AFR

HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 1058 of 2013

1. Smt. Mahrin Bai W/o Samokhan Baghel aged about 48 years
2. Samokhann Baghel S/o Bhodu Baghel aged about 50 years

   Both are R/o Village Shakti Nagar Post Shankar Nagar P.S. Mova Raipur Tahsil and District Raipur C.G.

------Appellants/Claimants

VERSUS

1. Santosh Sahu S/o Santram Sahu aged about 45 years, Occupation Transport, R/o Lodhipara Murrabhata road infront of Janghel Health Club Post and P.S. Guryari Tahsil and District Raipur C.G. **---------Owner**
2. The Reliance General Insurance Co. Ltd. through Divisional Manager Division office Pujari Park Panchpedhi Naka Raipur **--------Insurer**

-------**Respondents**

For Appellants : Mr. A.L. Singroul, Advocate.
For Respondent No. 2 : Mr. Sourabh Sharma, Advocate.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge
Judgment on Board

Per Parth Prateem Sahu, J.

03/07/2020

1. This appeal is filed under Section 30 of the Employees Compensation Act, 1923, challenging the judgment/ award dated 02-07-2013 passed by the Commissioner, Employees Compensation, Labour Court, Raipur (hereinafter referred to as “the Commissioner”) in case No. 113/WC Act /2012 (F), whereby the Commissioner awarded a total sum of Rs. 4,48,000/- as compensation.

2. Facts relevant for disposal of this appeal are that Mahesh Baghel (now deceased) who was son of appellants-claimants, was employed with the 1st Respondent as Driver of the vehicle Tata Ace bearing Registration No. CG 04JB 4217. On 20-05-2009 when deceased Mahesh Baghel was on his duty, some dacoits after murdering him looted the vehicle. The incident was reported to concerned police station Saja, Durg (now district Bemetara). The appellants-claimants filed

an application claiming compensation before the Commissioner, mentioning therein that on the date of incident, deceased Mahesh was aged of 20 years and was being paid Rs. 4,000/- per month as salary.

3. Respondent 1/ Non-applicant 1 submitted reply to the application filed by the claimants and admitted the claim of the appellants and further pleaded that on the date of accident, the vehicle was insured with Respondent 2/ Non-applicant 2, the liability for payment of amount of compensation would be on Insurance Company.

4. Respondent 2/ Non-applicant 2-Insurance Company also submitted its reply and pleaded that the application claiming amount of compensation is false and fabricated. It was admitted that the vehicle was insured as Light Goods Vehicle, but pleaded that there was breach of condition of insurance policy as on the date of accident, driver Mahesh was not possessing valid and effective driving licence and there was no valid permit and fitness certificate, there is no liability of the Insurance Company to satisfy the amount of compensation.

5. Upon appreciation of pleadings and evidence placed on record by the respective parties, the Commissioner allowed the application and awarded Rs. 4,48,000/- as compensation. Interest @ 12% p.a. is ordered, if the amount awarded by the Commissioner is not deposited within a period of 2 months from the date of judgment/ award.

6. The appeal was admitted on the following substantial questions of law:

> “(i) Whether the Commissioner was justified in not granting interest from the date of accident till its recovery in view of the judgment 2012 AIR SC 3144, Oriental Insurance Co. v. Siby George and others?
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> (ii) Whether the Commissioner was justified in not embossing penalty upon the employer though it held to make payment on date of accident?
>
> (iii) Whether the finding of the learned Commissioner exonerating the Insurance Company from its liability by holding the deceased who possessed a learner's licence, was not competent to drive the alleged

transport vehicle is perverse?”

7. Learned counsel for the appellants-claimants submits that under the provisions of the Employees Compensation Act, 1923 (for short “Act, 1923”), the compensation is to be paid as soon as it falls due i.e. the date of accident and if the amount of compensation is not paid within a period of one month from the date of accident then the interest is to be allowed @ 12% p.a., but in the case at hand, the Commissioner ignoring the provisions of the Act, 1923, awarded only default interest i.e. the claimants will be entitled for an interest only, if the compensation is not deposited within the period of two months. Non-awarding of interest on the amount of compensation from the date of accident is contrary to the provisions of Act, 1923. He further submits that the Commissioner also erred in not awarding the penalty of 50% of the amount of compensation because the amount of compensation was not paid to the applicants when it became due or at the most within one month from the date of accident.

