

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 830 of 2014**

1. Smt. Radha Bai, W/o Late Santlal Kol Aged About 19 Years R/o Nagdaha, Thana And Tah. Jaitari, Distt. Anooppur M.P., Madhya Pradesh
2. Harihar Prasad S/o Late Sant Lal Kol Age- 4 Months, Minor, Thru- Mother Smt. Radha Bai, R/o Nagdaha, Thana And Tah. Jaitari, Distt. Anooppur M.P.
3. Smt. Surtaniya Bai W/o Late Buddhu Kol Aged About 43 Years R/o Nagdaha, Thana And Tah. Jaitari, Distt. Anooppur M.P., District : Anuppur, Madhya Pradesh

---- Appellants**Versus**

1. Ugrasen Kol, S/o Bhalla Kol R/o Halha, Post- Amangwa, Thana And Tah. Anooppur, Distt. Anooppur M.P., Madhya Pradesh
2. Budhsen Kol S/o Bhalla Kol R/o Halha, Post- Amangwa, Thana And Tah. Anooppur, Distt. Anooppur M.P., District : Anuppur, Madhya Pradesh
3. The New India Insu.Co.Ltd. S/o Thru- Branch Manager, Branch Shahdol, Gurunanak Chowk, Shahdol, Distt. Shahdol M.P., District : Shahdol, Madhya Pradesh

---- Respondent

For Appellant	:	Shri Sunil Sahu, Advocate
For Respondents	:	None though served.

Order On Board By Hon'ble Shri Justice Parth Prateem Sahu**14/05/2019**

1. Appellants-claimants have filed this appeal under Section 30 of the Employee's Compensation Act, 1923 (henceforth 'the Act of 1923') challenging judgment dated 13.2.2014 passed by the Commissioner, Workmen's Compensation Act-cum- Labour Court, Bilaspur (for short 'the Commissioner') in Case

No.43/WC Act/2007 Fatal whereby the Commissioner awarded compensation of Rs.4,48,000/-.

2. Facts of case, in brief, are that workmen Santlal Kol was under employment of respondent No.1 & 2 as Driver for driving truck bearing registration No.MP18-H-2539. On 6.12.2006 said truck met with an accident which resulted in death of employee Santlal Kol. Claimants/appellants, who are widow, children and widow mother of deceased, filed application under Section 22 of the Act of 1923 before the Commissioner for grant of compensation of Rs.4,48,000/- along with interest @ 12% p.a. and 50% penalty. It was stated in application that on the date of accident deceased was aged about 20 years, he was working as Driver and getting Rs.4000/- per month as wages/salary.
3. Respondent No.1 & 2, employer & owner of offending vehicle, did not appear before the Commissioner despite service of notice and therefore they were proceeded ex-parte vide order dated 5.12.2007.
4. Respondent No.3 Insurance Company appeared before the Commissioner and submitted its reply to claim application admitting that at the relevant point of time offending vehicle was insured with it. It was pleaded that accident was not reported to insurance company. On the date of accident, vehicle was being used as commercial vehicle, which is in violation of condition of insurance company.
5. The Commissioner after appreciating pleadings and evidence

of respective parties placed on record by respective parties has awarded compensation of Rs.4,48,000/- by holding that deceased employee was being paid salary of Rs.4,000/- per month. The Commissioner further held that on the date of accident offending truck was insured with respondent No.3 Insurance Company and therefore insurance company is liable to indemnify injured owner. The Commissioner also recorded finding that as insurance company deposited interim compensation of Rs.50,000/-, therefore, not liable for payment of interest as well as penalty.

6. This appeal has been admitted for consideration on following substantial questions of law:-

“(i) Whether the Court below was justified in not granting the interest on the awarded amount to the claimants?

(ii) Whether the finding of the Court below was justified to the extent of denying the penalty to the claimants only on the ground that the insurer company have paid some interim amount in the year 2008?

7. So far as first question of law is concerned, records of the case would show that accident took place on 6.12.2006, respondent No.1 & 2 have not paid any amount as compensation to claimants/legal representative of deceased, employee. Record further shows that an amount of Rs.50,000/- as interim compensation was deposited by insurance company only on

5.3.2018 i.e. after lapse of more than one year from the date of accident or when compensation fell due.

8. Section 4A of the Act of 1923 envisages as under:-

“4A.Compensation to be paid when due and penalty for default.-(1) Compensation under section 4 shall be paid as soon as it falls due.

(2) In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts, and, such payment shall be deposited with the Commissioner or made to the employee, as the case may be, without prejudice to the right of the employee to make any further claim.

