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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 200 of 2015

1. Smt.Niroo Dhivar (Dhimar), W/o Late Krishna Kumar Dhivar Aged Aged About 23 Years,

2. Rahul Kumar Dhivar (Dhimar), Aged About 2 and half Years S/o Late Krishna Kumar Dhivar (Dhimar) Appellant No.2 Minor Through Mother Smt. Niroo Dhivar Dhimar W/o Late Krishna Kumar Dhivar

Both are R/o Village Teligundra, Police Station Ranitarai, Tahsil Patan, District Durg C.G.

---- Appellant

Versus

1. M/s Chandrashekhar Sahu, A Grade Vidhut Thekedar, R/o 39, Vivekanand Nagar, Borsi Road, Durg, District Durg, C.G.

2. Chhattisgarh State Electricity Distribution Compan Through Junior Engineer, Distribution Center Patan Division Durg, District Durg, C.G.

3. The Oriental Insurance Company Limited, Divisional Manager, Rajendra Park Chowk, G.E. Road, Durg, District Durg, C.G.

---- Respondents

For Appellants	Shri N.S. Dhurandhar, Advocate.
For Respondent	Shri H.P. Agrawal & Shri N.K. Vyas.

Hon'ble Shri Justice Gautam Chourdiya

Order On Board

24/10/2018

1. Present is an appeal by the claimants challenging the award dated 16.07.2014 passed by the Commissioner Workmen's Compensation Act, Labour Court, Durg, C.G. in new case No.87/WC Act/2012 Fatel.

2. The appeal is admitted for hearing on the following substantial

question of law:

> "Whether the Commissioner (Compensation) was justified in not granting interest upon awarded amount of compensation from the date of accident?"

3. As per claim petition filed by the claimants who are widow and minor son of deceased Krishna Kumar @ Juganu Dhivar. The deceased was in the employment of Respondent No.1. On 10.09.2012, the deceased on the instructions of respondent No.1 was doing maintenance of the electric line of respondent No.2. However, due to electrocution the deceased died. The claimants filed a claim petition stating that the deceased was at the time of accident 23 years of age, earning Rs.4,500/- per month and as such they are entitled for compensation to the tune of Rs.4,99,887/- 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 award dated 16.07.2014 allowed the claim application and ordered for payment of Rs. 3,10,744/- as compensation to the claimantsm, fastening the liability on the Insurance Company/Respondent 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 two months then the amount shall carry interest @ 12% from the date of accident till deposit of

the same.

5. It is this award which is under challenge in the present appeal.

6. Counsel for the appellants submits that once when the accident is admitted, the death of the deceased is admitted and the employment part is also admitted, 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.

7. The said contention of the counsel for the appellants has been opposed by the counsel for respondents 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 it should have been at the prevailing rate i.e. 6% to 7% per annum. So, the award dated 16.07.2014 passed by the Commissioner Workmen Compensation Act is legally correct.

8. 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-
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> (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;"

9. 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. The facts of the case clearly reflect that there is an admission on the part of the respondents so far as the accident, the death of the deceased and also the employment are concerned.

10. On the aforesaid admitted factual position, 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.

11. 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 Bench 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 :
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> > "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:
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> > > "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."

12. In view of the aforesaid factual matrix of the case, the substantial question of law so far as the non granting of interest to the claimants stands answered in the negative holding that the claimants shall be entitled for the interest @ 12% from the date of accident till the date of payment is made. The impugned award dated 16.07.2014 thus stands modified to the aforesaid extent. The liability of payment of interest shall be upon the Insurance Company i.e. respondent no.3 which in turn shall deposit the amount within a period of two months from today.

13. With the aforesaid modification in the impugned award, the appeal stands allowed.

Sd/-
Gautam Chourdiya
Judge

Akhilesh