NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No.834 of 2014

1. Smt. Guddi Devi, aged about 30 years, widow of Late Dilip Kumar Rajbhar Rai.
2. Suraj Rajbhar Rai, aged about 12 years, son of Late Dilip Kumar Rajbhar Rai.
3. Pankaj Rajbhar Rai, aged about 08 years, son of Late Dilip Kumar Rajbhar Rai (Minor)
4. Lambu Rajbhar Rai, aged about 06 years, son of Late Dilip Kumar Rajbhar Rai (Minor).
5. Santosh Rajbhar Rai, aged about 06 years, son of Late Dilip Kumar Rajbhar Rai (Minor)

   Appellants No.2 to 5 are minors, through their natural guardian i.e. Mother Smt. Guddi Devi, widow of Late Dilip Kumar Rajbhar Rai.
6. Smt. Ramanti Devi, aged about 70 years, widow of Late Jaribandhan Rajbhar Rai.

   All are resident of village Khemadeeh, Distt. Devariya, Uttar Pradesh, presently resided at GMR Power Plant, village Rajkhera, Tahsil Tilda, Distt. Raipur (CG)

---- Appellants

Versus

1. M/s Sugando Engineering Construction (Pvt) Ltd., GMR Power Plant, Village Rajkhera, Post Chicholi, P.S. Nevra, Tahsil Tilda, Distt. Raipur (CG)
2. The New India Insurance Company Limited, Divisional Office No.1, Madina Manzil, Jail Road, District Raipur (CG)

---- Respondents

For Appellants	:	Ms. Sareena Khan, Advocate
For Respondent No.2	:	Mr. N.K. Malviya, Advocate

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

Hon'ble Shri Parth Prateem Sahu, J

Order On Board

Per Parth Prateem Sahu, J

06/10/2020

1. Claimants/appellants have filed this appeal under Section 30 of the Employees' Compensation Act, 1923 (for short 'the Act

of 1923') challenging the judgment dated 15.7.2014 passed by the Commissioner, Employees' Compensation- cum- Labour Court No.2, Raipur in Case No.20/WC Act/2013/Fatal whereby the Commissioner has allowed application seeking compensation under the Act of 1923, awarded Rs.7,88,240/- as compensation with interest @12% p.a. payable from 14.5.2013.

2. Facts relevant for disposal of this appeal are that Dilip Kumar Rajbhar was employed as 'Skilled Labour' under the employment of non-applicant No.1. On 13.4.2013 at about 9.45 p.m. when said Dilip Kumar was working with non-applicant No.1, due to heavy rain & winds, the tin shed superstructure fell over Dilip Kumar. In the said accident, said Dilip suffered grievous injuries and died. Accident was reported to the concerned police station.

3. On 21.6.2013 applicants/appellants, who are widow, children & mother of deceased, filed an application under Sections 4, 10 & 22 of the Act of 1923 seeking compensation of Rs.10,19,250/- pleading therein that on the date of accident, deceased was working as Skilled Labour with non-applicant No.1 and earning Rs.10,000/- per month. In the application, they have also prayed for grant of 50% penalty and interest @ 12% p.a. on the amount of compensation and penalty.

4. Non-applicant No.1 – employer of deceased, submitted reply to application and admitted employment of deceased on the post of 'Plant Technician (Skilled Labour)' and also the

accidental death in the premises of non-applicant No.1 during the course of his employment. Non-applicant No.1 has accepted income of the deceased as Rs.8,000/- per month instead of Rs.10,000/- as pleaded in the application; further pleaded that deceased along with other employees was insured for a period from 26.9.2012 to 25.9.2013 under the Employees' Compensation Policy and additional premium was also paid to cover the aforesaid liability under the policy. It was further pleaded that as the deceased was covered under the policy liability for payment of amount of compensation after assessment would be upon non-applicant No.2 Insurance Company.

