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HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 31 of 2017**

- Mahendrakant Sahu S/o Shri R.R.Sahu, Aged About 60 Years, Prop. R.R.Construction, R/o Village Naardha, Post Office- Jamul, Bhilai, Distt. Durg, Chhattisgarh, Present Address- Plot No.70/06, Nehru Nagar East, Bhilai, District Durg, Chhattisgarh.

----Appellant**Versus**

1. Teerath Ram Sahu, Aged About 42 Years
2. Smt. Amreeka Bai W/o Shri Teerath Ram Sahu, Aged About 42 Years
3. Ku. Yamuna D/o Shri Teerath Ram Sahu, Aged About 16 Years Minor
4. Ku. Kiran D/o Shri Teerath Ram Sahu, Aged About 14 Years Minor
5. Risabh S/o Shri Teerath Ram Sahu, Aged About 12 Years Minor

Minors (Respondent Nos. 3 to 5) through their Natural Guardian Father, Teerath Ram Sahu,

All are R/o Village- Kодиya, P.S. Nandini, Tahsil And Distt. Durg, Chhattisgarh.

6. Manoj Kumar S/o Shri Kunj Bihari Singh, Contractor, R/o Sai Nagar, Camp-1, P.S. Chhawani, Bhilai, Tahsil And Distt. Durg, Chhattisgarh.
7. Madan Netam S/o Shri Manharan Lal, Contractor, R/o Near Teen Darshan Mandir, Camp-1, P.S. Chhawani, Bhilai, Distt. Durg, Chhattisgarh.
8. President, Nagar Palika Parishad- Jamul, Bhilai, Distt. Durg, Chhattisgarh.

---- Respondents

For Appellant	Shri M.K. Bhaduri, Advocate.
For Respondent Nos. 1 to 5	Shri R.K. Jain, Advocate.
For Respondent Nos. 6	Shri B.N. Nande, Advocate on behalf of Shri Anup Majumdar, Advocate.

MAC No. 341 of 2017

1. Teerath Ram Sahu S/o Jhaggar Sahu, Aged About 42 Years Presently 49 Years,
2. Amreeka Bai W/o Teerath Ram Sahu, Aged About 42 Years Presently 49 Years,
3. Ku. Yamuna D/o Teerath Ram Sahu, Aged About 16 Years Presently 23

Years,

4. Ku. Kiran D/o Teerath Ram Sahu, Aged About 14 Years Presently 21 Years,

5. Rishabh S/o Teerath Ram Sahu, Aged About 12 Years Presently 19 Years,

Appellant Nos. 3 to 5 are minor at the time of filing of suit and represented through their natural guardian father Teerath Ram Sahu

All R/o Village Kodiya, P.S. Nandini, Tahsil and District Durg, Chhattisgarh

---Appellants

Versus

1. Mahendrakant Sahu S/o R.R.Sahu, Aged About 60 Years Prop. R.R.Construction, R/o Village Naardha Post Office Jamul, Bhilai, District Durg, Chhattisgarh,

Present Address- Plot No.70/06, Nehru Nagar East, Bhilai, District Durg, Chhattisgarh.

2. Manoj Kumar S/o Kunj Bihari Singh, Contractor R/o Sai Nagar, Camp-1, P.S. Chhawani, Bhilai, Tahsil And District Durg, Chhattisgarh.

3. Madan Netam S/o Manharan Lal, Contractor, R/o Near Teen Darshan Mandir, Camp-1, P.S. Chhawani, Bhilai, Tahsil and District Durg, Chhattisgarh.

4. President, Nagar Palika Parishad, Jamul, Bhilai, District Durg, Chhattisgarh.

---- Respondents

For Appellants	Shri Rajesh Jain, Advocate.
For Respondent No.1	Shri M.K. Bhaduri, Advocate.
For Respondent No.2	Shri B.N. Nande, Advocate on behalf of Shri Anup Majumdar, Advocate.

Hon'ble Shri Justice Gautam Chourdiya

Judgment on Board

09/04/2019

1. Both the appeals are admitted for hearing on the following substantial questions of law:-

i) Whether the learned Commissioner for Workmen's Compensation has committed an error in recording a finding that the deceased was under the employment of non-applicant

no.1.?

- ii) Whether the learned Commissioner for Workmen's Compensation was justified in awarding interest on the compensation amount conditionally and not from the date of accident?
- iii) Whether the learned Commissioner for Workmen's Compensation was justified in not imposing penalty as envisaged under Section 4A(3)(b) on non-applicant no.1/employer?

