

THE HON'BLE SRI JUSTICE M.S.K.JAI SWAL

CIVIL MISCELLANEOUS APPEAL No.2147 of 2004

JUDGMENT:

This civil miscellaneous appeal is filed questioning award of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Nizamabad, vide his award dated 17.10.2001 made in W.C.Case No.33 of 2000 (NF).

The appellant claims that while he was working as a labourer in the lorry of the 1st respondent bearing No.APT-9919, the lorry met with an accident on 19.02.1998 by hitting a car and in that accident, himself and other labourers sustained injuries and the car driver died, and the lorry was completely damaged. The appellant sustained 45% partial permanent and functional disability and hence he claimed compensation of Rs.2,00,000/-. As the 1st respondent is the owner of the lorry and the 2nd respondent is its insurer, both of them are jointly and severally liable to pay the compensation.

To prove his case, the claimant was examined as PW 1 and the Doctor was examined as PW 2 and got marked Exs.A1 to A14. On behalf of the respondents, the Assistant Administrative Officer of the 1st respondent company was examined as RW 1 and marked Ex.B1 insurance policy.

The 1st respondent did not deny the fact that the appellant was working as labourer in his lorry. The 2nd respondent denied the accident and the relationship between the appellant and the 1st respondent as employer and employee.

On appreciation of oral and documentary evidence and considering the age, monthly salary and the percentage of the disability of the appellant, the Commissioner for workmen's' compensation gave a finding that the appellant is entitled for compensation of Rs.99,071/- by applying relevant age factor 203.85. Questioning the said award, the appellant filed the present appeal claiming more compensation.

Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the insurance company.

It is not in dispute that the workman received multiple injuries in the accident and sustained 45% disability. The learned commissioner has taken into consideration the monthly wages of the workman as Rs.1800/- per month, percentage of disability and by applying proper multiplier, determined the amount payable to the workman as Rs.99,071/-, however, the learned commissioner did not award any interest which the workman is entitled to.

On behalf of the workman, it is submitted that the workman is entitled to the compensation from the date of accident together with interest thereon at 12% p.a. In support of this contention, the learned counsel for the appellant relied upon a decision of the Apex Court in *Saberabibi Yakubhai Shaikh v. National Insurance Co.Ltd.*¹, wherein, after referring to the judgments of the Three-Judge Bench and Four-Judge Bench of the Supreme Court, the Apex Court observed as under:

“10. We have perused the aforesaid judgment. We are of the considered opinion that the aforesaid judgment relied upon by the learned Counsel for the Appellants is fully applicable to the facts and circumstances of this case. This Court considered the earlier judgment

¹ (2014) 2 SCC 298

relied upon by the High Court and observed that the judgments in the case of *National Insurance Co. Ltd. v. Mubasir Ahmed*: (2007) 2 SCC 349 and *Oriental Insurance Co. Ltd. v. Mohd. Nasir*: (2009) 6 SCC 280 were per incuriam having been rendered without considering the earlier decision in *Pratap Narain Singh Deo v. Srinivas Sabata*: (1976) 1 SCC 289. In the aforesaid judgment, upon consideration of the entire matter, a four-judge Bench of this Court had held that the compensation has to be paid from the date of the accident.

11. Following the aforesaid judgments, this Court in *Oriental Insurance Co. Limited v. Siby George and Ors.* (supra) reiterated the legal position and held as follows:

11. The Court then referred to a Full Bench decision of the Kerala High Court in *United India Insurance Co. Ltd. v. Alavi* and approved it insofar as it followed the decision in *Pratap Narain Singh Deo*.

12. The decision in *Pratap Narain Singh Deo* was by a four-judge Bench and in *Valsala K.* by a three-judge Bench of this Court. Both the decisions were, thus, fully binding on the Court in *Mubasir Ahmed* and *Mohd. Nasir*, each of which was heard by two Judges. But the earlier decisions in *Pratap Narain Singh Deo* and *Valsala K.* were not brought to the notice of the Court in the two later decisions in *Mubasir Ahmed* and *Mohd. Nasir*.

13. In the light of the decisions in *Pratap Narain Singh Deo* and *Valsala K.*, it is not open to contend that the payment of compensation would fall due only after the Commissioner's order or with reference to the date on which the claim application is made. The decisions in *Mubasir Ahmed* and *Mohd. Nasir* insofar as they took a contrary view to the earlier decisions in *Pratap Narain Singh Deo* and *Valsala K.* do not express the correct view and do not make binding precedents.

12. In view of the aforesaid settled proposition of law, the appeal is allowed and the judgment and order of the High Court is set aside. The Appellants shall be entitled to interest at the rate of 12% from the date of the accident. No costs.”

Following the above authority of the Apex Court, the appeal is liable to be allowed in part, by awarding the compensation to the workman, as determined by the learned Commissioner, together with interest @12% p.a. from the date of the accident till the date of payment. The compensation as determined by the learned commissioner is

reasonable, the workman is not entitled for any enhancement of compensation, except interest thereon, as mentioned supra.

In the result, the Civil Miscellaneous Appeal is allowed, to the extent indicated above. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.S.K.JAI SWAL,J

Date: 20.01.2017
Dsr