5. Non-applicant No.2 Insurance Company submitted reply to application admitting issuance of policy covering risk of 100 employees of non-applicant No.1 on total wages of Rs.1,27,00,000/-. However, the engagement and manner of accident, as pleaded in application, have been denied stating that the story is concocted and fabricated. Non-applicant No.2 has denied that the deceased being workman/employee of non-applicant No.1 was insured under the policy issued by non-applicant No.2. Non-applicant No.2 has also denied the fact regarding knowledge of accident or submission of any claim by non-applicant No.1 to non-applicant No.2. Ultimately, the liability to pay interest as well as liability to satisfy the amount of compensation was denied.

6. Upon appreciation of pleadings and evidence placed on

record by respective parties, the learned Commissioner held that on 13.4.2013 deceased Dilip was under the employment of non-applicant No.1, he suffered accidental injuries arising out of and in the course of employment. While accepting income and age of deceased as Rs.8,000/- per month & 35 years, awarded Rs.7,88,240/- as compensation along with interest @12% p.a. from 14.5.2013.

7. Ms. Sareena Khan, learned counsel for the appellants submits that the Commissioner erred in not awarding interest from the date of accident. The Commissioner has also not awarded any amount of penalty though specifically pleaded in the application. She submits that appeal is with regard to award of interest and penalty to the tune of 50% of the awarded amount of compensation.

8. Mr. N.K. Malviya, learned counsel appearing on behalf of respondent No.2 submits that the Commissioner in compliance of the provisions of Section 4 of the Act of 1923 has awarded interest after one month from the date of accident and award of interest after one month of accident cannot be said to be erroneous. He further submits that although the pleading was made by applicant/appellants with regard to award of penalty to the tune of 50%, no issue has been framed for the same and the applicants have not objected to it nor filed any application for framing additional issue. He further submits that even if the penalty is to be awarded on the amount of compensation calculated, then also

as per provisions under the Act of 1923, the liability to satisfy the amount of penalty is upon the employer and not on the insurance company. He further contended that under the provisions of the Act of 1923 there is further pre-condition for imposition of penalty that the Commissioner under the Act of 1923 to issue show-cause notice which has not been done in this case.

9. None appeared on behalf of respondent No.1/employer even after service of notice by way of alternate mode of service i.e. paper publication, for his appearance on 8.7.2019.

10. This appeal has been admitted for consideration on following substantial questions of law;-

    1. Whether the Commissioner is justified in awarding interest @12% under Section 4A (3) (a) of the Act of 1923 from 14.5.2013?

    2. Whether the Commissioner erred in not awarding amount of penalty as envisaged under Section 4A(3)(b) of the Act of 1923?

11. So far as first question of law is concerned, the provision contained under Section 4A of the Act of 1923 makes it clear that amount of compensation awarded under Section 4 of the Act of 1923 is to be paid 'as soon as' it fell due. Section 4A (3) provides that where the employer is in default of paying compensation due under the Act within one month from the date it fell due, the Commissioner shall impose interest under Section 4A (3)(a) and penalty under Section 4A (3) (b) of the

Act of 1923.

12. The Commissioner misinterpreted the language used under Section 4A (3) of the Act of 1923 that the interest will come into play only after one month of accident. In the opinion of this Court, it is not the intention of the Legislature but the period for award of compensation has been fixed within one month. If within one month employer fails to pay amount of compensation then employer is liable to pay interest from the date when compensation fell due. The word 'fell due' and 'date of award of compensation' has been considered by Hon'ble Supreme Court in the matter of **Pratap Narayan Singh Deo vs. Srinivas Sabata** reported in **(1976) 1 SCC 289** and recently, in case of **Oriental Insurance Company Ltd. Vs. Siby George & ors** reported in **(2012) 12 SCC 540** that has been again considered by Supreme Court following its earlier decision in Pratap Narayan Singh Deo and held thus:-

> "8. Now, coming back to the question when does the payment of compensation fall due and what would be the point for the commencement of interest, it may be noted that neither the decision in Mubasir Ahmed nor the one in Mohd. Nasir can be said to provide any valid guidelines because both the decisions were rendered in ignorance of earlier larger Bench decisions of this Court by which the issue was concluded. As early as in 1975 a four Judge Bench of this Court in Pratap Narain Singh Deo. Vs. Shrinivas Sabata and Anr., AIR 1976 SC 222 directly answered the question. In paragraphs 7 and 8 of the decision it was held and observed as follows:-
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> > "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 4- A(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."

