

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.A.(C) No. 1251 of 2014****Reserved on 19.05.2020****Pronounced on 09.06.2020**

1. Jaysingh Baghel S/o Bhakla Ram Baghel Aged About 42 Years R/o Village- Lachanpur, P.S. Lormi, Tah. And Distt. Bilaspur C.G.
2. Ku. Durga Baghel D/o Jaysingh Baghel Aged About 16 Years R/o Village- Lachanpur, P.S. Lormi, Tah. And Distt. Bilaspur C.G.
3. Santosh Kumar Baghel S/o Jaysingh Baghel Aged About 15 Years R/o Village- Lachanpur, P.S. Lormi, Tah. And Distt. Bilaspur C.G.
4. Ku. Narbadiya Baghel D/o Jaysingh Baghel Aged About 14 Years R/o Village- Lachanpur, P.S. Lormi, Tah. And Distt. Bilaspur C.G.
5. Ku. Sarojni Baghel D/o Jaysingh Baghel Aged About 12 Years R/o Village- Lachanpur, P.S. Lormi, Tah. And Distt. Bilaspur C.G.
6. Rajkumar Baghel S/o Jaysingh Baghel Aged About 9 Years Respondents No. 2 to 6 are Minors, Thru- Guardian Jaysingh Baghel, R/o Village- Lachanpur, P.S. Lormi, Tah. And Distt. Bilaspur C.G.

---- Appellants**Versus**

1. Narendra Koshle S/o Late Sukdev Prasad Aged About 38 Years R/o Ghuru, Post- Tifra, P.S. Chakarbhata, Distt. Bilaspur C.G.
2. Harishchandra @ Maccra S/o Kartik Ram Dahriya Aged About 30 Years R/o Awaas Para, P.S. Chakarbhata, Distt. Bilaspur C.G.
3. IFFCO Tokio General Insurance Company Ltd. Thru- Managing Director, Branch Office- 3rd Floor, Shop No. 346, 347, Lal Ganga Shopping Mall, G.E. Road, Raipur, Distt. Raipur C.G.

---- Respondents

For Appellants:	Shri Anand Shukla, Advocate.
For Respondents No.1 & 2:	Shri Vijay K. Deshmukh, Advocate.
For Respondent No.3:	Shri K. Rohan, Advocate appears on behalf of Shri Amrito Das, Advocate.

Single Bench: Hon'ble Shri Sanjay S. Agrawal, J**CAV Award/Order**

1. This Miscellaneous Appeal has been preferred by the Claimants under Section 30 of the Employee's Compensation Act, 1923 (hereinafter referred to as 'the Act, 1923') questioning the legality and propriety of the

award dated 18.09.2014 passed by the Commissioner for Employee's Compensation-Cum-Labour Court, Bilaspur (C.G.) (hereinafter referred to as 'the Commissioner'), whereby, the learned Commissioner while allowing the claim in part awarded a total amount of compensation to the tune of Rs.5,40,620/- with a direction that if the same has not been deposited within a period of one month from the date of passing of the award, it shall carry interest at the rate of 12% per annum from the date of the accident till its realization. The parties to this appeal shall be referred hereinafter as per their description before the Commissioner.

2. Briefly stated the facts of the case are that on 24.05.2009, deceased Smt. Anjana Baghel, who was an employee of Non-applicant No.1 Narendra Koshle, was going along with others by his offending vehicle "Tractor" for the purposes of unloading agricultural materials "*Khatu Mitti*". On the fateful day, it was being driven rashly and negligently by its driver Harishchandra alias Maccra (Non-applicant No.2), as a result of which, it turned turtle when they reached near Gokhlenala of village Ghuru. Owing to which, she (the deceased) fell down and came under the wheels of the vehicle in question and sustained serious multiple injuries and expired on 25.05.2009 during the course of her treatment, giving rise to the institution of the claim by her legal representatives, who are her husband and children, under Section 22 of the Act, 1923 claiming a total amount of compensation to the tune of Rs.5,00,000/- along with interest and penalty. It is alleged therein that the deceased, 30 years old, was a labourer and working under the employment of Non-applicant No.1, where she used to earn Rs.200/- per day.

