NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 605 of 2012

1. Smt. Reshmi Bai Banjare D/o Lt. Kushaal Banjare, Aged about 24 years,
2. Hershal Aged about 4 years, S/o Lt. Kushaal Banjare,
3. Ku. Taniya, Aged about 2 years, D/o Lt. Kushaal Banjare,

Appellant No.2 & 3 are Minors through natural guardian mother Smt. Reshmi Bai Banjare.

All are R/o Village Tilaiwara, P.S. Dongergaon, Dist. Rajnandgaon, Chhattisgarh

---- Appellants

Versus

1. Khemlal Sahu, S/o. Shri Devlalu Sahu, R/o. Village Kokpur, Tahsil and District Rajnandgaon, Chhattisgarh
2. Branch Manager, The Oriental Insurance Co. Ltd. Branch Station Road, Rajnandgaon, Chhattisgarh

---- Respondents

For Appellants	:	Mr. Rakesh Thakur, Advocate
For Respondent No.1	:	Mr. Roop Naik, Advocate
For Respondent No.2	:	Mr. Pankaj Agrawal, Advocate along with Ms. Prabha Sharma, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

12/02/2018

1. The present is an appeal by the Claimants challenging the order dated 23.09.2011, passed by the Commissioner for Workmen's Compensation, Labour Court, Rajnandgaon, Chhattisgarh, in Case No. 19/W.C.Act/2009/Fatal.

2. Vide the impugned award, the Commissioner in a death case awarded a compensation of Rs.1,89,262/- with interest @ 9% per annum and penalty of Rs.10,000/-.

3. The substantial question of law involved in the appeal is, “whether the income assessed by the Commissioner is justified in the light of

the statement of the Claimant that the deceased was earning Rs.150/- a day." The second question of law is "whether the interest, which has been awarded by the Commissioner is justified when the provisions of Section 4A(3)(a) specifically enumerates that the interest to be paid on the awarded amount should be 12%."

4. The contention of the counsel for the appellants is that on 26.07.2008, the deceased Kushal Banjare met with an accident while discharging the duties of a Driver on the Tractor bearing registration No. CG/07/D/7597 owned by the respondent No.1 Khemlal Sahu and which was duly insured with the respondent No.2. The deceased in the instant case was aged around 30 years at the time of accident. The widow of the deceased Reshmi Bai, AW/1 has deposed before the Commissioner that the deceased was working as a Driver and was paid an amount of Rs.150/- per day, but the Tribunal for the reason best known has assessed the income at only Rs.70/-. This according to the counsel for the appellants is erroneous findings for the reason that AW/2 has deposed before the Tribunal that he was working as a labour and was earning more than Rs. 80/- a day and the deceased being definitely a skilled person and discharging the work of a Driver would have definitely been earning much more than the unskilled labour and therefore the income assessed by the Tribunal needs reconsideration and the award has to be suitably modified.

5. Further, it was also contended that the Commissioner in the instant case while quantifying the compensation has awarded interest of only 9% whereas under Section 4A(3)(a) the rate of interest has been fixed at 12%. According to the appellants, the Commissioner

did not have any power to award interest at a lower rate than what is prescribed under the statute.

6. The counsel appearing for the respondents however opposing the appeal submits that there is nothing much to interfere with the award as the entire contention of the Claimants are finding of facts and that there is no substantial question of law involved in the appeal. He thus prayed for the rejection of the appeal.

7. Having heard the contentions put forth on either side and on perusal of record, some of the admitted position is that; the accident which took place on 26.07.2008, the vehicle involved in the accident being the Tractor owned by the respondent No.1 bearing registration No. CG/07/D/7597, the deceased Kushal Banjare was working as a Driver on the said Tractor, the age of the deceased was 30 years. The deceased being a Driver would definitely fall under the category of skilled labour. AW/2 Udheram, a labour has deposed before the Commissioner that he was earning at the relevant point of time more than Rs.80/- a day. There is no rebuttal to this finding. If an unskilled labour was getting a wages of more than Rs.80/- a day, it is anybody's guess that in July, 2008, the skilled labour like a Driver would had been easily drawing an income of Rs.150/- a day, which makes it Rs.4500/- a month.

8. This Court has no hesitation in assessing the income of the deceased in July, 2008 at Rs.150/- a day, particularly taking note of the fact that he was working as a Driver. This Court therefore proceeds to quantify the compensation assessing the income of the deceased at Rs.150/- a day. Further, this Court has also no hesitation in holding that Claimants would had been entitled for the

calculation of the income of the deceased for the whole month of 30 days instead of 26 days calculated by the learned Commissioner. Accepting Rs.150/- per day, the monthly income of the deceased would be Rs.4500/-. For the purpose of quantifying the compensation as per Section 4A(3)(a) of the Workmen's Compensation Act, it would be 50% of the said amount, which has to be accepted as the monthly wages and which comes to Rs.2250/-. If the said amount is multiplied with the relevant factor, which is 207.98, the amount would come to Rs. 4,67,955/-. It is ordered accordingly that the Claimants shall be entitled for a compensation of Rs.4,67,955/- instead of Rs.1,89,262/-.

9. So far as the interest part is concerned, it is relevant at this juncture to refer to Section 4A(3)(a), which for ready reference is being reproduced herein under:

> ***"4A.(3)(a) 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 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."***

10. The plain reading of the said provision of law by itself is emphatically cleared that the rate of interest has been fixed under the statute itself i.e. 12%. Further, it is also clear that there is no scope for the Commissioner under this provision for not granting interest, when there is an admitted delay in the payment of compensation. Admittedly, the accident took place on 26.07.2008, the respondents both the Owner and the Insurance Company have not deposited the

amount till the date of award that was passed in September, 2011 i.e. for almost more than 3 years.

11. Under the circumstances, it is the aforementioned provision of law i.e. Section 4A(3)(a) which would automatically come into play and the Claimants would be entitled for interest on the said amount @ 12% instead of the penal interest awarded by the Commissioner and said rate of interest of 12% shall be applicable from the date the compensation fell due i.e. the date of accident, which is 26.07.2008.

12. In view of the aforesaid facts the appeal of the appellants stands allowed. The question of law is answered in favour of the Claimants holding that the Commissioner was not justified in assessing the income of the deceased at Rs.70/-, when there is sufficient evidence before the Court so as to prove that he was a skilled labour and even an unskilled labour during the said period was earning much more than what has been assessed by the Commissioner.

13. The question of law so far as interest part is concerned also stands decided in favour of the appellant holding that the interest would be charged @12% and the payment of interest would calculated from the date of accident itself.

14. The appeal thus stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
Judge

Ved