AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 388 of 2017

1. Lalit Telga S/o Late Mangal Singh, Aged About 46 Years

2. Smt. Mehtarin W/o Lalit Telga, Aged About 42 Years

Both R/o Village Katekalyan Tahsil Dantewada District Dantewada, Chhattisgarh.

---- Appellants

Claimants

Versus

1. Surya Carriers Co. Opposite Idgah Complex Bhadauriya Bhawan Nayapara Jagdalpur District Bastar, Chhattisgarh ....Employer Co.,

2. Mohan Jain R/o Suncity Jagdalpur District Bastar, Chhattisgarh Employer

3. The Branch Manager, Oriental Insurance Company Ltd., Branch Office Laxman Avenue Medical College Road Jagdalpur District Bastar, Chhattisgarh Insurer,

---- Respondents

For Appellants	:	Shri Praveen Dhurandhar, Adv.
For Respondent No.1 & 2	:	Shri Subhash Yadav, Adv.
For Respondent No.3	:	Shri Sudhir Agrawal, Adv.

MAC No. 1758 of 2016

- Branch Manager, The Oriental Insurance Co. Ltd. Branch Office-Laxman Avenue, Medical College Road, Jagdalpur District Bastar, Chhattisgarh.

---- Appellant

Versus

1. Lalit Telga S/o Late Mangalsingh, Aged About 46 Years

2. Smt. Mehtarin W/o Lalit Telga, Aged About 42 Years

R/o Village And Post Katekalyan, Tehsil- Dantewada, District

Dantewada, Chhattisgarh

3. Surya Carriers Company In Front Of Idgah Complex, Bhadauria Bhavan, Nayapara, Jagdalpur, District Bastar, Chhattisgarh,

4. Mohan Jain Resident- Sansiti Jagdalpur, District Bastar, Chhattisgarh

---- Respondents

For Appellant	:	Shri Sudhir Agrawal, Adv.
For Respondent No.1 & 2	:	Shri Praveen Dhurandhar, Adv.
For Respondent No.3 & 4	:	Shri Subhash Yadav, Adv.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

30/11/2018

1. As both these appeals arise out of the judgment dated 28.9.2016 passed by Commissioner for Employees Compensation-Labour Court, Jagdalpur (CG) in Case No.26/2010/WC Act/Fatal, they are being disposed of by this common judgment.

2. MAC No.388/2017 has been admitted for hearing on the following substantial questions of law:

> "1. Whether the Commissioner for Employees Compensation-Labour Court, Jagdalpur was justified in awarding conditional interest?
>
> 2. Whether the claimants are entitled for interest @ 12% awarded by the Commissioner from the date of accident?"

MAC No.1758/2016 has been admitted for hearing on the following substantial question of law:

> "Whether the judgment passed by the Commissioner for Employees Compensation-

Labour Court, Jagdalpur is legal and based on proper appreciation of the evidence led by the parties?"

3. As per claim petition filed by the claimants who are parents of deceased Siyaram, the deceased was in the employment of non-applicant No.1 through non-applicant No.2 as a labour. On 7.9.2008 the deceased during the course of his employment under non-applicant No.1 while unloading goods from the train, came under the wheel of the train as a result of which both his hands and legs got cut and he died on the way while being taken to hospital for treatment. The claimants filed a claim petition stating that the deceased was at the time of accident 17 years of age, earning Rs.120/- per day, the risk of the labourers was covered by the insurance policy issued by non-applicant No.3 and as such they are entitled for compensation with interest at the rate of 12% per annum.

4. The Commissioner Workmen Compensation Act after considering the evidences which have come on record vide its impugned judgment dated 28.9.2016 allowed the claim application and ordered for payment of Rs.3,54,885/- as compensation to the claimants, fastening the liability on the Insurance Company/non-applicant No.3. However, while granting compensation, the Commissioner has not granted interest on the said amount and has only ordered that in the event the Insurance Company fails to deposit the compensation amount within one month, then the amount shall carry interest @ 12% from the date of accident till deposit of the same. It is this award which is under challenge in the appeal MAC No.388/2017.

