

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO. 1007 OF 2017
WITH
CIVIL APPLICATION NO. 3755 OF 2008
IN
FIRST APPEAL NO.1007 OF 2017**

The New India Ass. Co. Ltd.

...Appellant

Versus

Smt. Geetadevi Chotelal @ Satyanarayan Mishra
Shri Chotelal @ Satyanarayan Shivkumar Mishra
& Anr.

...Respondents

.....

Shri. V.N.Sagare for the Appellant.

.....

**CORAM: MRS.MRIDULA BHATKAR, J.
DATED: SEPTEMBER 20, 2017**

P.C. :

1. This appeal is directed against the judgment and order dated 04.10.2007 passed by the learned Commissioner for Workmen's Compensation and Judge, 4th Labour Court, Mumbai, thereby partly allowing the application and granting compensation of Rs.2,64,738/- alongwith interest @ 12% with effect from 20.07.2005 till its realization.
2. It is the case of respondent no.1 i.e. the parents of the deceased that their son was working with respondent no.2/opposite party as a

cleaner of motor vehicle. On 16.06.2005, the deceased Pawan Chotelal Mishra met with a fatal accident. The accident occurred in the course of his employment with respondent no.2/opposite party. At the time of accident, the deceased was 20 years old and he was drawing salary of Rs.4000/- p.m. The applicants being the parents filed the claim under Section 3 of the Workmen's Compensation Act, 1923, in which opponent nos.1 and 2 were served. Opponent no.1 remained absent. Opponent no.2/ insurance company filed its written statement and opposed the claim. The learned Chairman after considering the oral and documentary evidence partly allowed the application and granted compensation of Rs. 2,64,738/- alongwith interest @ 12 % p.a. with effect from 20.07.2005.

3. Being aggrieved by the said judgment and award, the appellant/Insurance Company filed this appeal.

4. The substantial question of law is as follows:

Whether granting interest @ 12% p.a. from the date of the claim application under Workmen's Compensation Act, 1923 was legal.

5. Learned counsel for the appellant/Insurance Company submits that the learned Chairman has granted interest @ 12% p.a. from the

date of the application under the Workmen's Compensation Act is illegal, as it is contrary to the judgment in the case of *National Insurance Co. Ltd. Versus Mubasir Ahmed and Another*, reported in (2007) 2 Supreme Court Cases 349.

6. This is the only legal challenge raised by the appellant/Insurance Company, however, it is not maintainable in view of the judgment in the case of *Oriental Insurance Company Versus Mohd. Nasir and Another*, reported in (2009) 6 Supreme Court Cases 280 and in view of the judgment in the case of *Oriental Insurance Co. Ltd. v. Siby George*, reported in (2012) 12 SCC 540.

7. In the case of *Mubasir Ahmed and Anr*, (*supra*), the Supreme Court has held that the period starts on completion of one month from the date on which the compensation fell due is not the date of accident, but it is the date of adjudication of the claim. However, this view of the Division Bench of the Supreme Court was subsequently overruled in the case of *Oriental Insurance Company (supra)* and the Division Bench of the Supreme Court has relied on the judgments of larger bench decisions in *Pratap Narain Singh Deo vs Srinivas Sabata and anr*, reported in (1976) 1 SCC 289 and *Kerala State Electricity Board vs Valsala K and*

another, reported in *(1999) 8 SCC 254*. The Supreme Court has held that the date on which the compensation falls due is the date of the accident and not the date of adjudication of the claim. In the present case, the trial Court has fixed the date payable for compensation is from the date of filing of the application is correct. The appeal stands disposed of accordingly.

8. In view of the disposal of the Appeal, Civil Application also stands disposed of.

(MRIDULA BHATKAR, J.)