

HIGH COURT OF CHHATTISGARH, BILASPUR**Order Reserved on 27/06/2018****Order Delivered on 06 /08/2018****MAC No. 36 of 2013**

Manohar Pal S/o Dukalharam Aged About 20 Years R/o Quarter No. 17,
Kurmipara, Village Surajpura, Tahsil- Bhatapara, Distt- Bhatapara –
Balaudabazar, Chhattisgarh.

---- Appellant**Versus**

1. M/s Siyaram Daal Mill, Surajpura Road, Bhatapara, Distt- Bhatapara –
Balaudabazar, Chhattisgarh.
2. The Oriental Insurance Company Ltd. Divisional Office No. 1, Madina
Manzil, Jail Road, Post And Distt. Raipur., C.G.

---- Respondents

For Appellant : Shri Malay Kumar Bhaduri, Advocate.

For Respondents : Shri Pankaj Agrawal, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu**CAV Judgment**

1. This appeal has been filed by the appellant/claimant under the provisions of Section 30 of the Employees Compensation Act, 1923 (for short hereinafter called "The Act") (prior to 18.01.2010 known as Workmen's Compensation Act) against the impugned award dated 26.11.2012 passed by the Commissioner for Employees Compensation Act, Labour Court No. 2, Raipur, C.G in Case No.185/ WC Act/ 2012 Non-fatal.

2. By impugned award the Commissioner allowed claim petition filed by the injured appellant and awarded a total sum of Rs. 3,76,320/- considering that the appellant/claimant sustained 80% disability in accident which took place during the course of his employment. The Commissioner further awarded 12 % interest from the date of accident till its realization in case the amount of compensation is not deposited by respondent No.2 Insurance Company within a period of one month from the date of passing of award.

3. The appellant/claimant challenged the impugned award on grounds that the Commissioner had not awarded interest at the rate of 12% per annum on the awarded amount as provided under Section 4 A of (Employee's Compensation Act, 1923) and further that the appellant/claimant is also entitled for penalty as provided under Section 4 A of the Employees Compensation Act, 1923.

4. The appeal preferred by the appellant/claimant has been admitted by this Court on following substantial question of law :-

1. Whether the learned Commissioner for Workmen's Compensation was justified in holding loss of earning capacity of the appellant to the extent of 80 % only ?
2. Whether the learned Commissioner for workmen's compensation was justified in not awarding interest in terms of Section 4 A of the Employee's Compensation Act, 1923 ?”

5. Learned counsel appearing for the claimant conceded that he is pressing only Question of Law No.2 which relates to awarding of interest under the provisions of Section 4 A of the Act, 1923.

6. Brief facts of this case are that the appellant was employed with respondent No.1 as skilled labour. On 18.03.2011 when appellant was working in place of his employment he met with an accident at about 5 :00 P.M. and his left leg came in contact with “Warm Machine” due to which, his left leg got imputed from knee and bones were also fractured. He pleaded that at the time of accident he was 20 years of age and receiving salary of Rs. 3,575 /- from Respondent No.1, who is his

employer. The appellant/claimant further pleaded that during the time of accident working place and employees of respondent No.1 was insured with respondent No.2 under the provisions of Workmen's compensation Insurance Policy.

7. Respondent No.1 did not appear even after service of notice and thus he was proceeded ex-parte. Respondent No.2 denied all the averments made in claim petition by the appellant and further stated that the claim of appellant, that he sustained injury in an accident occurred during the course of employment is concocted and calculation made with regard to the payment of compensation appears to have been on higher side and, therefore, company is not liable for payment of the same. The Commissioner after conclusion of the proceedings and trial of the case awarded an amount of Rs. 3,76,320/- with the default interest at the rate of 12 % per annum from the date of accident till its realization, if the amount of compensation awarded by the Commissioner is not paid/deposited within one month from date of passing of award.

8. Learned counsel appearing for the appellant submits that he is pressing only Question of Law No.2 and not pressing his appeal so far as it relates to Question of Law No.1. In view of Question of law No.2 he submitted that the Commissioner has not awarded interest in terms of Section 4 A of the Act of 1923. To appreciate the arguments of appellant it will be helpful to consider the provisions of Section 4 A of the Act of 1923. Section 4 A reads as under :-

'4 A. Compensation to be paid when due and penalty for default.-:

1. Compensation under section 4 shall be paid as soon as it falls due.
2. In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts, and, such payment shall be deposited with the Commissioner or made to the "employee" as the case may be, without prejudice to the right of the "employee" to make any further claim.

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; and
- B- If, in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears, and interest thereon pay a further sum not exceeding fifty per cent of such amount by way of penalty:

4. Provided that an order for the payment of penalty shall not be passed under clause (b) without giving a reasonable opportunity to the employer to show cause why it should not be passed.'

9. Learned counsel appearing for the appellant submits that the provision as provided under Section 4 (A) (3) are mandatory in nature and, therefore, the respondent becomes liable for payment of interest as provided under Section 4 (A) (3) as soon as one month is completed from the date of accident if compensation is not paid within that period.

10. Learned counsel for the appellant placed reliance on the decision of this Court passed in the matter of **Smt. P. Narayanamma Versus General Manager South East Central Railway, Bilaspur**, reported in **2013 (2) C.G.L.J. 410 (DB)**.