8. Learned counsel for the Respondent-Insurance Company, supporting the award, submits that the award of interest is from the date when it became due and the amount of compensation will become payable and due only after ascertaining the amount of compensation i.e. on the date of passing of the award and the Commissioner has rightly awarded the interest in default i.e. if the amount of compensation is not deposited within a period of two months from the date of passing of the award. He further submits that the claimants have not filed any application for awarding the amount of penalty and even the Commissioner did not issue any notice for awarding the amount of penalty. Learned counsel submits that **in absence of any prayer or application before the Commissioner under the Employees Compensation Act for awarding penalty, the claimants cannot make a prayer before this Court in an appellate jurisdiction.**

9. We have heard learned counsel for the respective parties and perused the record.

10. So far as, the submission made by the learned counsel for the respective parties on the first question of law, the award of interest is specifically provided under Section 4(A) of the Act, 1923, which reads 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 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; and
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> (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:
>
> Provided that an order for the payment of penalty shall not be passed under clause *(b)* without giving a reasonable opportunity to the employer to show cause why it should not be passed.
>
> *Explanation*.--For the purposes of this sub-section, "scheduled bank" means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934.
>
> [(3A) The interest and the penalty payable under sub-section *(3)* shall be paid to the [employee] or his dependant, as the case may be.]”

11. As provided under Section 4A of the Act, compensation to be paid when it fell due. The word 'fell due' has been considered by the Hon'ble Supreme Court in

the case of ***Pratap Narain Singh Deo v. Sriniwas Sabata*** reported in **AIR 1976 SC 222** and held thus:

> "7. Section 3 of the Act deals with the employer's liability for compensation. Sub-section (1) of that section provides that the employer shall be liable to pay compensation if "personal injury is caused to a workman by accident arising out of and in the course of his employment". It was not the case of the employer that the right to compensation was taken away under sub-section (5) of Section 3 because of the institution of a suit in a civil court for damages, in respect of the injury, against the employer or any other person. The employer therefore became liable to pay the compensation as soon as the aforesaid personal injury was caused to the workman by the accident which admittedly arose out of and in the course of the employment. It is therefore futile to contend that the compensation did not fall due until after the Commissioner's order dated May 6, 1969 under Section 19. What the section provides is that if any question arises in any proceeding under the Act as to the liability of any person to pay compensation or as to the amount or duration of the compensation it shall, in default of agreement, be settled by the Commissioner. There is therefore nothing to justify the argument that the employer's liability to pay compensation under Section 3, in respect of the injury, was suspended until after the settlement contemplated by Section 19. The appellant was thus liable to pay compensation as soon as the aforesaid personal injury was caused to the appellant, and there is no justification for the argument to the contrary.
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> 8. 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 settling 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. The Hon'ble Supreme Court in the case of ***Oriental Insurance Co. Ltd. v. Siby George and others,*** reported in **AIR 2012 SC 3144** while taking note of the

aforementioned judgment, passed by Four Judges Bench has held that the amount of compensation fell due as per the Section 4(A) of the Act, 1923, as soon as the accident took place and not from the date of filing of claim application or Commissioner's order. Relevant paragraph of the case is extracted below:

> "9. The matter once again came up before the Court when by amendments introduced in the Act by Act No. 30 of 1995 the amount of compensation and the rate of interest were increased with effect from 15-09-1995. The question arose whether the increased amount of compensation and the rate of interest would apply also to cases in which the accident took place before 15-09-1995. A three Judge Bench of the Court in Kerala State Electricity Board v. Valsala K., AIR 1999 SC 3502 answered the question in the negative holding, on the authority of Pratap Narain Singh Deo, that the payment of compensation fell due on the date of accident. In paragraphs 1,2 and 3 of the decision the Court observed as follows:
>
> '1. The neat question involved in these special leave petitions is whether the amendment of Ss.4 and 4A of the Workmen's Compensation Act, 1923, made by Act No. 30 of 1995 with effect from 15-9-1995, enhancing the amount of compensation and rate of interest, would be attracted to cases where the claims in respect of death or permanent disablement resulting from an accident caused during the course of employment, took place prior to 15-9-1995?
>
> 2. Various High Courts in the country, while dealing with the claim for compensation under the Workmen's Compensation Act have uniformly taken the view that the relevant date for determining the rights and liabilities of the parties is the date of the accident.
>
> 3. A four Judge Bench of this Court in Pratap Narain Singh Deo v. Srinivas Sabata, (1976) 1 SCC 289: (AIR 1976 SC 222: 1976 Lab IC 222) speaking through Singhal, 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.'
>
> 12. In light of the decisions in Pratap Narain Singh Deo and Valsala, 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 do not express the correct view and do not make binding precedents."

13. In view of the aforementioned law laid down by the Hon'ble Supreme Court that the employer becomes liable to pay the amount of compensation if personal injury is caused to a workman by accident arising out of and in the course of his employment, the date of determination of amount of compensation is the date of accident and not the date of adjudication of the claim.

