

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 343 of 2014

- Smt. Sangeeta Kushvaha W/o Late Rajesh Kushvaha Aged About 49 Years R/o Indira Sarovar, Mathrapara, Talabpar, Shani Mandir Ke Pass, Ward No. 30, Rajnandgaon C.G.

---- Appellant

Versus

- C.G. Rajya Bhandar Grih Nigam, Branch- Bhanupratappur, Tah. And Distt. Bhanupratappur, Through- Branch Manager.

---- Respondent

For Appellant	:	Shri KPS Gandhi, Advocate.
For Respondent	:	None.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

16/01/2019

1. This is claimant's appeal under Section 30 of the Employees Compensation Act against the order dated 31.1.2014 passed by Commissioner, Workmen Compensation Act, Labour Court, Rajnandgaon in Case No.28/WC Act Fatal/2012, awarding compensation of Rs.5,00,451/- in favour of the claimant with interest @ 12% per annum from the date of order till realization, in case the awarded amount is not deposited within one month from the date of order.
2. Learned counsel for the appellant submits that the Commissioner has not awarded interest and penalty as per Section 4A (3)(a) & (b) of the Employees Compensation Act. The interest awarded by the

Commissioner is from the date of order whereas it should have been from the date of accident. Further, the claimant has specifically sought relief of penalty of 50% but no award has been passed in this regard.

3. Heard learned counsel for the appellant and perused the material available on record.

4. This appeal has been admitted for hearing on the following substantial questions of law:

“1. Whether finding of the Commissioner for Workmen's Compensation (Labour Court, Rajnandgaon) in not granting the interest as per the provision prescribed under Clause (a) of sub-section (3) of Section 4A of the Employees Compensation Act, 1923, is perverse?

2. Whether under the facts and circumstances of the case, the Commissioner for Workmen's Compensation (Labour Court, Rajnandgaon) has committed an illegality in not awarding the penalty under Clause (b) of sub-section (3) of Section 4A of the Employees Compensation Act, 1923?”

5. With regard to interest part, Clause (a) of Sub section 3 of Section 4A of the Employee's Compensation Act reads as under:

“(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;”

6. A plain reading of the aforesaid statutory provision itself clearly reflects that if the employer or the Insurance Company committed a

default in making the payment of compensation to the dependents of the deceased employee, the said amount shall carry interest @ 12% per annum.

7. The said issue has already been considered by the Division Bench of this Court in the matter of ***Smt. P. Narayanamma Vs. General Manager, South East Central Railway, Bilaspur, 2013 (2) CGLJ 410***. Recently, a similar matter came up before this Court in MAC No. 291/2010 wherein also this Court in similar set of facts vide its order dated 06.10.2016 allowed the application and ordered for payment of interest from the date of accident till the date of payment. It would be relevant at this juncture to reproduce paragraph-8 & 9 of the judgment of this Court passed in MAC No. 291 of 2010 wherein certain earlier decisions in this regard have also been referred for further strengthening the opinion of this Court.

“8. The Division Bench in the said judgment, referring to some of the decisions of the Supreme Court in paragraphs 10 & 11 has held as under :

“10. The question, as to when the compensation becomes payable under the Act or in other words, when it falls due for being paid to employee concerned by his employer as provided in Section 4-A remains no longer res integra and stands already decided by four Judges Bench decision of the Supreme Court in the case reported in Pratap Narain Singh Deo (Supra). It is in this case, justice Shinghal, speaking through the Bench has held that an employer primarily becomes liable to pay compensation as soon as the personal injury is caused to the workman by the accident which arose out of and in the course of the employment. This is what was held by the Supreme Court in this case:

“It is wrong to contend that the compensation had not fallen due until it was settled by the Commissioner under Section 19 by his impugned order dated May 6, 1969. The employer became liable to pay the

compensation as soon as the personal injury was caused to the workman by the accident which admittedly arose out of and in the course of employment. There was no suspension of the compensation pending settlement. It was the duty of the appellant under Section 4A(1) of the Act, to pay the compensation at the rate provided by Section 4 as soon as the personal injury was caused to the respondent”

11. This view was reiterated by a three Judges Bench's decision of the Supreme Court in Kerala State Electricity Board and another Vs. Valsala K. and another (1999) 8 SCC 254 : 2000 ACJ 5 (SC), by following words:

3. A four judge Bench of this Court in Pratap Narain Singh Deo v. Srinivas Sabata and Anr. (1976) 1 SCC 289 : 1976 ACJ 141 (SC) speaking through Shinghal. J. has held that an employer becomes liable to pay compensation as soon as the personal injury is caused to the workmen by the accident which arose out of and in the course of employment. Thus, the relevant date for determination of the rate of compensation, is the date of the accident and not the date of adjudication of the claim.

9. Further, reliance is also on the decision of Supreme Court in case of *Oriental Insurance Co. Ltd. Vs. Siby George* 2012 ACJ 2126, the Division Bench again held in paragraphs 14 & 15 as under:

“14. In the light of the law laid down by the Supreme Court in *Oriental Insurance Co. Ltd. Vs. Siby George* (Supra) the legal position on the issue that emerges is that the law laid down by the Supreme Court in *Pratap Narain Singh Deo* and in *Valsala K.* continuously hold the filed and not the view laid down in *Mabasir Ahmed and Mohd. Nasir*. In other words, the binding precedent on the issue in question would be the law laid down in *Pratap Narain* and *Valsala K.* and not what is laid down in *Musabir Ahmed and Mohd. Nasir*, which is declared as per incurium.

15. The law laid down in *Pratap Narain Singh Deo and Valsala K. (Supra)* is that employer becomes liable to pay compensation as soon as the personal injury is caused to the workman in the accident which arise out of and in the course of employment and therefore the relevant date for payment of the compensation and for payment of interest upon it, if the compensation is not paid within one month from the date of accident, would be the date of accident and not the date of award of Commissioner. It is ruled that liability to pay interest at the rate of 12% on the sum in terms of the Section 4A(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.”

8. As regards imposition of penalty, the Commissioner has not passed any order on this point. As per clause (b) of sub-section (3) of Section 4A, 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 direct that the employer shall pay a further sum not exceeding fifty per cent of the awarded amount inclusive of interest by way of penalty, provided that the employer is given a reasonable opportunity to show cause why such an order should not be passed.
9. Thus, considering the facts and circumstances of the case, the manner in which the Commissioner has passed the impugned order, this Court is of the opinion that the matter needs to be remanded to the Commissioner for decision afresh on both the points of interest and penalty in light of the aforesaid observations by this Court, as expeditiously as possible, preferably within a period of four months from the date of receipt of record.

It is made clear that nothing in this order shall be construed as an expression of opinion on merits of the case including the substantial questions of law framed by this Court and the Commission to decide the case afresh on the issue of grant of

interest and penalty strictly in accordance with law.

10. Parties to appear before the concerned Commissioner on 15th February, 2019.

11. Registry to send back the record to the concerned Commissioner forthwith.

12. With the aforesaid observations, the appeal stands disposed of.

The amount, if any, deposited or paid shall be adjusted in the final order to be passed afresh by the Commissioner.

Sd/
(Gautam Chourdiya)
Judge

Khan