

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 996 of 2014

1. Smt. Ahilya Bai W/o Manthir Lal Sailik Aged About 45 Years.
2. Manthir Lal Sailik S/o Late Sakalu Sailik Aged About 52 Years, Caste-Satnami.
Both are R/o village- Khapri, Post- Kumhari, P.S & Tah. Patan, Distt. Durg C.G.

----Appellants/Claimants

Versus

1. Manjeet Singh S/o Najir Singh R/o House No. 681, M.P.H.B. Colony, Tatibandh, Raipur C.G.
2. The New India Insu. Co. Ltd. Thru- The Divisional Manager, Divisional Office, Thakkar Chambers, G.E. Road, Power House, Bhilai, Distt. Durg C.G.

--- Respondents

For Appellants	:	Mr. C.K. Sahu, Advocate.
For Respondent No.1	:	None.
For Respondent No.2.	:	Mr. Qamrul Aziz, Advocate..

Hon'ble Shri P. R. Ramachandra Menon, CJ

Hon'ble Shri Parth Prateem Sahu, J

Order on Board

Per Parth Prateem Sahu, J

18/11/2020

1. Appellants/claimants have filed this appeal under Section 30 of the Employee's Compensation Act, 1923 (earlier Workmen's Compensation Act, 1906) (for short 'the Act of 1923') challenging the impugned judgment/ award dated 17.07.2014 passed by the learned Commissioner for Employees Compensation - cum - Labour Court, Durg, (CG) in Claim Case No.29/W.C.ACT/2012/Fatal, whereby the learned Commissioner allowed application filed under Section 10 of the Act of 1923 and awarded Rs.4,17,049/- as total compensation.
2. Facts relevant for disposal of this appeal are that Rajendra Kumar Sailik was working as driver under the employment of non-applicant No.1. On 24.01.2012, he was coming to Raipur from Saraipali on Truck bearing registration No.CG04-HA-1531 after loading coal. Rajendira Kumar Sailik

was assaulted, amount kept with him was looted and his body was thrown away. Incident was reported in concerned police station.

3. Appellants/claimants have filed an application under Section 10 of the Act of 1923 seeking compensation of Rs.4,22,048/- pleading therein that on the date of accident, deceased was working as 'Driver' under the employment of non-applicant No.1 and getting Rs.4,050/- per month as salary. He died in an incident arising out of and in the course of employment.
4. Non-applicant No.1 submitted reply to application and denied the pleadings made therein, however, employment of deceased has been admitted. He further pleaded that on the date of accident, truck was insured with non-applicant No.2/insurance Company, hence, he is not liable to pay any amount of compensation.
5. Non-applicant No.2 -Insurance Company filed its reply to application denying the entire pleadings made therein. It was further pleaded that on the date of accident, deceased was not possessing valid and effective driving license, there was no relationship of employer and employee between non-applicant No.1 and deceased. However, admitted the fact that on the date of accident, said truck was insured with it.
6. On appreciation of pleadings and evidence placed on record by the respective parties, the learned Commissioner held that death of deceased was on account of accident arising out of and in the course of employment, awarded Rs.4,17,049/- as compensation and also directed for payment of conditional interest at the rate of 12% if amount of compensation awarded is not deposited within a period of two months from the date of passing of the order.

7. Learned counsel for the appellants-claimants submits that the learned Commissioner erred in awarding conditional interest and not awarding interest from the date of accident. He further submits that under the Act of 1923, it is the liability of employer to pay the amount of compensation within a period of 30 days from the date of accident, but non-applicant No.1/employer has failed to pay the amount of compensation. As per the provisions of Section 4 (A) (3) (a), claimants are entitled for interest from the date of accident.
8. Per contra, leaned counsel for respondent No.2/Insurance Company submits that the Commissioner was justified in awarding conditional interest, because entitlement of amount of compensation has been decided by the Commissioner only after conclusion of the proceeding pending before it. No amount of compensation could have been paid to claimants until and unless amount of compensation is quantified by the Commissioner under the Act of 1923.
9. We have heard learned counsel for the parties and perused the record of claim case.
10. On 14.10.2014, appeal was admitted for hearing on following substantial question of law :-

“Whether the Court below was justified in not granting the interest on the awarded amount to the claimants ?”
11. Before proceeding further it would be beneficial to have the glance of Section 4(A) of the Act of 1923. Section 4 (A) (i) envisaged that compensation shall be paid as soon as it 'falls due'. Section 4 (A) (ii) further makes it clear that the employer has a liability for payment of compensation and if he does not accept the liability to the extent of amount claimed then he is bound to make provisional payment based on his own

calculation. Section 4 (A) (3) prescribes that if employer fails to pay interest within a period of one month from the date it falls due, the Commissioner shall direct the employer for payment of simple interest thereon at the rate of 12% p.a., or at such higher rate not exceeding the maximum of the lending rates. In case at hand, admittedly accident took place on 24.01.2012, non-applicant No.1/employer has not deposited any amount of compensation, as soon as the amount of compensation fell due ie accidental injuries suffered by the deceased during the course of his employment.

12. Issue with regard to payment of interest has been considered by the Hon'ble Supreme Court in case of **Oriental Insurance Company Limited vs. Siby George and Ors¹** and held thus :-

“8. It is, thus, to be seen that sub-section (3) of section 4-A is in two parts, separately dealing with interest and penalty in clauses (a) and (b) respectively. Clause (a) makes the levy of interest, with no option, in case of default in payment of compensation, without going into the question regarding the reasons for the default. Clause (b) provides for imposition of penalty in case, in the opinion of the Commissioner, there was no justification for the delay. Before imposing penalty, however, the Commissioner is required to give the employer a reasonable opportunity to show cause. On a plain reading of the provisions of sub-section (3) it becomes clear that payment of interest is a consequence of default in payment without going into the reasons for the delay and it is only in case where the delay is without justification, the employer might also be held liable to penalty after giving him a show cause. Therefore, a finding to the effect that the delay in payment of the amount due was unjustified is required to be recorded only in case of imposition of penalty and no such finding is required in case of interest which is to be levied on default per se.

¹ (2012) 12 SCC 540

13. In the aforesaid judgment Hon'ble Supreme Court has considered the word payment of compensation as soon as fall due. Taking note of its earlier judgment in case **Pratap Narain Singh Deo vs Srinivas Sabata & Anr**² has held that the appellant therein was liable to pay compensation as soon as aforesaid personal injury was caused and there is no justification for the argument to the contrary.

14. It was further taken note of the **Kerala State Electricity Board & Anr vs Valsala K & Anr**³ held thus :-

“3. A four judge Bench of this Court in **Pratap Narain Singh Deo v. Srinivs Sabata and Anr**, speaking through Shinghal. 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.

15. In view of above pronouncement of the Hon'ble Supreme Court on the issue, we are of the considered view that the learned Commissioner erred in awarding conditional interest in place of interest from the date of accident. Hence, award so far as it relates to the award of conditional interest is set aside. We direct that the appellants/claimants are entitled for interest on the amount of compensation at the rate of 12% p.a from the date of accident till its realisation. Insurance Policy of vehicle is not in dispute, deceased was driver of vehicle. Respondent No.2/Insurance Company not examined any witness in their support. In view of above fact, we direct Insurance Company to pay the interest as ordered above.

² (1976) 1 SCC 289

³ (1999) 8 SCC 254

16. Question of law is answered accordingly and appeal is allowed.

Sd/-
(P. R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

Jamal/-