3. Non-applicants No. 1 & 2, who were owner and driver respectively

of the vehicle in question were proceeded *ex-parte*, while Non-applicant No.3, the Insurance Company has contested the claim mainly on the ground that the vehicle in question was insured as an agricultural purposes, however, it was being used other than its purposes as the deceased and others were travelling on it beyond its sitting capacity, and therefore, no liability could be fastened upon it.

4. After considering the evidence led by the parties, it has been held by the Commissioner that deceased Smt. Anjana Baghel expired during the course of her employment, owing to the alleged accident, who was 30 years old and used to earn Rs.5,200/- per month. It held further that the vehicle in question was being used for loading the agricultural materials "*Khatu Mitti*" and was, thus, being used for agricultural purposes. In consequence, while fastening the liability upon the Insurance Company, awarded a total amount of compensation to the tune of Rs.5,40,620/- by applying the relevant factor of 207.93 and directed for its deposition within a period of one month else it shall carry interest at the rate of 12% per annum from the date of the accident till its realization.

5. Being aggrieved, the Claimants have preferred this appeal, which is admitted for its hearing vide order dated 09.12.2014 on the following substantial question of law:-

"Whether the Court below was justified in not awarding interest and penalty to the claimants on the compensation awarded?"

6. Learned counsel for the Appellants submits that the Commissioner has erred in awarding the interest on the awarded sum conditionally instead of directing for its deposition from the date of the accident till its realization. It is contended further that the Appellants are also entitled for

the penalty as well to the extent of 50% of the awarded sum payable by the employer as per the provisions prescribed under Section 4-A of the Act, 1923.

7. On the other hand, learned counsel for the Respondents have supported the award impugned.

8. I have heard learned counsel for the parties and perused the entire record carefully.

9. From perusal of the record, it appears that the Commissioner, while passing the award impugned, has directed for payment of interest at the rate of 12% per annum conditionally with a direction that if the Non-applicants have failed to deposit the awarded sum within a period of one month from the date of passing of the award then it shall carry interest as such. However, the finding so recorded in this regard appears to be unreasonable and deserves to be modified as the said issue has been settled and remains no more res- integra in view of the principles laid down by the Supreme Court in the matter of **Pratap Narain Singh Deo vs. Srinivas Sabata and another** reported in **(1976) 1 SCC 289**, where it has been held at paragraphs 7 & 8 as under:-

“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.

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.....”

10. The aforesaid decision was reiterated by the Supreme Court in the matter of ***Oriental Insurance Co. Ltd. vs. Siby George and others***, reported in **2012 ACJ 2126**, where at paragraphs 11 & 12, it has been observed as under:-

“11. The decision in *Pratap Narain Singh Deo*, 1976 ACJ 141 (SC), was by a four-Judge Bench and in *Valsala K.*, 2000 ACJ 5 (SC), by a three-Judge Bench of this court. Both the decisions were, thus, fully binding on the court in *Mubasir Ahmed*, 2007 ACJ 845 (SC) and *Mohd. Nasir*, 2009 ACJ 2742 (SC), 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*.

12. In light of the decisions in *Pratap Narain Singh Deo*, 1976 ACJ 141 (SC), and *Valsala K.*, 2000 ACJ 5 (SC), 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*, 2007 ACJ 845 (SC) and *Mohd. Nasir*, 2009 ACJ 2742 (SC), 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.”

11. Applying the aforesaid principles to the case in hand, the Claimants shall be entitled to the said awarded sum with interest at the rate of 12% per annum from the date of the accident till its realization instead of its

payment conditionally as held by the Commissioner. The substantial question of law is, thus, answered in negative in so far as the interest part is concerned.

12. As far as passing the award impugned without imposing the penalty is concerned, it, however, appears from the perusal of the award impugned that the learned Commissioner has directed to consider the same separately after collecting the evidence of the parties. The Commissioner has, thus, kept it in abeyance instead of refusing to impose the penalty at that stage and, I do not find any infirmity in the same in view of the provisions prescribed under proviso to clause (b) of sub-section (3) of Section 4-A of the Act, 1923. The parties are directed to remain present before the concerned Commissioner on 06.07.2020, who, in turn, shall consider and decide the said issue in accordance with law after affording sufficient and reasonable opportunity of hearing to them.

13. Consequently, the appeal is allowed in part to the extent indicated hereinabove with the aforesaid direction. No order as to costs.

Sd/-

(Sanjay S. Agrawal)
JUDGE

Nikita