14. In view of the above, ruling of Hon'ble Supreme Court under Section 4(A) of the Act, 1923, the submission made by the learned counsel for the appellants is allowed. The appellants-claimants will be entitled for an interest @ 12% p.a. under the provisions of Section 4(A)(a) from the date of accident. The first question of law is answered accordingly.

15. Learned counsel for the appellants admitted that the appellants have not filed any application under Section 4(A)(b) of the Act, 1923 for awarding penalty also and no notice was issued to the employer for awarding the amount of penalty. The provisions under the Act, 1923 in this regard is very clear. The award of penalty is provided under proviso to Section 4(A)(b) of the Act, 1923 which reads as under:

> (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:
>
> Provided that an order for the payment of penalty shall not be passed under clause *(b)* without giving a reasonable opportunity to the employer to show cause why it should not be passed.

Proviso to Section 4(A)(b) of the Act, 1923 very specifically mentions that the order of payment of penalty shall not be passed without giving a reasonable opportunity to employer to show cause. Admittedly, in this case, no such notice under the proviso to Section 4(A)(b) was issued to the employer by the Commissioner and as admitted by the learned counsel for the appellant, no such prayer is made or any application has been filed by the appellants-claimants before the Commissioner under the Act, 1923. In view of the above, the submission made by the learned counsel for the appellants-claimants that the

Commissioner erred in not awarding penalty on the amount of compensation as provided under Section 4(A)(b) of the Act, 1923, is not sustainable and it is hereby repelled. Accordingly, the second question of law is answered in affirmative.

16. The third question of law framed is with regard to exoneration of the Insurance Company from its liability on the ground that driver possessing learner's licence on the date of accident was not competent to drive the vehicle. The learned counsel for the appellants submitted that learner's licence was issued by the competent authority and person holding a learner's licence to drive Light Motor Vehicle can very well drive the motor vehicle falls under the category of Light Motor Vehicle. This submission is opposed by the learned counsel for Insurance Company and submits that under Section 7(1) of the Motor Vehicles Act, bars for issuance of learner's licence to transport vehicle unless the driver holds licence to drive Light Motor Vehicle at least for one year. The transport vehicle even if comes under the definition of Light Motor Vehicle then also the bar will be applicable. He submits that the licence which the driver was holding was learner's licence for Light Motor Vehicle.

17. To appreciate the submission raised at bar by the learned counsel for the respective parties, it is beneficial to abstract Section 7 of the Motor Vehicles Act for ready reference.

> “7. **Restrictions on the granting of learner's licences for certain vehicles.-** [(1) No person shall be granted a learner's licence to drive a transport vehicle unless he has held a driving licence to drive a light motor vehicle for at least one year:]
>
> [Provided that nothing contained in this sub-section shall apply to an e-cart or e-rickshaw.]
>
> (2) No person under the age of eighteen years shall be granted a learner’s licence to drive a motor cycle without gear except with the consent in writing of the person having the care of the person desiring the learner’s licence.

Section 8 of the Motor Vehicles Act envisages for grant of learner's licence, Proviso 1 of which reads as under:

> "8. **Grant of learner's licence.-** (1) Any person who is not disqualified under section 4 for driving a motor vehicle and who is not for the time being disqualified for holding or obtaining a driving licence may, subject to the provisions of section 7, apply to the licencing authority having jurisdiction in the area-
>
> (i) in which he ordinarily resides or carries on business, or
>
> (ii) in which the school or establishment referred to in section 12 from where he intends to receive instruction in driving a motor vehicle is situate, for the issue to him of a learner's licence".

From perusal of the above two provisions of the Motor Vehicles Act, it is crystal clear that Section 7(1) puts bar on issuance of learner's licence for driving transport vehicle unless the person is possessing licence to drive Light Motor Vehicle, at least for a year. Further the provision under Section 8(1) of the Motor Vehicles Act talks about issuance of learner's licence subject to the provisions of Section 7 of the Act. In the case at hand, the learner's licence was for Light Motor Vehicle.

