AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 71 of 2018

1. Shanti Chaudhary Wd/o Late Jaikumar @ Jangi Chaudhary, Aged About 35 Years.
2. Sunil Chaudhary S/o Late Jai Kumar @ Jangi Chaudhary, Aged About 17 Years.
3. Santlal S/o Late Jai Kumar @ Jangi Chaudhary, Aged About 15 Years.
4. Ramchandra S/o Late Jai Kumar @ Jangi Chaudhary, Aged About 11 Years.

   Appellants No.2 to 4 are Minor Through Their Natural Guardian I.E. Mother Shanti Chaudhary.

   All are R/o Rajkishore Nagar, Police Station - Sarkanda, Distt. Bilaspur Chhattisgarh.

---Appellants

Versus

1. Krishna Kumar Gupta S/o Shri Shrinath Gupta, Aged About 35 Years, R/o Ward No.27, Mayapur, Tahsil Ambikapur, Distt. Surguja Chhattisgarh. (Owner Mahindra Pick Up No. U P 62 T / 1070).
2. The Division Manager The Oriental Insurance company Limited, Near Bus Stand, Bilaspur, Distt. Bilaspur Chhattisgarh. (Insurer Mahindra Pick Up No. U P 62 T /1070, District : Bilaspur).

---Respondents

For appellants	:	Ms.Nita Choubey, Advocate.
For respondent No.2/ Insurance Company.	:	Shri Pankaj Agrawal, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

24/01/2018

1. Present is an appeal by the claimants under Section 30 of the Workmen Compensation Act, 1923 (for short, the Act) against the award dated 12/07/2017 passed by the Commissioner, Workmen Compensation-cum-Labour Court, Bilaspur in case No.13/ECA/Coc-I-B/2012 (F claim).

2. The limited question of law involved in the instant case is whether the claimants in the instant case would had been entitled for interest from the date the amount fell due or whether it would be in the form of penal interest as has been awarded by the learned Labour Court.

3. Before proceeding further, it would be relevant at this juncture to refer to Section 4-A of the Act. For ready reference, Section 4-A of the Act is reproduced hereinunder:

> **"4A. 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.
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> (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; and
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> (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:
>
> 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."

4. From a plain reading of the aforesaid provision of law itself it is so evident that duty has been casted upon the employer to pay compensation to the injured or the family members of the deceased as the case may be immediately from the date of accident. What is reflected from Sub Section-2 is in the first place, the employer has to accept the accident and his liability for payment of compensation and on that basis he has to make payment either to the workmen or has to deposit with the Commissioner. Sub section-3 of Section 4-A of the Act envisages a provision where in the event the employer defaults in payment of compensation, the claimants can be compensated by the Commissioner with awarding interest as also penalty in case if there was no proper justification for the delay in making good the compensation to the claimants.

5. What is also paramount to be considered at this juncture is that the entire act itself is a beneficial legislation and Sub section-3 of Section 4-A has been enacted as a beneficial provision in favour of the employee with a sole intention to deter the employer from taking unnecessary pleas and avoiding payment of compensation which is otherwise payable and due to the claimants. This view stands fortified from the decision of MP High Court reported in 1995 (1)LLJ-MP-837, Divisional Forest Officer Vs. Vaijanti Bai.

6. If we read clause-'a' of Sub section 3 of Section 4A, it clearly reflects or mandates that where an employer has defaulted in paying compensation, the Commissioner shall direct the employer to pay in addition to the arrears interest on the said amount. Likewise, clause- 'b' of sub section 3 of Section

4A stipulates that Commissioner shall, in the event of reaching to the conclusion that there was no justification for the delay caused in payment of compensation by the employer, the Commissioner shall order for payment of penalty which may not exceed 50 percent of such amount payable in addition to the arrears and interest awarded.

7. The act is a social security legislation. The object of enactment of the said Act was to provide speedy, cheaper and efficient mechanism in determining the payment of compensation due to an injured or family members of the deceased. This being the reason, sub section 4A was required to be enacted by amendment made in the year, 1959, holding that the compensation under Section 4 shall be paid as soon as it falls due and the latter part of the Section deals with the event of the payment not being made by the employer promptly.

8. The Supreme Court in case of Ved Prakash Vs. Premi Devi, 1997(8)SCS 1, dealing with the issue of payment of interest under Section 4A (3)(a) has held that so far as interest under this provision is concerned, it is almost automatic, once default in payment of compensation is committed by an employer beyond permissible limit of one month, the amount payable would automatically attract interest and the Commissioner shall have to pass an order granting interest in such circumstances.

9. The Supreme Court as early as in case of Pratap Narayan Singh Deo Vs. Srinivas Sabata,1976 (1)SCC 289 held that the compensation becomes payable on the date of accident and not on the date of determination of

amount by the Commissioner. Again, the Supreme Court in case of Oriental Insurance Co. Ltd. Vs. Khajuni Devi, 2002 (10)SCC 567 while dealing with the issue of relevant date from which the interest and penalty would be payable, has held that the relevant date for determining the rights and liability of parties is concerned, is the date of accident and not the date of adjudication of the claim. Similar was the view of the Supreme Court in one of its earlier decision in Kerala SEB Vs. Valsala K, 1999 (8)SCS 254.

10. In view of the aforesaid legal position as has been laid by the Supreme Court in the aforesaid judicial precedents, this court has no hesitation in reaching to the conclusion that whenever the interest is to be awarded, the same shall have to be awarded from the date of accident i.e. the date on which it fell due. Therefore, the claimants in the instant case are entitled for interest from the date the amount fell due which is the date of accident in the instant case i.e. 01/10/2009.

11. The imupgned award thus stands modified to the extent that the amount of compensation shall carry interest @ 12% from the date of accident i.e. 01/10/2009 onwards. It is expected that the Insurance Company shall pay the interest part also at the earliest.

12. The appeal stands allowed and disposed off.

Sd/-

(P. Sam Koshy)
JUDGE

Sumit