

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR
M. A. (C) No. 696 of 2013

1. Smt. Prem Bai Wd/o Late Anand @ Raju Mahilang, Aged About 23 Years
 2. Ku. Chitralekha D/o Late Anand @ Raju Mahilang, Aged About 6 Years Minor
 3. Rahul S/o Late Anand @ Raju Mahilang, Aged About 3 Years Minor
 4. Tejkaran S/o Late Anand @ Raju Mahilang, Aged About 1 ½ Years Minor
 5. Smt. Pawan Bai W/o Dhelu Ram Mahilang, Aged About 30 Years
 6. Dhelu Ram Mahilang S/o Late Kheduram Aged About 54 Years,
- Appellant No. 2 to 4 are minor through natural gurdian mother
 appellant No. 1-Prembai

All R/o Tatibandh Basti, Raipur, Tahsil Raipur, Civil and Revenue
 District Raipur (C.G.).

---- Appellants

Versus

1. Madanlal Sahu S/o Late Chaituram Sahu, R/o Basti Tatibandh, Raipur, Tahsil Raipur, Civil and Revenue District Raipur C.G.
2. Ifko Tokiyo General Insurance Company Limited Through Manager, Ifko Tokiyo General Insurance Company Limited, Ravi Bhawan, G.E. Road Raipur, Tahsil Raipur, Civil and Revenue District Raipur C.G.

---- Respondents

For Appellants	: Mr. Malay Kumar Bhaduri, Advocate
For Respondent No.1	: None
For Respondent No.2	: Mr. Amrito Das, Advocate

Hon'ble Shri Justice Parth Prateem Sahu
Judgment On Board

13/05/2019

1. This appeal has been filed by the appellant/claimants under the provisions of Section 30 of the Employees Compensation Act, 1923 (hereinafter referred to as "Act of 1923") (prior to 18/01/2010 known as Workmen's Compensation Act) against the impugned award dated 05/03/2013 passed by Commissioner for Employees' Compensation Act, Labour Court No.2, Raipur, C.G (hereinafter referred to as 'Commissioner') in new Case No.112/ WC Act/ 2012 Fatal (Old Case No.124/WC Act/2009F, whereby Commissioner awarded a total sum of Rs.4,19,840/- as compensation and directed for payment of interest @ 12% per annum, if the amount of compensation awarded is not deposited within two months.
2. Brief facts for disposal of this appeal are that Anand alias Raju Mahilang working as a driver of Tata Sumo Jeep bearing registration No. CG-04-H-2290 (hereinafter referred to as 'offending Jeep'). On 19/03/2009, when Anand alias Raju Mahilang was travelling on offending vehicle as driver under the employment of respondent No.1/non-applicant No.1 and going to Jod (Odisha) from Raipur, at that relevant time, near village Nuwadih Gudasahi, District Qwejhar (Odisha) on National Highway No.6, one unknown vehicle dashed

offending jeep driven by Anand alias Raju Mahilang, due to which, he sustained severe injuries on his person and thereafter he succumbed to those injuries on spot. Matter was reported to Police Station, Telki District Qwejhar (Odisha).

3. On account of death of Anand alias Raju Mahilang, claimants who are widow, minor children and parents of deceased have filed an application under the provisions of Section 22 of the Act of 1923 claiming Rs.4,31,000/- as compensation along with 50% penalty and 12% interest from the date of accident.
4. Respondent No.1/non-applicant No.1-employer submitted reply to claim application under Section 22 of Act of 1923 and admitted that deceased Anand @ Raju Mahilang was under his employment and he was being paid Rs.4,000/- as salary. It has been further admitted that at the time of accident, deceased Anand alias Raju Mahilang was driving the offending vehicle owned by him. It has been lastly pleaded that offending vehicle was insured with non-applicant No.2/respondent No.2 for a period from 17/03/2009 to 16/03/2010 and as offending vehicle was insured with non-applicant No.2/respondent No.2, therefore, liability for payment of compensation, if any, is on the Insurance Company.
5. Respondent No.2/non-applicant No. 2 submitted reply to claim application and pleaded that appellants are not dependants on the deceased Anand alias Raju Mahilang and denied that deceased was under the employment of respondent No.1 and driving the vehicle

owned by him. It was further pleaded that on the date of accident, deceased Anand alias Raju Mahilang was not possessing valid and effective driving licence and there was no valid fitness and permit with the owner of vehicle. Issuance of insurance policy for a period from 17/03/2009 to 16/03/2010 for offending Jeep has been admitted.

