

**HIGH COURT OF CHHATTISGARH, BILASPUR****Misc. Appeal No. 10 OF 2003**

1. Budhram S/o Sukhram (Age about 50 years)
  2. Smt. Meena Bai W/o Budhram (Age about 45 years)
  3. Ku. Pushpa Bai D/o Budhram (Age about 17 years)
  4. Rajendra Kumar S/o Budhram (Age about 14 years)
- 3 & 4 minors through guardian mother Smt. Meena Bai  
All above Resident of-  
 Village & Post Karamtara District Rajnandgaon (C.G.)

**---- Appellants****Versus**

1. Suresh Kumar Agrawal & Son's Ganj Line, Rajnandgaon (C.G.)
2. Oriental Insurance Company, Through Branch Manager, Kamptee Line Rajnandgaon (C.G.)

**---Respondents**


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| For Appellants       | : | Mr. Viprasen Agrawal, Advocate |
| For Respondent No. 1 | : | None.                          |
| For Respondent No. 2 | : | Mr. Raj Awasthi, Advocate      |

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**Hon'ble Shri Sanjay Agrawal, J.****Judgment on Board****27/01/2017**

1. The claimants have filed this appeal while exercising the power enumerated under Section 30 of the Workmen's Compensation Act, 1923 (hereinafter 'W.C. Act, 1923' for brevity) against the award dated 29/10/2002 passed by the Commissioner for Workmen's Compensation, Rajnandgaon (hereinafter 'Commissioner' for brevity) in case No. 53/A/W.C.Act Fatal/2001 whereby the Commissioner has awarded a total sum of Rs. 2,19,950/-. It was also directed that the said amount would carry interest @ 6% per annum from the date of filing of the claim petition i.e. 07/06/2001 and, directed further by the Commissioner in its impugned award that since the employer Suresh Kumar

Agrawal has not made any effort to provide him the amount of compensation as provided in the statute, therefore, he is liable to pay the penalty of 15% on the awarded amount of Rs. 2,19,950/-.

2. Being aggrieved with the aforesaid award, the claimants have preferred this appeal and submitted very specifically that the amount of interest and the penalty as awarded by the Commissioner is apparently contrary to the provisions prescribed under Section 4A of the W.C. Act, 1923, and therefore, the award impugned is liable to be modified and enhanced accordingly.

3. On 09/10/2014, this Court has framed following substantial questions of law :-

“(i) Whether the penalty part awarded by the Court below @ 15% is proper particularly when the employer has at the first instance itself admitted the employment, accident and death of the deceased?

(ii) Whether the interest part could have been lowered by the Commissioner contrary to the provisions of Section 4A(3)(a) of Workmen Compensation Act, 1923?”

4. In order to give answer with regard to the aforesaid questions, it is necessary to examine the relevant provision of Section 4A of the W.C. Act, 1923. Sub-section (3) of the said provision is relevant for the purpose, reproduced herein as under:-

**“4A. Compensation to be paid when due and penalty for default.-**

(1) \*\*\*\*

(2) \*\*\*\*

(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 percent 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 percent 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 (2 of 1934)."

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

5. In view of the aforesaid provision, it is clear that the interest of 6% as awarded by the Commissioner is apparently contrary to clause (a) of sub-section (3) of Section 4A of the W.C. Act, 1923 and in fact it ought to have been @ 12% per annum. Consequently, the substantial question of law No. (ii) is answered in negative and, I hereby modified the same by directing that the amount of compensation as awarded by the Commissioner will carry the interest @ 12% per annum from the date of the accident which occurred on 13/04/2001 till its

realization in view of the principles laid down in **Smt. P. Narayanamma v. General Manager, South East Central Railway, Bilaspur**<sup>1</sup>. Para-15 of the said judgment relevant is reproduced herein as under:-

“15. The law laid down in *Pratap Narain Singh Deo v. Srinivas Sabata & others*, (1976) 1 SCC 289 and *Kerala State Electricity Board & another v. Valsala K. & others*, (1999) 8 SCC 254 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.”

6. Therefore, the said amount of compensation will carry interest @ 12% per annum from the date of accident, i.e., 13/04/2001 and not from the date of filing of the claim petition i.e. 07/06/2001 as held and awarded by the Commissioner in its impugned award.

7. As far as substantial question of law No. (i) is concerned, it is clear that the Commissioner while considering the conduct of the employer has directed and imposing him the penalty of 15% on the amount of compensation of Rs. 2,19,950/-, which is extremely in lower side in view of the conduct of the employer Suresh Kumar Agrawal. Pertinently to be mentioned here that the accident had occurred on 13/04/2001 whereby one Ramesh Kumar has died when he was performing his duty during the course of his employment and despite of that the employer has failed to make any effort to make the amount of

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<sup>1</sup> 2013 (2) C.G.L.J. 410 (DB)

compensation. The Commissioner has already observed that without any reasons being assigned, the employer has failed to make the payment of compensation amount to the claimants even by efflux of more than sufficient time, i.e., from the date of accident, and therefore, the penalty of 15% on the amount of compensation as awarded by the Commissioner is in my opinion not proper. Accordingly, the same is modified and enhanced up to 30% and the employer Suresh Kumar Agrawal is liable to pay the penalty of 30% on the amount of compensation of Rs. 2,19,950/-. Thus, substantial question of law is therefore answered in negative.

8. Resultantly, the appeal is allowed to the extent indicated hereinabove. There shall be no order as to costs.

Sd/-  
**(Sanjay Agrawal)**  
Judge

Yogesh.