12,605/- to the claimants along with interest @ 10 percent. In addition, the employer was also saddled with the liability of payment compensation of 50 percent of award amount i.e. Rs.1,56,303/- towards penalty under Section 4-A of the Workmen Compensation Act, 1923 (in short, the Act).
3. MAC No. 1254 of 2009 has been filed by employer challenging imposition of penalty whereas, MAC No. 1499 of 2009 has been filed by the insurance company assailing the interest part which according to insurance company should had been from the date of award and not from the date of accident applying the principle disputing it as date on which the amount fell due.
4. For the sake of convenience, the appeal of the insurance company is to be adjudicated upon first.
5. The insurance company has assailed the award to the extent that interest has wrongly been awarded to be paid from the date of accident and not from the date of award. He relied upon the decision of Supreme Court in cases of Kamla Chaturvedi Vs. National Insurance Co. Ltd. 2009(1) SCC 487 wherein it was held that unless adjudication is done, question of payment of compensation becoming due does not arise, and therefore, payment of compensation would

always be from the date of award and not from the date of accident.

6. This view of the Supreme Court is no longer a good law in the light of subsequent decision rendered by the Supreme Court particularly in case of Oriental Insurance Co. Ltd. Vs. Siby George, 2012 (12) SCC 540 and which has subsequently been re-iterated in case of Sabera Bibi Yakub Bhai Sheikh Vs. National Insurance Co. Ltd. and Ors. 2014 (2) SCC 298. In the light of the aforesaid two decisions of the Supreme Court, so far as the appeal of the insurance company is concerned, the same does not have any force and it deserves to be and is accordingly rejected.
7. So far as appeal of the employer is concerned, the appeal of the employer is assailing the impugned order is on the ground that before passing the order of penalty the court below has not granted an opportunity of hearing. The second ground was that penalty on the part of the employer would only be from the date of amount fell due which according to employer, it fell due only when the award was passed by the Commissioner and not from the date of accident relying upon the decision of Supreme Court in case of National Insurance Co. Ltd. Vs. Mubasir Ahmed, 2007 (2) SCC 349. The said ground of the employer so far as the effective date on which the compensation fell due, again stands adjudicated upon in the light of the two decisions referred to in the preceding paragraphs i.e. Oriental Insurance Co. Ltd. Vs. Siby George (Supra) and Sabera Bibi Yakub Bhai Sheikh (Supra).
8. Thus, the ground so raised by the employer does not have any force.

The same deserves to be and is hereby negated.

9. So far as the opportunity of hearing is concerned, the claim put forth by the claimants before the Commissioner was immediately on the date of accident and the matter was pending consideration before the Commissioner for almost one year after which the award was passed. The employer had entered appearance before the Commissioner and had contested the case on merits and it is only thereafter that the award has been and therefore, it cannot be said that they were not given opportunity of hearing to defend the case. Furthermore, from the factual details available, it appears that the date of accident being 29.03.2008, the employer had deposited the compensation nearly after 8 months from the date of accident which again is not in accordance with the provisions of the Act where under Section 4-A of the Act, it is the responsibility of the employer to ensure deposit of compensation within 30 days from the date of award. In the absence of which, this court does not find any strong case made out by the employer for interference.
10. Thus, both the appeals filed by the insurance company as well as by the employer being devoid of merit are liable to be and are hereby dismissed.

Sd/-
(P. Sam Koshy)
Judge