10. The Court then referred to a Full Bench decision of the Kerala High Court in United India Insurance Co. Ltd. vs. Alavi, 1998(1) KerLT 951(FB) and approved it in so far as it followed the decision in Pratap Narain Singh Deo.
11. The decisions in Pratap Narain Singh Deo was by a four Judge Bench and in Valsala 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 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 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 facts of the case where date of accident is not in dispute and further the amount of compensation has not been deposited within one month, the award of interest would be from the date of accident as per law laid down by Hon'ble Supreme Court in the aforementioned cases.

14. Coming back to the facts of the case. In case at hand, accident took place on 13.4.2013. Non-applicant No.1-employer has sent written intimation under the letter head vide letter dated 15.4.2013, which was received on 16.4.2013. Letter of intimation has been placed on record as Ex.D-5. Intimation was given to respondent No.2 by the employer making a claim under the policy issued by him for deceased

Dilip Kumar and requested for deposit of amount before the Labour Court at the earliest. Again vide email dated 21.6.2013 intimation was made as reminder with a copy of letter dated 15.4.2013. Document Ex.D-5 was provided by M.D. Kurre, Supervisor of non-applicant No.1. Non-applicant No.2 examined one Satyendra Kumar Ahuja as Witness No.1 of Non-applicant No.2, who admitted the policy covering risk of 100 employees, but has not specifically denied about the letter of intimation sent by non-applicant No.1 vide Ex.D-5 and stated that he could not able to point out whether Ex.D-5 is received by the Company or not. Letter dated 15.4.2013 bears the signature acknowledging receiving. In these facts of case, the liability to satisfy the award of interest in absence of any exclusion clause would be upon non-applicant No.2 along with amount of compensation. The first question of law is answered accordingly.

15. So far as second question of law is concerned, the award of penalty comes into play as soon as employer defaults in paying amount of compensation within one month from the date it fell due. In case at hand, the employer admitted the employment, accidental death during course of employment but except sending intimation to the insurer / non-applicant No.2, he had not deposited the amount of compensation upon self-assessment before the Commissioner or paid to the appellants. Award of interest and penalty is consequential to default in paying amount of compensation by employer but

only difference is that the award of interest is to be awarded mandatorily, whereas for award of penalty, if employer succeeds in placing acceptable justification before the Commissioner for not paying the amount of compensation as soon as it fell due, then the Commissioner can after recording reasons could refuse the prayer for award of penalty or after considering the facts and circumstance of case and the reasons/justification offered by employer for not paying the amount of compensation as soon it fell due can vary percentage of amount of compensation to be awarded as penalty, which is in its jurisdiction in view of language used under Section 4A (3) (b) of the Act of 1923. In the case at hand, the applicants in their application have very specifically pleaded and sought a relief for award of interest and penalty to the tune of 50%. The Commissioner has not considered the said prayer / relief sought for by applicants and no order has been passed in this regard. In view of aforementioned facts, we are of the considered view that the Commissioner erred in not considering relief of award of penalty, as claimed by applicants/appellants in their application under Section 22 of the Act of 1923.

16. As requirement under Section 4A (3) (b) of the Act of 1923 award of penalty to be after issuance of show-cause notice to the employer for providing reasonable opportunity, we find it appropriate to remand back the case to the Commissioner for considering the case afresh with respect to relief of award of

penalty only, as prayed by the applicants in their application. Second question of law is also decided accordingly.

17. In view of above discussions, we hold that;

(i) appellants are entitled for interest @12% p.a. from the date of accident i.e. 14.4.2013, on the awarded amount.

(ii) the Commissioner erred in not considering relief sought for by appellant for award of penalty to the tune of 50% of the awarded amount of compensation. Therefore, as per requirement of proviso to Section 4A (3) (b) of the Act of 1923, the case is remanded back to the Commissioner for considering and deciding the relief of penalty after issuing show cause notice to the employer and further offering reasonable opportunity of hearing to non-applicant No.1.

18. Appeal is allowed in part to the extent indicated above.

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

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-