5. **<u>MAC No.1758/2016</u>**: Learned counsel for the appellant/insurance company has assailed the judgment of the Commissioner firstly on the ground that there is no evidence to show that the deceased was under the employment of non-applicant No.1 Suya Carriers. Even otherwise, the deceased being minor cannot be engaged in any employment, there was no contract between non-applicant No.2 Mohan Jain and the insurance company and as such, the insurance company is not liable for indemnifying the employer non-applicant No.1 Surya Carriers against the claim of the claimants. Secondly, he submits that the claimants being parents of the deceased were not dependent upon him. Thirdly, he submits that as per insurance policy Ex.D/1 issued in favour of non-applicant No.1, the insurance company had the limited liability of Rs.1,83,000/- for 10 labourers and as such, the insurance company is not responsible for satisfying the whole award passed by the learned Commissioner of Rs.3,54,885/-. Lastly, he submits that rate of interest @ 12% p.a. awarded by the Commissioner on the compensation amount is also on the higher side and at the most, it should have been 9-10% p.a. He has placed reliance on the judgment of the Supreme Court in ***Manju Sarkar and others Vs. Mabish Miah and others, 2014 ACJ 1927***.

6. Learned counsel for the claimants has opposed the above contention of the insurance company and argued that as per documents Ex.P/1 final report filed by the police, Ex.P/2 merg intimation; Ex.P/3 inquest and Ex.P/5 postmortem report, the deceased was 20-21 years of age and even as per Ex.P/6C middle school certificate, the deceased was above 17 years of age. Therefore, it cannot be said that the deceased could not be in

employment on account of his age. He submits that the claimants have specifically pleaded in their claim petition that they were dependent upon the deceased. Further, as per insurance policy Ex.D/1, there is no limited liability on the insurance company. In Ex.D/1 it has been specifically mentioned that compensation shall be payable as per Workmen's Compensation Act, 1923, Indian Fatal Accident Act, 1885 and their subsequent amendments and the policy was Workmen's Compensation Insurance Policy. Therefore, the Commissioner was fully justified in fastening liability on the insurance company to satisfy the award.

7. So far as interest part is concerned, learned counsel for the claimants submits that the Commissioner has awarded interest @ 12% on the awarded amount from the date of accident on the failure of the insurance company to deposit the compensation within one month from the date of judgment whereas according to Section 4A of the Act, the claimants are entitled for interest @ 12% from the date of accident till realization. Therefore, the appeal preferred by the insurance company being without any substance is liable to be dismissed.

8. Learned counsel for non-applicants No. 1 & 2 has duly assisted the Court.

9. **MAC No.388/2017**: Counsel for the appellants/claimants submits that once when the accident is admitted, the death of the deceased is admitted and the employment part also stands proved from the pleadings and evidence adduced by the parties, it was the duty fastened upon the employer so also that of the Insurance Company to have promptly deposited the compensation which the claimants were entitled under the Employee's Compensation Act. Since the

respondents did not honour the policy and contested the matter and in the process, considerable time got consumed, the claimants would definitely be entitled for the interest on the compensation awarded by the Labour Court from the date of accident till realization.

10. The said contention of the counsel for the appellants has been opposed by the counsel for respondent/insurance company on the ground that the claimants themselves had not raised the claim promptly. Further contention of the counsel for the Insurance Company is that even otherwise if at all, if the interest has to be paid, the same could not be @ 12% and at the most it should have been 9-10% per annum.

11. Heard learned counsel for the parties and perused the material available on record.

12. As regards the minority of the deceased disqualifying him for employment, from the pleadings of the claimants and the documents available on record it appears that the deceased was above 17 years of age at the time of accident. As per documents Ex.P/1 final report filed by the police, Ex.P/2 merg intimation; Ex.P/3 inquest and Ex.P/5 postmortem report, the deceased was 20-21 years of age and even as per Ex.P/6C middle school certificate, the deceased was above 17 years of age. The insurance company could not put forth any evidence which shows that the deceased was below 17 years at the relevant time. In these circumstances, it cannot be said that on the date of accident the deceased was minor and could not be in any employment.