18. 'Light Motor Vehicle' is defined under Section 2(21) of the Motor Vehicles Act which reads as under:

> "(21) "light motor vehicle" means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed [7500] kilograms;"

Definition of Light Motor Vehicle also mentions the word "Transport Vehicle." The Hon'ble Supreme Court in the case of ***Mukund Dewangan v. Oriental Insurance Company Ltd.*** reported in ***(2017) 14 SCC 663*** has considered the issue with respect to the person holding the licence to drive Light Motor Vehicle and was driving the Light Goods Vehicle or Light Passenger Vehicle and held thus:

> "60.1 "Light motor vehicle" as defined in section 2(21) of the Act would include a transport vehicle as per the

> weight prescribed in section 2(21) read with section 2(15) and 2(48). Such transport vehicles are not excluded from the definition of the light motor vehicle by virtue of Amendment Act 54 of 1994.
>
> 60.3 The effect of the amendment made by virtue of Act 54 of 1994 w.e.f. 14-11-1994 while substituting clauses (e) to (h) of section 10(2) which contained “medium goods vehicle” in section 10(2)(e), medium passenger motor vehicle in section 10(2)(f), heavy goods vehicle in section 10(2)(g) and “heavy passenger motor vehicle” in section 10(2)(h) with expression ‘transport vehicle’ as substituted in section 10(2)(e) related only to the aforesaid substituted classes only. It does not exclude transport vehicle, from the purview of section 10(2)(d) and section 2(41) of the Act i.e. light motor vehicle.”

In the aforementioned law laid down by the Hon'ble Supreme Court, it is held that there is no requirement of a separate endorsement authorising the driver holding the licence of Light Motor Vehicle to drive Transport Vehicle. In view of the aforementioned fact, the submission made by the learned counsel for the Respondent-Insurance Company that the driver of the vehicle in question is not eligible to drive the Light Goods Vehicle under the learner's licence of Light Motor Vehicle is not appealing us. In the present facts of the case, the bar under Section 7 of the Motor Vehicles Act will be applicable for the Transport Vehicle other than Light Motor Vehicle. The licence issued to the deceased driver of the vehicle was with a warning drawing attention of the holder of the licence to rule of the Central Motor Vehicles Rule, 1989, which prohibits the holder of the learner's licence from driving any motor vehicle unless he has, besides him, a person duly licenced to drive the vehicle. Further, perusal of copy of licence available on record shows that it was issued with 'Warning' mentioning prohibition as prescribed under Rule 3 of the Central Motor Vehicles Rule, 1989. Rule 3 of the said Rules is abstracted below.

“LICENSING OF DRIVERS OF MOTOR VEHICLES

General

> **3. General**.—The provisions of sub-section (1) of section 3 shall not apply to a person while receiving instructions or gaining experience in driving with the object of presenting himself for a test of competence to drive, so long as—

> (a) such person is the holder of an effective learner's licence issued to him in Form 3 to drive the vehicle;
>
> (b) such person is accompanied by an instructor holding an effective driving License to drive the vehicle and such instructor is sitting in such a position to control or stop the vehicle; and
>
> (c) there is painted, in the front and the rear or the vehicle or on a plate or card affixed to the front and the rear, the letter "L" in red on a white background as under:—
>
> **L**
>
> **Note.-** The painting on the vehicle or on the plate or card shall not be less than 18 centimeters squares and the letter "L" shall not be less than 10 centimeters high, 2 centimeters thick and 9 centimeters wide at the bottom:
>
> Provided that a person, while receiving instructions or gaining experience in driving a motor cycle (with or without a side-car attached), shall not carry any other person on the motor cycle except for the purpose and in the manner referred to in clause (b)."

Rule 3(b) of the Central Motor Vehicles Rule, 1989 mentions that the person holding the learner's licence issued to him in Form 3 be accompanied by an instructor holding an effective Driving licence to drive the vehicle, sitting in such a position to control or stop the vehicle. There is no such pleading made in the claim application nor any evidence to this effect that the deceased driver was accompanied by an instructor holding effective driving licence as conditioned in the licence issued to him.

19. The Hon'ble Supreme Court in the case of ***National Insurance Company v. Swarn Singh*** reported in **(2004) 3 SCC 297,** in paragraph 93, while dealing with the issue of learner's licence has held that if the driver possessing a learner's licence and driving the vehicle subject to the conditions mentioned in the licence, he would not be a person who is duly licenced. The deceased was holding a valid licence as learner's licence but in absence of the pleading and material available on record that the condition mentioned in the licence following Rule 3 of the Central Motor Vehicles Rules, 1989 mandatorily complied with, certainly, in absence of pleading and material showing the compliance of Rule 3 of the said Rules, there will be breach of condition of

insurance policy. In view of the above, as the driver who was possessing learner's driving licence at the time of accident and not accompanied by the instructor beside him, there is breach of conditions of insurance policy. The third question of law is answered accordingly.

20. The Respondent No. 1 will pay the amount of compensation of Rs. 4,48,000/- to the claimants and interest @ 12% p.a. on the amount of compensation awarded from the date of accident till its realization.

21. In view of the above, appeal is allowed in part and the impugned award is modified to the extent as indicated hereinabove.

Sd/-	Sd/-
(P.R. Ramachandra Menon)	**(Parth Prateem Sahu)**
Chief Justice	Judge

Pawan