

HIGH COURT of CHHATTISGARH, BILASPUR**MAC No.1367 of 2016**

1. Smt. Pitar Bai Wd/o Late Prem Lal Kewat, Aged About 26 Years
2. Chandan Kumar S/o Late Prem Lal Kewat, Aged About 8 Years
3. Ku. Pooja D/o Late Prem Lal Kewat, Aged About 6 Years
The appellant No.2&3 are Minor Through The Natural Guardian Mother Smt. Pitar Bai Kewat,
4. Manharan Lal S/o Late Kheduram Kewat, Aged About 48 Years
5. Smt. Moso Bai W/o Manharan Lal Kewat, Aged About 46 Years
All are R/o Village Nandeli, Police Station And Tahsil Jaijaipur, District Janjgir-Champa, Chhattisgarh.

---- Appellants**Versus**

1. (a) Laxman Chandra S/o Late Phoolsai Chandra, Quarter No. E/462, Kailash Vihar, H.T.T.P. Darri, Korba, Chhattisgarh
(b) Gorelal Male Age - 0 S/o Late Phoolsai Chandra, R/o Village Nandeli, Post Aamgaon, Police Station And Tahsil Jaijaipur, District Janjgir-Champa, Chhattisgarh
(c) Sammelal Male Age - 0 S/o Late Phoolsai Chandra, R/o Village Nandeli, Post Aamgaon, Police Station And Tahsil Jaijaipur, District Janjgir-Champa, Chhattisgarh
(d) Smt. Membai Chandra Female Age - 0 Wd/o Late Phoolsai Chandra, R/o Village Nandeli, Post Aamgaon, Police Station And Tahsil Jaijaipur, District Janjgir-Champa, Chhattisgarh(Owner Of Offending Vehicle/ Non-Applicant No.1).
2. The Branch Manager, State Bank Of India, Branch Jaijaipur, Police Station And Tahsil Jaijaipur, District Janjgir-Champa, Chhattisgarh (Financer Of The Offending Vehicle/ Non-Applicant No.2).

---- Respondents

For Appellants	:	Shri Yogesh Chandra, Advocate.
For respondents 1A to D:	:	Shri MD Sharma, Advocate.
For respondent No.2	:	Shri Sudeep Agrawal, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy**Order On Board****20/07/2017**

1. The present is an appeal by the claimants under Section 30 of the Employee's Compensation Act, 1923 (for short, the Act) against the award dated 27.05.2016 passed by the Commissioner, Workmen

Compensation-cum-Labour Court, Janjgir Champa in case No.6/WCA/CoC-1B/2012 (F-Claim). Vide the said impugned award, on a claim application filed by the widow, minor children and parents of the deceased Premlal Kenwat, who met with an accidental death on 07.05.2008 while he was working as Driver of Tractor belonging to respondents No.1A to 1D, bearing registration No.CG-11-A-4462 and was earning Rs.4000/- per month as salary, the Commissioner, ordered for payment of compensation of Rs.4,23,580/-.

2. While passing the said award, the Commissioner has rejected the claim of grant of penalty and have also not granted interest from the date of accident or from the date of application, but has granted interest from the date of award till the amount is finally deposited before the court. It is this award which has been challenged by the claimants through the present appeal.
3. The contention of the appellants is that, the Commissioner has erred inasmuch as, in not granting interest as well as penalty which is otherwise legally entitled to the claimants as per Section 4-A of the Act.
4. The substantial question of law raised in this appeal is whether the Commissioner has committed an error of law in providing interest only from the date of award and not from the date of accident or the date on which the application for claim was filed.
5. The other substantial question of law is whether the court below has committed an error of law in denying the penalty to the claimants in the factual matrix of the case.