13. With regard to dependency of the claimants, the argument

advanced by counsel for the insurance company that the claimants being parents were not dependent upon the deceased is not acceptable. In the claim petition, in para-12, the claimants have specifically mentioned that they were dependent upon the deceased. The claimants are father and mother of the deceased, aged 46 and 42 years at the time of filing of claim petition; there is no suggestion to the witnesses or parents of the deceased that they were not dependent upon the deceased. From the pleadings of the claimants and the evidence adduced by them, it stands proved that the deceased was working from the age of 17 years. Even otherwise, as per Motor Vehicles Act, mother can be considered to be dependent upon her son. Therefore, considering the overall facts and circumstances of the case, this Court finds no substance in the above argument of the counsel for insurance company.

14. So far as employment of the deceased under non-applicant No.1 is concerned, as per statement of AW-1 Lalit Telga, in para-1 he has specifically stated that the deceased was working under non-applicant No.1 Surya Carriers through non-applicant No.2 Mohan Jain. This fact has not been challenged in his cross-examination. In para-3 he has categorically stated that non-applicant No.2 Mohan Jain is working for non-applicant No.1 Surya Carriers, however, no any document was submitted by the claimants. AW-2 Rajesh Kumar also stated in para-1 that the deceased was working under non-applicant No.1 Surya Carriers as a labour doing the work of loading and unloading. However, no contrary evidence has been adduced by the non-applicants. It may be that the deceased was working under non-applicant No.1 through non-applicant No.2

being agent of non-applicant No.1. As per Ex.P/1 i.e. final report submitted by the police, it is also mentioned that the deceased was working under non-applicant No.1 Surya Carriers. Further as per report of the investigator of the insurance company on the basis of statements of the labourers working in the field also the deceased was found under the employment of non-applicant No.1. Only partner of non-applicant No.1 company namely Shakti Singh has denied employment of the deceased under non-applicant No.1, but no evidence has been adduced by non-applicant No.1 or on behalf of non-applicant No.1 to substantiate the same. Therefore, contention of the insurance company that the deceased was not under the employment of non-applicant No.1 is not acceptable.

15. So far as liability under the insurance policy Ex.D/1 is concerned, from perusal of the same, it is seen that it has been specifically mentioned in the policy that compensation shall be payable as per Workmen's Compensation Act, 1923, Indian Fatal Accident Act, 1885 and their subsequent amendments and the policy was Workmen's Compensation Insurance Policy. Therefore, this Court finds no illegality in the finding recorded by the Commissioner fastening liability on the insurance company to satisfy the award.

16. With regard to interest part, having considered the rival contentions put forth by the counsel appearing for the parties and on perusal of the record what is necessary at this juncture is to take note of the provision of the Employee's Compensation Act. Clause (a) of Sub section 3 of Section 4A of the Employee's Compensation Act reads as under:

> “(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;"

17. A plain reading of the aforesaid statutory provision itself clearly reflects that if the employer or the Insurance Company committed a default in making the payment of compensation to the dependents of the deceased employee, the said amount shall carry interest @ 12% per annum. As observed above, it stands proved that the deceased who was under the employment of non-applicant No.1 through non-applicant No.2 died in an accident occurred during the course of his employment. Therefore, in these circumstances, it was the duty of the employer so also the Insurance Company to have honoured the policy under which the deceased was covered. However, the respondents failed to discharge their responsibility, of timely depositing compensation rather when the claim application was filed, they contested the matter and therefore, the provision of Clause (a) of Sub Section (3) of Section 4A of the Employee's Compensation Act clearly attracts.

18. The aforesaid opinion of this Court further stands fortified from the judgment of the Division Bench of this Court reported in ***2013 (2) CGLJ 410 (Smt. P. Narayanamma Vs. General Manager, South East Central Railway, Bilaspur)***. Recently, a similar matter came up before this Court in MAC No. 291/2010 wherein also this Court in similar set of facts vide its order dated 06.10.2016 allowed the application and ordered for payment of interest from the date of accident till the date of payment. It would be relevant at this

juncture to reproduce paragraph-8 & 9 of the judgment of this Court passed in MAC No. 291 of 2010 wherein certain earlier decisions in this regard have also been referred for further strengthening the opinion of this Court.

