

HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

C.M.A.No.109 of 2006

JUDGMENT:

This Civil Miscellaneous Appeal is filed by the Insurance Company against the order dated 28.07.2005 passed in WC No.4 of 2004 by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Karimangar.

The case before the lower Court in WC No.4 of 2004 is filed by the legal heirs of one J. Sailu, who was employed as a driver of lorry bearing No.ATS-2779 under first opposite party. The said lorry was insured with second opposite party. Stating that the deceased met with a fatal accident on 04.04.1999, the present application was filed claiming compensation of Rs.4,30,560/- with interest and costs.

The first opposite party did not appear and was set *ex parte*. The second opposite party denied all the allegations and contested the case. For the applicants, two witnesses were examined as PWs.1 & 2 and three documents were marked as Exs.A.1 to A.3. For second opposite party, RW.1 was examined and a copy of insurance policy was marked as Ex.R.1. After considering the material on record, the Commissioner came to a

conclusion that opposite parties 1 & 2 are jointly and severally liable to pay the compensation of Rs.2,15,280/- with interest and costs. It is this order that is now assailed in the appeal.

This Court heard Smt. S.A.V. Ratnam, learned counsel for the appellant/insurance company and Sri Ram Chandar Rao Vemuganti, learned counsel for the respondents/ applicants.

The two essential points that were urged by the learned counsel for the appellant was that the application was barred by limitation as it is not filed within two years from the date of the accident and that interest was wrongfully awarded by the lower Court. These are the grounds urged in the appeal as ground Nos.3 to 6.

The learned counsel for the appellant argued that the accident occurred on 04.04.1999 and that the application, which is dated 28.09.2002, is hopelessly barred by limitation. She argued that no application was filed to condone the delay in the lower Court and that she has specifically pleaded the same in ground No.3 of the grounds of appeal. Hence, her argument is that in the absence of a delay condonation application and an order condoning the delay, the appeal should have been rejected *in limine*.

However, an examination of the lower Court record reveals that WC MP No.1 of 2003 is filed before the Commissioner to condone the delay in filing the application. The Commissioner by his order dated 01.07.2004 condoned the delay in filing the application. It is also noticed from the order dated 01.01.2004 that the present appellant viz., the National Insurance Company Limited was also represented by a counsel in the lower Court and a copy of the order was also sent to him. Therefore, the argument of the learned counsel that no application is filed in the lower Court or that the delay was not condoned is factually not correct. A reading of the record shows that a formal application was made on 28.09.2002 to condone the delay of one year five months and 25 days. The second respondent-insurance company also filed a counter dated 27.09.2003 opposing the application. The same was considered and the delay was condoned. Therefore, this Court finds that the contention of the learned counsel for the appellant is totally incorrect.

The other ground that survives for consideration in this case is about interest. The submission of the learned counsel for the appellant is that interest is not payable. In fact, the learned counsel sought time for producing the

case law on the question of interest including the date from which the interest is payable, but she ultimately did not do so.

The learned counsel for the respondents/applicants on the other hand pointed out that the Workmen's Compensation Act as amended provides the payment of interest and that ***Pratap Narain Singh Deo v. Srinivas Sabata and another***¹, which is the judgment of five-judges states that compensation is payable from the date of the accident. He also pointed out that the decision in ***Ved Prakash Garg v. Premi Devi and others***² and all other subsequent judgments have clearly laid down that interest is payable from the date of the accident till the date of the realization. This Court has already held in more than one judgment relying on judgments of the Hon'ble Supreme Court of India including ***National Insurance Co. Ltd.V Mubasir Ahmed***³ that interest is payable from the date of the accident till realization, as per the law on the subject.

This Court also notices that the lower Court considered all the aspects while awarding interest and in fact, award of interest against the appellant is from the date of the application till the date of deposit only.

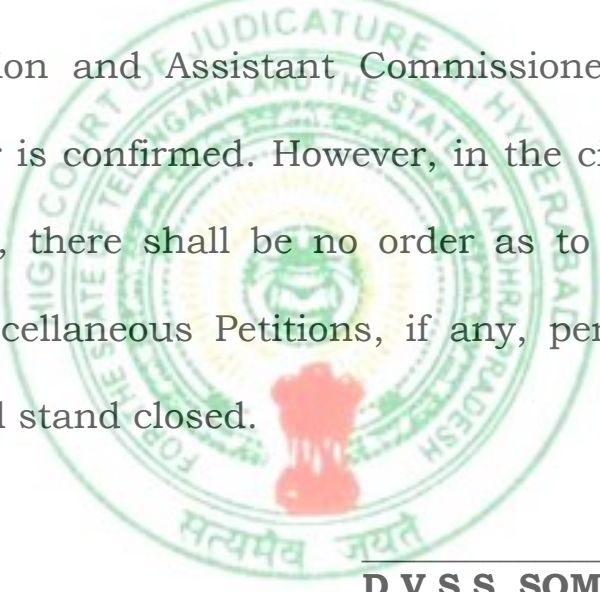
¹ AIR 1976 SC 222

² AIR 1997 SC 3854

³ 2007 (2) SCC 349

The delay in filing the application disentitled the applicants from claiming interest for the period from the date of accident till the date of the application. Therefore, on an overall consideration of the entire evidence and the legal submissions made, this Court holds that there are absolutely no merits in the appeal.

Accordingly, the Civil Miscellaneous Appeal is dismissed. The order dated 28.07.2005 passed in WC No.4 of 2004 by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Karimangar is confirmed. However, in the circumstances of the case, there shall be no order as to costs. As a sequel, miscellaneous Petitions, if any, pending in this appeal shall stand closed.



D.V.S.S. SOMAYAJULU, J

Date: 16.04.2018
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