6. The facts so far as the accident, the resultant death of Premlal, the Tractor involved in the accident belonging to one late Fulsai Chandra whose legal representatives is respondents No.1A to 1D and the Tractor not being insured at the relevant point of time are not in dispute. The award of payment of compensation also not has been subjected to challenge by the employer/owner of the Tractor. Hence, the only issue which remains to be considered is whether the denial of interest and penalty to the claimants vide the said impugned award was proper, legal or justified for which aforesaid two substantial questions of law have been framed.
7. Learned counsel appearing for the respondents No.1A to 1D Shri M.D.Sharma opposing the appeal took a solitary stand that the appeal was not maintainable under Section 30 of the Act. According to him, as Section 30 of the Act does not provide for preferring an appeal against the order refusing interest or penalty as is clear from Section 30(1)(aa) of the Act. According to Shri Sharma Section 30 provides for certain orders alone which are appealable and in the said provisions, the order refusing grant of interest and penalty does not reflect, whereas, sub-section 1(aa) of Section 30 provides for an appeal against an order awarding interest or penalty which by itself mean that refusal of interest and penalty is non appellable. Therefore, the present appeal being not maintainable, prayed for its rejection relying upon the judgment passed by a Single Bench of the MP High Court in the case of Krishna Bai Vs. Kishan Lal, 1991 MPLJ 485. According to him, this judgment of MP High Court squarely applies in

the present case.

8. Having heard the rival contentions put forth on either side, this court proceeds to decide the issue of maintainability of the appeal first as raised by the counsel for the respondents.
9. For better understanding the provision, it would be trite to reproduce the relevant provisions of Section 30 of the Act which reads as under :

“30. Appeals.- (1) An appeal shall lie to the High Court from the following orders of a Commissioner, namely:--

(a) an order awarding as compensation a lump sum whether by way of redemption of a half-monthly payment or otherwise or disallowing a claim in full or in part for a lump sum;

(aa) an order awarding interest or penalty under section 4A;

(b) an order refusing to allow redemption of a half-monthly payment;

(c) an order providing for the distribution of compensation among the dependants of a deceased *[employee], or disallowing any claim of a person alleging himself to be such dependant;

(d) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of sub-section (2) of section 12; or

(e) an order refusing to register a memorandum of agreement or registering the same or providing for the registration of the same subject to conditions.”

10. A plain reading of aforesaid provision of law would give the various orders against which appeal can be filed before the High Court. Clause-a of Sub section 1 of Section 30 of the Act is relevant to be considered, appreciated and interpreted so as to deal with the objection raised by the respondents. A plain reading of aforesaid provision would clearly contemplate that the appeal shall lie to the High Court against an order awarding compensation or otherwise,

which means rejecting the compensation. It also envisages an order where the Commissioner has disallowed the claim in full or in part.

11. One cannot ignore the fact that the Employee's Compensation Act which was earlier known as Workmen's Compensation Act, is a social and beneficial legislation enacted for the protection and benefit of the employees/workmen. Once when in clause-'a' it is contemplated that the order disallowing a claim in full or in part, an appeal shall lie to the High Court, for all practical purposes, it has also to be construed that an appeal shall also lie against an order disallowing the claim of interest and penalty or grant of interest prospective from the date of award and not retrospective from the date of accident this is precisely what is meant by disallowing a claim in full or in part. In the instant case, the Commissioner has disallowed the claim of penalty in total whereas, it has disallowed the payment of interest in part as the Commissioner has granted interest from the date of judgment.
12. So far as clause-"aa" of sub section 1 of Section 30 is concerned, it only envisages that an appeal shall also be maintainable against an order of awarding interest or penalty under Section 4A of the Act. This provision was enacted perhaps keeping in view the fact that there could be proceedings where the employer voluntarily deposit the compensation before the court and the Commissioner later on decides a claim under Section 4A of the Act alone which deals with grant of interest and penalty. Therefore, strict or negative interpretation of clause-"aa" of sub-section-1 of Section 30 of the Act

cannot be applied so as to hold that in the event of refusal or rejection of claim for penalty and interest, appeal would not lie since it is not clearly contemplated under any of the clauses under sub-section-1 of Section 30 of the Act.