> "8. The Division Bench in the said judgment, referring to some of the decisions of the Supreme Court in paragraphs 10 & 11 has held as under :
>
> > "10. The question, as to when the compensation becomes payable under the Act or in other words, when it falls due for being paid to employee concerned by his employer as provided in Section 4-A remains no longer res integra and stands already decided by four Judges Bench decision of the Supreme Court in the case reported in Pratap Narain Singh Deo (Supra). It is in this case, justice Shinghal, speaking through the Bench has held that an employer primarily becomes liable to pay compensation as soon as the personal injury is caused to the workman by the accident which arose out of and in the course of the employment. This is what was held by the Supreme Court in this case:
> >
> > > "It is wrong to contend that the compensation had not fallen due until it was settled by the Commissioner under Section 19 by his impugned order dated May 6, 1969. The employer became liable to pay the compensation as soon as the personal injury was caused to the workman by the accident which admittedly arose out of and in the course of employment. There was no suspension of the compensation pending settlement. It was the duty of the appellant under Section 4A(1) of the Act, to pay the compensation at the rate provided by Section 4 as soon as the personal injury was caused to the respondent"
> >
> > 11. This view was reiterated by a three Judges Bench's decision of the Supreme Court in Kerala State Electricity Board and another Vs. Valsala K. and another (1999) 8 SCC 254 : 2000 ACJ 5 (SC), by following words:
> >
> > 3. A four judge Bench of this Court in Pratap Narain Singh Deo v. Srinivas Sabata and Anr.

(1976) 1 SCC 289 : 1976 ACJ 141 (SC) speaking through Shinghal. J. has held that an employer becomes liable to pay compensation as soon as the personal injury is caused to the workmen by the accident which arose out of and in the course of employment. Thus, the relevant date for determination of the rate of compensation, is the date of the accident and not the date of adjudication of the claim.

9. Further, reliance is also on the decision of Supreme Court in case of *Oriental Insurance Co. Ltd. Vs. Siby George* 2012 ACJ 2126, the Division Bench again held in paragraphs 14 & 15 as under:

"14.In the light of the law laid down by the Supreme Court in Oriental Insurance Co. Ltd. Vs. Siby Geogre (Supa) the legal position on the issue that emerges is that the law laid down by the Supreme Court in Pratap Narain Singh Deo and in Valsala K. continuous hold the filed and not the view laid down in *Mabasir Ahmed and Mohd. Nasir*. In other words, the binding precedent on the issue in question would be the law laid down in Pratap Narain and Valsala K. and not what is laid down in Musabir Ahmed and Mohd. Nasir, which is declared as per incurium.

15. The law laid down in Pratap Narain Singh Deo and Valsala K. (Supra) 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."

19. In view of the aforesaid factual matrix of the case, it is held that the claimants shall be entitled for the interest @ 12% from the date of accident till the date of payment is made. The judgment relied upon by the insurance company in the matter of *Manju Sarkar* (supra) is

of no help to the insurance company in view of the judgment of the Hon'ble Supreme Court in the matter of *Pratap Narain Singh Deo* (supra).

20. Thus, on the basis of aforesaid discussions, it is held that the Commissioner was justified in fastening liability on the insurance company for payment of compensation to the claimants. However, it was not justified in awarding conditional interest on the awarded amount.

21. In the result:

(i) MAC No.388/2017 filed by the claimants is allowed in part. The impugned judgment is hereby modified to the extent that the claimants shall be entitled for interest on the awarded amount @ 12% p.a. from the date of accident till realization. The Insurance Company/non-applicant No.3 shall deposit the amount of interest within a period of two months from today.

(ii) MAC No.1758/2016 being without any substance is hereby dismissed.

The substantial questions of law framed in the aforesaid appeals stand answered in the above terms.

Sd/
(**Gautam Chourdiya)**
Judge

Khan