11. Per contra learned counsel appearing for respondent No.2 have supported the award passed by the Commissioner and submitted that appellant is not entitled to claim interest from the date of accident or after completion of one month from the date of accident and the Commissioner has rightly awarded compensation and submitted that he will be entitled for interest only from the date of passing of award

as held by the Commissioner. Respondent No.1 did not appear even after service of notice.

12. I have heard learned counsel for parties and perused the records.

13. Considering the arguments raised by the counsel appearing for the appellant in the light of the judgment passed by this Court in the matter of **Smt. P. Narayananamma Versus General Manager South East Central Railway, Bilaspur**, (Supra) Their Lordships while considering the 4 Judges Bench decisions of Hon'ble Supreme Court in the matter of **Pratap Narain Singh Deo Versus Srinivas Sabata and Anr.** reported in **1976 (1) SCC 289** & decision rendered in **Kerala State Electricity Board Versus Valsala K and Anr.**, reported in **1999 (8) SCC 254** have held that workman became entitled to get compensation the moment he suffers personal injuries and it is the date of accident on which, the amount of compensation is liable to be paid to the injured workmen. Their Lordships have further held that the liability to pay interest on the sum in terms of Section 4 A (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. In the case in hand admittedly accident occurred on 18.03.2011 at 5:00 P.M but the respondents have not paid any compensation to the appellant/claimant within one month from the date of accident but have deposited the amount of compensation only after passing of the impugned award by the Commissioner.

14. The payment of compensation in Act of 1923 is on employer and he has to compensate the injured employee immediately. The provisions of Section 4 is mandatory in nature but the employer failed to comply the same.

15. The Commissioner committed error in not awarding any interest to appellant as provided under Section 4 A (3) of the Act of 1923, which is automatic when employer fails to deposit compensation within one month from date of accident.

16. In view of the above the appellant/claimant is entitled for the interest @ 12% on awarded amount of Rs. 3, 76, 320/- from 18.03.2011 till its realization.

17. Now, the next question emerges for consideration of this Court is that, which respondent will be liable for payment of the interest as awarded above under the provisions of 4 A (3) of the Act of 1923. Which is consequential to answer of Question No.2.

18. Learned counsel for the appellant submits that as respondent No.2 is liable for payment of compensation amount and, therefore, he is also be liable for payment of interest amount under the provisions of Section 4 A (3) of the Act of 1923.

19. Learned counsel appearing for respondent No.2 opposes the arguments raised by counsel for the appellant and would submit that liability to pay penal interest is on employer respondent No.1. Considering rival submissions of the counsels and also considering the provisions of Section 4 A (3) wherein the employer has been made liable for payment of interest in default of not paying the amount within one month from the date it fell due. From reading the provisions of Section 4 (A) (3) of the Act, 1923 it is crystal clear that it is the liability of employer to pay compensation. Further in Section 3 (a) also it is specifically mentioned as "direct that the employer shall".

20. I have perused the workmen's Compensation Insurance Policy Ex. P-6 in which it has been mentioned that the Insurance under this policy is extended to cover risks as per the forms attached. On a bare perusal of the forms attached to the policy there is a clause of endorsement in which, it has been mentioned as *"it is hereby understood and agreed that the cover provided under this policy shall not extend to indemnify the insured/insureds in respect of any interest and/or penalty, which may be imposed on him/them or account of his /their failure to comply with the requirements laid down under the Workmen's Compensation Act, 1923 and subsequent amendments of the said Act"* The Workmen's Compensation Insurance Policy taken by respondent No.1 is a contract of insurance entered into between the employer i.e. respondent No.1 and insurer i.e. respondent No. 2 and under this policy as per agreed clause it is mentioned insurer shall not be liable to indemnify

the insured in respect of any interest on account of his failure to comply with the requirements of Section 4-A (3) of the Act. The Hon'ble Apex Court in the matter of **P. J. Narayan Versus Union of India and Ors.** reported in **2006 (5) SCC 200** while dealing with almost identical issue has held that there is no statutory liability on the insurance company. The statutory liability under the Workmen's Compensation Act, 1923 is on employer. It has been further held that in absence of any statute to that effect, insurance companies cannot be forced by courts to take on liabilities which they do not want to take on. Similarly, in the matter of **New India Assurance Co. Ltd. Versus Harshadbhai Amrutbhai Modhiya and Anr** reported in (2006) 5 SCC 192 the Hon'ble Supreme Court has held that the employer shall be liable to pay interest amount to the claimants under the provisions of Section 4 A (3) of the Act, 1923.

21. Considering the aforementioned law laid down by the Apex Court in the matters of **P. J. Narayan Versus Union of India and Ors & New India Assurance Co. Ltd. Versus Harshadbhai Amrutbhai Modhiya and Anr** (supra) also considering the conditions mentioned in the Insurance Policy wherein specific exclusion of the Insurance Company from the liability to pay interest or penalty has been made, this Court is of the considered opinion that the Insurance Company cannot be saddled with the liability to pay interest under the provisions of Section 4 A (3) of the Act, of 1923.

22. Substantial Question of Law No.2 is answered accordingly.

23. In view of the above the appeal is allowed in part. The appellant is entitled for the interest @ 12 % per annum on awarded amount of compensation from the date of accident i.e. 18.03.2011, till its realization from respondent No.1 employer.

24. No order as to costs.

Sd /-

(Parth Prateem Sahu)
Judge