13. Giving such interpretation would infact be against the object and spirit of the beneficial legislation itself. Rather, a wider, more pragmatic and liberal interpretation can be easily drawn. rReading of clause-'a' of sub-section-1 of Section 30 contemplates the different nature of orders passed by the Commissioner which could be applicable in an appeal and which includes disallowing of claim in full or in part.
14. Word “claim” itself means “a demand for something as due” or “to seek or ask for on the ground of right” (see-.....,1988(2)SCC 513. If we consider the aforesaid definition of term “claim”, it would be inclusive of whatever that was demanded by the claimants which was otherwise due to them under the statutes.
15. What is also relevant at this juncture to consider is the fact that the claim application of the claimants before the Commissioner at the first instance itself there was a claim for compensation along with interest and penalty. Thus, from the claim of the claimants seeking for compensation along with interest and penalty, the Commissioner has disallowed the claim of penalty and so far as interest is concerned, it has been awarded from the date of judgment. Thus, the finding of the Labour court clearly would fall within clause-'a' of sub-section-1 of Section 30 of the Act making it an appeal from the order of Commissioner disallowing claim in full or in part.

16. For the aforesaid reasons, the objection raised by the respondents stands negated and it is held that appeal refusing to grant interest and penalty is maintainable.
17. So far as judgment cited by the counsel for the respondent is concerned, this court respectfully disagrees with the finding arrived at by the MP High Court for the reasons enumerated in the preceding paragraphs while holding that the appeal is maintainable. At this juncture it would be noteworthy to refer to the judgment of the Supreme Court relied upon by the MP High Court in case of Krishna Bai (Supra) and D.N. Taneja Vs. Bhajan Lal, 1988(3) SCC 26, wherein it was held that right of appeal is a creature of statute and the question whether there is a right of appeal or not, will have to be considered on interpretation of the provisions of the statute and not on the ground of proprietary or any other condition.
18. In the given factual matrix of the case, taking note of the legal proposition laid down by the Supreme Court in the aforesaid judgments, it would clearly reflect that right of appeal is a creature of statute and on interpretation of such statutes as has been discussed in preceding paragraphs, this court has no hesitation in reaching to the conclusion that the appeal of the claimants would fall within the ambit of clause-'a' of sub-section -1 of Section 30 of the Act.
19. With the consent of the parties, the matter is heard finally.
20. Before proceeding further, it would be relevant at this juncture to refer to Section 4-A of the Act. For ready reference, Section 4-A of the Act is reproduced hereinunder:

“4A. 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 *[employee], as the case may be, without prejudice to the right of the *[employee] 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.”

21. From a plain reading of the aforesaid provision of law is so evident that duty has been casted upon the employer to pay compensation to the injured or the family members of the deceased as the case may be immediately from the date of accident. What is reflected from Sub Section-2 is in the first place, the employer has to accept the accident and his liability for payment of compensation and on that basis he has to make payment either to the workmen or has to deposit with the Commissioner. Sub section-3 of Section 4-A of the Act envisages a provision where in the event the employer defaults in payment of compensation, the claimants can be compensated by the Commissioner with awarding interest as also penalty in case if there was no proper justification for the delay in making good the compensation to the claimants.

22. What is also paramount to be considered at this juncture is that the entire act itself is a beneficial legislation and Sub section-3 of Section 4-A has been enacted as a beneficial provision in favour of the employee with a sole intention to deter the employer from taking pleas and avoiding payment of compensation which is otherwise payable and due to the claimants. This view stands fortified from the decision of MP High Court reported in 1995 (1)LLJ-MP-837, Divisional Forest Officer Vs. Vijanti Bai.
23. If we read clause-'a' of Sub section 3 of Section 4A, it clearly reflects or mandates that where an employer has defaulted in paying compensation, the Commissioner shall direct the employer to pay in addition to the arrears interest on the said amount. Likewise, clause-'b' of sub section 3 of Section 4A stipulates that Commissioner shall, in the event of reaching to the conclusion that there was no justification for the delay caused in payment of compensation by the employer, the Commissioner shall order for payment of penalty which may not exceed 50 percent of such amount payable in addition to the arrears and interest awarded.
24. The act is a social security legislation. The object of enactment of the said Act was to provide speedy, cheaper and efficient mechanism in determining the payment of compensation due to an injured or family members of the deceased. This being the reason, sub section 4A was required to be enacted by amendment made in the year, 1959, holding that the compensation under Section 4 shall be paid as soon as it falls due and the latter part of the Section deals with in the event

of the payment not being made by the employer promptly.

