

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 310 of 2014**

1. Anusuiya Bai Netam Wd/o Late Gajendra Prasad Aged About 38 Years
2. Kumari Aarti Netam D/o Late Gajendra Prasad Aged About 21 Years
3. Aman Singh Netam S/o Late Gajendra Prasad Aged About 17 Years
4. Shrimati Sundari Bai W/o Late Lal Bahadur Aged About 71 Years
Appellant No.3 through his legal & natural guardian Smt. Anusuiya Bai.

All the appellants R/o Village Kudari, Gram Panchayat Kurudih, Tehsil Korba, Distt. Korba (CG)

---- Appellants/claimants

Versus

1. Ashok Kumar Mittal And Construction Company Through- Ashok Kumar Mittal, R/o Sitamarhi, Korba, Distt. Korba C.G.
2. Commissioner Municipal Corporation, Korba C.G.

---- Respondents

For Appellants	:	Shri SK Guha on behalf of Shri RS Baghel, Advocates.
For Respondent No.1	:	Shri Dharmesh Shrivastava, Advocate.
For Respondent No.2	:	Shri Rajendra Tripathi, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

11/02/2019

This appeal is by the claimants under Section 30 of the Workmen's Compensation Act, 1923 (in short "the Act") against the judgment dated 28.12.2013 passed by Commissioner, Workmen's Compensation Act-cum-Labour Court, Korba (CG) in Case No.52/WC Act/2010 Fatal, awarding compensation of Rs.2,11,800/- with simple interest @ 12% per annum from the date of judgment till realization if the said amount is not deposited within 30 days from the judgment.

02. As per averments in the claim petition, deceased Gajendra Prasad was working as Watchman under non-applicant No.1 Ashok Kumar Mittal & Construction Company, which was given contract of construction of residential houses at Ravishankar Shukla Nagar,

Phase-II, Korba by non-applicant No.2 Municipal Corporation, Korba. On 25.8.2010 at night while Gajendra Prasad was on his duty as a Watchman, he was murdered by some unknown person. As the death of Gajendra Prasad occurred during the course of his employment, the claimants, wife, children and mother of the deceased, filed a claim petition under Section 22 of the Act before the Commissioner seeking compensation.

03. The Commissioner considering the pleadings of the respective parties and the evidence adduced by them, vide impugned judgment granted compensation in favour of the claimants as mentioned above.

04. Learned counsel for the appellants/claimants has filed this appeal seeking enhancement of compensation on the following grounds:

(i) that age of the deceased has wrongly been considered by the Commissioner as 45 years whereas according to evidence adduced by the claimants, he was 40 years of age at the time of accident.

(ii) that the monthly income of the deceased has also been wrongly considered by the Commissioner as Rs.2500/- whereas as per evidence adduced by the claimants and even as per minimum wages, it should have been considered as Rs.3000/-.

(iii) that the Commissioner has also committed illegality in awarding interest @ 12% from the date of judgment if the amount of compensation is not deposited within 30 days from the date of judgment whereas it should have been from the date of accident till realization.

(iv) that the Commissioner has not imposed any penalty on non-applicant No.1 and as per provisions of the Act, 50% of the compensation amount should have been imposed as penalty on non-applicant No.1.

05. On the other hand, learned counsel for respondent/non-applicant No.1 submits that the Commissioner considering the overall facts and

circumstances of the case, the pleadings of the parties and the evidence adduced by them, has rightly assessed the age and income of the deceased. Further, non-applicant No.1 soon after the accident has already paid Rs.25,000/- to the family members of the deceased and therefore, the Commissioner was justified in not imposing any penalty on non-applicant No.1. The judgment impugned is strictly in accordance with law, warranting no interference by this Court.

06. Learned counsel appearing for respondent/non-applicant No.2 submits that no liability has been fastened upon non-applicant No.2 as the deceased was under the employment of non-applicant No.1. He has duly assisted the Court.

07. Heard learned counsel for the parties and perused the material available on record.

08. This appeal was admitted for hearing vide order dated 16.9.2015 on the following sole substantial question of law:

“Whether the quantum of compensation awarded is just and legal as the age of the deceased was stated to be 40 years, which was held to be 45 years?

09. As regards age of the deceased, according to the documents Ex.P/9 i.e. Postmortem report, filed and proved by the claimants themselves, his age comes to 45 years. The Commissioner believing the said evidence has rightly assessed the age of the deceased as 45 years.

10. For ascertaining whether the quantum of compensation is just and legal, certain other aspects i.e. income, interest and penalty are to be seen. So far as income of the deceased is concerned, the Commissioner considered the same as Rs.2500/- which is definitely on the lower side in view of pleading and evidence of claimant Anusuiya Bai (AW-1), wife of the deceased. AW-1 has stated in her examination-in-chief in para-2 that the deceased was working as a Watchman and getting salary of Rs.3000/- from non-applicant No.1. In cross-

examination, she has reiterated the said fact. There is no contrary evidence adduced by the non-applicants. Therefore, looking to the evidence of AW-1 Anusuiya Bai, the minimum wages at the relevant time when the accident occurred i.e. in the month of August, 2010, the monthly income of the deceased can safely be taken as Rs.3000/-. Therefore, in view of age of the deceased, the applicable multiplier would be 211.79 as per Schedule IV under Section 4 of the Act. Accordingly, the total compensation comes to Rs.1,500 x 169.44 = 2,54,160/-.

11. So far as interest part is concerned, Clause (a) of Sub section 3 of Section 4A of the 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;”

A plain reading of the aforesaid statutory provision itself clearly reflects that if the employer 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. In the matter of ***Pratap Narain Singh Deo vs Srinivas Sabata & another, 1976 AIR 222***, the Hon'ble Supreme Court 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 and observed as under:

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. He failed to do so. What is worse, he did not even make a provisional payment under sub-section (2) of [section 4](#) for, as has been stated, he went to the extent of taking the false pleas

that the respondent was a casual contractor and that the accident occurred solely because of his negligence. Then there is the further fact that he paid no heed to the respondent's personal approach for obtaining the compensation. It will be recalled that the respondent was driven to the necessity of making an application to the Commissioner for settling the claim, and even there the appellant raised a frivolous objection as to the jurisdiction of the Commissioner and prevailed on the respondent to file a memorandum of agreement setting the claim for a sum which was so grossly inadequate that it was rejected by the Commissioner. In these facts and circumstances, we have no doubt that the Commissioner was fully justified in making an order for the payment of interest and the penalty.

12. Thus, the law laid down in *Pratap Narain Singh Deo (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.

13. In the present case, non-applicant No.1 soon after the accident paid Rs.25,000/- to the family members of the deceased against the death of the deceased and this has been admitted by the claimant Smt. Anusuiya Bai (AW-1). Therefore, considering the facts and circumstances of the case, this Court is of the opinion that the aforesaid amount of compensation shall carry simple interest @ 12% per annum from the date of claim petition i.e. 22.11.2010 till realization. However, there shall be no order as to imposition of penalty.

14. In the result, the appeal is allowed in part with modification in the impugned judgment to the extent that the claimants shall be entitled to compensation of Rs.2,54,160/- with simple interest @ 12% per annum from the date of claim petition i.e. 22.11.2010 till realization. Liability of

payment of compensation amount and the interest shall be of non-applicant No.1 as has been held by the Commissioner. However, in the facts and circumstances of the case, there shall be no order in respect of penalty. The substantial question of law stands answered accordingly.

Sd/

(Gautam Chourdiya)

Judge

Khan