(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 at the rate of six per cent. per annum or at such higher rate not exceeding the maximum of the lending rate of any scheduled bank as may be specified by the Central Government, by notification in the Official Gazettee, on the amount due and;

(b) if, in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears and interest thereon, pay a further sum not exceeding fifty per cent. of such amount, by way of penalty.”

9. Sub-Section (3) of Section 4A in very specific term provides

that if employer fails to deposit compensation due under the Act within one month then the Commissioner may direct employer to pay, in addition to amount of arrears, simple interest @ 12% p.a. or at such higher rate not exceeding the maximum of lending rate of any scheduled bank. The legislature has purposefully used the word 'shall' which means the Commissioner is mandatorily required to award interest if he finds that amount of compensation to be awarded to claimants has not been deposited by employer within a period of one

month from the date when it fell due. The words 'it fell due' have been considered and decided by Hon'ble Supreme Court in Pratap Narain Singh Deo vs. Srinivas Sabata & anr reported in (1976) 1 SCC 289.

10. The Act of 1923 provides for payment of compensation on self-assessment basis that too within a period of 30 days from the date of accident. An outer limit of 30 days from the date of accident has been fixed for the employer to deposit amount of compensation to be awarded to legal representatives of deceased employee. Compensation fell due immediately when an employee sustained injuries or died in an accident.
11. Award of interest has been dealt with by Hon'ble Supreme Court recently in the matter Saberabibi Yakubibi Shaikh v. National Insurance Co. Ltd. & ors reported in 2014 AIR SCW 1584 wherein the Hon'ble Supreme Court has held thus:-

“10. We have perused the aforesaid judgment. We are of the considered opinion that the aforesaid judgment relied upon by the learned counsel for the appellants is fully applicable to the facts and circumstances of this case. This Court considered the earlier judgment relied upon by the High Court and observed that the judgments in the case of National Insurance Co. Ltd. v. Mubasir Ahmed [(2007) 2 SCC 349] and Oriental Insurance Co. Ltd. v. Mohd. Nasir [(2009) 6 SCC 280] were per incuriam having been rendered without considering the earlier decision in Pratap Narain Singh Deo v. Srinivas Sabata [(1976) 1 SCC 289]. In the aforesaid judgment, upon consideration of the entire matter, a four-judge Bench of this Court had held that the compensation has to be paid from the date of the accident.

11. Following the aforesaid judgments, this Court in Oriental Insurance Company Limited versus 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.

12. The decision in Pratap Narain Singh Deo 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 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." ...

12. In view of the aforesaid settled proposition of law, the appeal is allowed and the judgment and order of the High Court is set aside. The appellants shall be entitled to interest at the rate of 12% from the date of the accident."

12. In the case at hand also, the employer failed to calculate amount of compensation against death of his employee/driver of offending truck and to make payment to the claimants and therefore the finding recorded by Commissioner that as Rs.50,000/- was deposited without any calculation of compensation in a death case then there is no requirement of awarding interest is not sustainable and is hereby set aside. Now the claimants are entitled for interest on compensation amount @ 12% p.a. from the date of accident.

13. In view of above, Question of law No.1 is answered in affirmative.

14. Coming to next question of law framed for consideration.
15. Section 4A (3) (b) of the Act of 1923 provides for penalty not exceeding 50%, in addition to arrears and interest when employer is in default in paying compensation due under the Act within one month. However, issuance of a show-case notice before imposing penalty is mandatory.
16. As held in preceding paragraph that 'fell due' means the date of accident. Employer not paid any amount of compensation immediately. Even after getting notice of application for compensation, employer not paid any amount and after giving his appearance through advocate, he became ex-parte. The Commissioner had not initiated any proceeding under Section 4A (3) (b) of the Act of 1923 and issued show-notice but erroneously recorded that as interim compensation was deposited, therefore, no case for initiating proceeding for penalty is made out. Interim deposit is not made on basis of calculation of amount of compensation but it is only deposited when application in this regard was filed. There is non compliance of mandatory provisions of the Act of 1923 as employer neither calculated amount of compensation nor paid and therefore provisions of Section 4A(3) (b) of the Act of 1923 are attracted in this case and proceeding for imposition of penalty is to be initiated against employer. Hence, second question is accordingly answered.
17. In the result;-
 - it is directed that appellant is entitled for 12% interest on the

amount of compensation from the date of accident till its realization.

- Matter is remanded back to the Court of Commissioner to initiate proceeding under Section 4A(3) (b) of the Act of 1923 for imposing penalty against respondent No.1-employer.
- Looking to the date of accident it is expected from the Commissioner to conclude the proceeding at the earliest in accordance with law.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-