25. The Supreme Court in case of Ved Prakash Vs. Premi Devi, 1997(8)SCS 1, dealing with the issue of payment of interest under Section 4A (3)(a) has held that so far as interest under this provision is concerned, it is almost automatic, once default in payment of compensation is committed by an employer beyond permissible limit of one month, the amount payable would automatically attract interest and the Commissioner shall have to pass an order granting interest in such circumstances.
26. In the instant case, the Commissioner has awarded interest, but has made it effective only from the date of award of Labour court whereas, sub section-3 of Section 4A requires the Commissioner to direct the employer to pay interest from the date the amount fell due which would be the date of accident and not the date of judgment of Labour Court. The Supreme Court as early as in case of Pratap Narayan Singh Deo Vs. Srinivas Sabata, 1976 (1)SCC 289 held that the compensation becomes payable on the date of accident and not on the date of determination of amount by the Commissioner. Again, the Supreme Court in case of Oriental Insurance Co. Ltd. Vs. Khajuni Devi, 2002 (10)SCC 567 while dealing with the issue of relevant date from which the interest and penalty would be payable, has held that the relevant date for determining the rights and liability of parties is concerned, is the date of accident and not the date of adjudication of the claim. Similar was the view of the Supreme Court in one of its earlier decision in Kerala SEB Vs. Valsala K, 1999 (8)SCS 254.

27. In view of the aforesaid legal position as has been laid by the Supreme Court in the aforesaid judicial precedents, this court has no hesitation in reaching to the conclusion that whenever the interest is to be awarded, the same shall have to be awarded from the date of accident i.e. the date on which it fell due. So far as present case is concerned, the date of death was 07.05.2008. From the records which has been produced before the court, it reflects that the claim application by the claimants was initially filed before the Motor Accident Claims Tribunal, Sakti, vide claim case No. 39/2008 under the provisions of Section 163-A of the Motor Vehicles Act, 1988 (for short, MV Act). The Claims Tribunal vide its award dated 31.08.2010 granted compensation to the claimants to the tune of Rs.5,93,500/- under various heads.
28. The said award was subjected to challenge before the High Court in MAC No.379 of 2011 and the Division Bench of this High Court vide award dated 10.08.2011 allowed the appeal of the employer and set aside the award holding that claim was not maintainable under Section 163-A of the MV Act. However, liberty was granted to the claimants to file fresh claim application under the relevant provisions of law. It is thereafter that the claim case was filed before the Commissioner for workmen compensation, Janjgir Champa and it has now got finally adjudicated upon vide impugned award.
29. What is relevant to be taken note of is that the accident has taken place on 07.05.2008 and today i.e. in the month of July, 2017, almost a period of about 9 years have lapsed and the claimants have been

denied the rightful claim on the death of deceased, the bread earner of the family, forcing the claimants to live a life in penury and destitution. What is also relevant to take note is that in spite of accident being admitted, the death of deceased being not disputed, his employment with the employer is not under challenge, yet the employer did not take care for complying with the provisions as is envisaged under Section 4 as well as Section 4A of the Act. Thus, the act of employer clearly establishes the deliberate default on their part entitling the claimants interest on the said amount. In the said factual matrix of the case, interest ought to had been granted from the date of accident and not from the date of award of the Labour Court and the finding of the Labour court of making the interest payable from the date of award thus is bad in law and is set aside. It is further held that the claimants shall be entitled for interest from the date of accident. The award is modified to that extent accordingly.

30. So far as the issue of grant of penalty under clause-'b' of Sub Section 3 of Section 4A of the Act is concerned, one cannot brush aside the finding of the Labour Court that pending the dispute before the court below, the original employer of the offending vehicle namely Fulsai Chandra had died and the respondents No.1A to 1D are infact legal representatives of original owner. The legal representatives as such cannot be blamed or held liable for deliberate default or act on the part of late Fulsai. In the said factual background, the denial of penalty by the Labour Court is proper, legal and justified which does not warrant any interference and the claim for grant of penalty thus

stands rejected.

31. In view of the aforesaid finding, the substantial question of law so far as grant of interest is concerned, the same is decided in the affirmative holding that the claimants are entitled for interest from the date of accident. So far as second substantial question of law with regard to penalty is concerned, the same stands decided in the negative.

Sd/-
(P. Sam Koshy)
Judge

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