6. Learned Commissioner on appreciation of pleadings and evidence available on record awarded a total sum of Rs.4,19,840/- as compensation and directed that if the amount of compensation is not deposited within two months of the date of award, the amount under award will carry interest @ of 12% per annum.
7. Learned counsel appearing for appellants submitted that Act of 1923 provides that compensation to be paid when due and penalty for default. He refers to the provisions of Section 4A(1) as well as provisions of 4A(3)(a). He also relied upon the judgment rendered by Hon'ble Supreme Court in the matter of **Saberabibi Yakubbbhai Shaikh v. National Insurance Co. Ltd. And others**¹.
8. Learned counsel appearing for respondent No.2 supported the award.
9. I have heard learned counsel appearing for parties and perused entire record carefully.
10. The question on which this appeal is admitted is whether the Commissioner was justified in not awarding interest from the date when it became due?

¹ 2014 AIR SCW 1584

11. Reading of provisions of Section 4A of the Act of 1923, it is very clear that compensation under Section 4 shall be paid as soon as it falls due and the word 'shall' has been used in Section 4A(1) of the Act of 1923.
12. The word 'fell due' has been considered by the Hon'ble Supreme Court in the matter of **Saberabibi Yakubbbhai Shaikh** (supra) after taking into consideration the judgment of four Judges Bench of Hon'ble Supreme Court in the matter of **Pratap Narain Singh Deo v. Srinivas Sabata**² as well as judgment passed in the matter of **Oriental Insurance Company Limited v. Siby George and others**³, Hon'ble Supreme Court has categorically held as under :-

11. Following the aforesaid judgments, this Court in Oriental Insurance Company Limited v. Siby George and others (supra) reiterated the legal position and held as follows:

“11. The Court then referred to a Full Bench decision of the Kerala High Court in United India Insurance Co. Ltd. v. Alavi and approved it insofar as it followed the decision in Pratap Narain Singh Deo (supra).

12. The decision in Pratap Narain Singh Deo (supra) was by a four-judge Bench and in Valsala K. by a three-judge Bench of this Court. Both the decisions were, thus, fully binding on the Court in Mubasir Ahmed and Mohd. Nasir, each of which was heard by two Judges. But the earlier decisions in Pratap Narain Singh Deo and Valsala K. were not brought to the notice of the Court in the two later decisions in Mubasir Ahmed and Mohd. Nasir.

13. In the light of the decisions in Pratap Narain Singh Deo and Valsala K., it is not open to contend that the payment of compensation would fall due only after the

² AIR 1976 SC 222

³ AIR 2012 SC 3144

Commissioner's order or with reference to the date on which the claim application is made. The decisions in Mubasir Ahmed and Mohd. Nasir insofar as they took a contrary view to the earlier decisions in Pratap Narain Singh Deo and Valsala K. do not express the correct view and do not make binding precedents.”

- 13.** In view of aforementioned law laid down by Hon'ble Supreme Court in the aforementioned cases, wherein in categorical terms, it has been held that interest is to be paid from the date of accident. If the facts and circumstances of the present case is considered, in the light of the law laid down by Hon'ble Supreme Court, Commissioner has committed gross illegality in awarding default interest. Meaning thereby that interest is made payable only when the amount of compensation awarded is not paid within a period of two months, which is not sustainable and it is hereby set aside.
- 14.** In the result, the appeal is allowed and appellants will be entitled for amount of Rs.4,19,840/- as awarded by Commissioner along with interest @ 12% per annum from the date of accident.

Sd/-

(Parth Prateem Sahu)
Judge