IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

213 FIRST APPEAL NO. 639 OF 2004

. Gopinath s/o Ankush Pole
Age: 23 years, Occu.: Nil,
R/o.Sumthana, Ta.Ahmedpur,
Dist.Latur. ..Appellant

VERSUS

1. Nem Virchand Soni
Age: – years, Occu.: Owner,
R/o.R.No.115, New Anant Bhawan,
Ist Floor, 257/65, Narsi-nath,
Street, Mumbai 09.

2. National Insurance Company,
Branch Ghatkopar (E), through
it's Manager, Hanuman Chauk,
Latur. 1 ..Respondents

...
Advocate for Appellant : Mr.S.S.Manale
Advocate for Respondent No.2 : Mr.P.P.Bafna (absent)
...

CORAM : M.S.SONAK, J.
DATE : 29.1.2018

ORAL JUDGMENT:-

1) Although, on the date of admission of this appeal, no specific substantial question of law was framed, the

learned counsel for the appellant points out that in this case, the interest awarded is in breach of provisions of Section 4-A of the Employees' Compensation Act, 1923. Accordingly, this appeal is considered on the following substantial question of law:-

a) Whether the Commissioner erred in awarding interest @ only 9% p.a. from the date of accident ? or whether in terms of provisions of Section 4-A of the Employees' Compensation Act, 1923, the interest should have been awarded @ 12% p.a. from the date of the accident ?

2) The respondents though served are not present.

3) Mr.S.S.Manale learned counsel for the appellant has made submission on behalf of the appellant. He has pointed out that the provisions of Section 4-A of the Employees' Compensation Act, 1923. He has also placed reliance on the decision of this Court in *Subhash Gajananrao Tiwade & anr. Vs. National Insurance Co.Ltd. & anr. [**2015 (1) Bom.C.R., 358**]* in support of his

contention that interest ought to have been awarded @ 12% p.a. and that too from the date of accident.

4) The operative portion of the impugned award dated 12.9.2003 reads as follows:-

*“**ORDER***

Application is allowed as under:

1. The opponent no.1 & 2 are held jointly and severally liable to pay the compensation amount of Rs.2,00,435/- with simple interest @ 9% p.a. from the date of accident i.e. 02.10.2001 till its full realisation to the appellant.

2. The opponents no.2 shall bear it's own costs.

3. The opponents no.1 to pay costs of this litigation to the tune of Rs.1000/- to the applicant.

4. Judgment and order pronounced in open Court in presence of Adv.Shri Poul.

Sd/-
Date: 12.09.2003 *(V.S.Padalkar)*
Place: Latur. *Commissioner,*
For W.C. Act & Judge
Labour Court, Latur.”

5) The only question is whether the Commissioner erred

in awarding interest @ 9% p.a. instead of 12% p.a. as claimed by the claimant.

6) Section 4-A of the Employees Compensation Act, 1923 reads as follows:-

"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.

(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:

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."

7) Sub-Section 3 of Section 4-A very clearly provides that where any employer is in default in paying the compensation due under this Act within one month from the date it fell down, the Commissioner may direct the

employer that, in addition to the amount of the arrears, simple interest thereon @ 12% p.a. or 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.

8) In this case, taking into consideration the provisions of Section 4-A(3) of the Employees' Compensation Act, there was no justification on the part of Commissioner to award interest only @ 9% p.a. instead of 12% p.a. Accordingly, the question will have to be answered in favour of the appellant.

9) This Court in *Subhash Gajananrao Tiwade & anr*. (supra) has held that compensation is payable from the date of the accident and that too with interest @ 12% p.a.

10) For the aforesaid reasons, the impugned order is

modified and the direction for payment of interest @ 9% p.a. is substituted by direction for payment of interest @ 12% p.a.

11) The appeal is allowed in the aforesaid terms.

12) The respondents are directed to pay the differential amount within eight weeks from today.

13) The appeal is disposed of in the aforesaid terms.

[M.S.SONAK, J.]