2. With the consent of both the parties, both the appeals are heard finally.
3. Since appeal i.e. MAC No.341 of 2017 has been filed by the appellants/claimants and appeal i.e. MAC No.31/2017 has been filed by the appellant/non-applicant no.1 under Section 30 of the Workmen Compensation Act, 1923 against the judgment dated 11.11.2016 passed by the Commissioner for Employees Compensation Act, Labour Court, Durg, Chhattisgarh in case no.101/WC Act/2010 (Fatal), whereby the Commissioner awarded a compensation of Rs.3,80,621/- in favour of the claimants and further directed that if the amount so awarded is not deposited within a period of 45 days from the date of judgment then interest at the rate of 12% per annum on the above amount from the date of accident till deposit shall be payable by non-applicant No.1, they are being disposed of by this common judgment.
4. Facts in brief of the case are that Hemant Sahu (deceased) was working as Drilling Operator under the employment of non-applicants No. 1 to 3. On 09.07.2010, he was engaged in the work of breaking

the culvert (puliya) made of concrete near Jamul High School. However, non-applicants no. 2 & 3 did not provide safety equipments to Hemant Sahu and the drilling machine being used by Hemant Sahu was connected directly with the electric pole by one Ravi Chouhan, employee of Municipal Corporation. During the course of his work, Hemant Sahu came in contact with the said electric wire and during treatment in Sector-9 Hospital, Bhilai, he died. At the time of accident, deceased was 19 years of age and was earning Rs.130/- per day.

5. On claim petition under Section 22 of the Workmen's Compensation being filed by the claimants, who are parents, sisters and brother of the deceased, the Commissioner considering the overall evidence available on record by the impugned judgment granted compensation, fastening the liability on non-applicant no.1/employer as mentioned in para 1 of this judgment.
6. **MAC No.31/17** – Learned counsel for the appellant/employer submits that the Commissioner was not justified in fastening the liability on non-applicant no.1 of paying compensation with interest to the claimants since the deceased had never been under the employment of non-applicant no.1.
7. **MAC No.341/17**- Learned counsel for the claimants submits that Commissioner has erred by not granting any amount towards penalty and has also erred by not awarding interest on the compensation from the date of accident. He submits that the Tribunal considering the over all pleadings and evidence adduced by the parties has rightly held that the deceased was working under the employment of non-applicant no.1 and as such rightly fastened the liability on non-applicant no.1 which needs no interference by this Court.

8. Learned counsel for the other respondents have duly assisted the Court.

9. I have heard the parties and perused the material available on record.

10. Mahendra Sahu (NA-1), who is proprietor of R.R. Construction has specifically admitted in para 2 of his affidavit filed under Order 18 Rule 4 of CPC that on the date of accident i.e. 9th July, 2010, the deceased was working under his employment and non-applicant No.3. Teerath Ram Sahu (AW-1) has stated in his affidavit under Order 18 Rule 4 of CPC that on the date of accident his son Hemant Sahu (deceased) was working under the employment of non-applicant No.1 and while doing the work of breaking the culvert he came in contact with a live electric wire and died due to electrocution during treatment in Sector-9 Hosiptal, Bhilai. (AW-2) Mahesh Sinha has also stated that on the date of accident the deceased was under the employment of non-applicant No.1 as a Drilling Machine Operator and he died due to electrocution while doing the work of breaking the culvert. Thus, in view of the aforesaid evidence of (AW-1) Teerath Ram Sahu, (AW-2) Mahesh Sau and the admission of non-applicant No.1 M.K. Sahu, stands proved that the deceased was under the employment of non-applicant No.1 on the date of accident and that he died in an accident arising out and during the course of employment of the deceased under non-applicant No.1. In these circumstances, the learned Commissioner was fully justified in fastening the liability on non-applicant No.1 of paying compensation to the claimants. Accordingly, the substantial question of law No.1 is decided in the negative, i.e. against the non-applicant no.1/employer and in favour fo the claimants.

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.

10. 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 arises 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.
11. In the present case, admittedly, it is not disputed by the parties that the accident occurred on 9th July, 2010 and no amount was deposited by the non-applicant No.1 either with the Commissioner or paid to the claimants. Therefore, considering the facts and circumstances of the case, this Court is of the opinion that the amount of compensation as awarded by the Commissioner shall carry simple interest @ 12% per annum from the date of accident till realization. Accordingly, substantial question of law No.2 is answered in the negative.
12. As regards the issue of penalty, as per Section 4A(3) (b) of the Act, penalty can be imposed on the employer but before imposition of penalty, a reasonable opportunity has to be granted to the employer to show cause as to why it should not be imposed. In the present case, it is seen from the record that no such opportunity was granted to non-applicant No.1/employer by the Commissioner. Therefore, in the

totality of facts and circumstances of the case, there seems to be no requirement for imposing penalty on non-applicant No.1. Accordingly, the substantial question of law No.3 is answered in the affirmative.

13. In the result:-

- **MAC No.31 of 2017** filed by the non-applicant No.1/Employer is being without any substance is liable to be dismissed and is, accordingly, dismissed.
- **MAC No.341 of 2017** filed by the claimants is allowed in part with modification in the impugned judgment to the above extent that the claimants shall be entitled for the amount of compensation as awarded by the Tribunal with interest @ 12% per annum from the date of accident till its payment.

Sd/-
Gautam Chourdiya
Judge

Akhilesh