

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.A.(C) No. 1335 of 2015****Reserved on 24.08.2020****Pronounced on 28.08.2020**

1. Hemin Bai W/o Late Shri Chhatturam Sahu, Aged About 30 Years
R/o Gram- Piraud, Police Station- Gobra Navapara, Tahsil-
Abhanpur, District- Raipur, Chhattisgarh.
2. Nemichand Sahu S/o Late Shri Chhatturam Sahu, Aged About 10
Years Minor Through Mother / Legal Guardian Hemin Bai, R/o
Gram- Piraud, Police Station- Gobra Navapara, Tahsil- Abhanpur,
District- Raipur, Chhattisgarh.
3. Chain Singh S/o Late Shri Chhatturam Sahu, Aged About 7 Years
Minor Through Mother / Legal Guardian Hemin Bai, R/o Gram-
Piraud, Police Station- Gobra Navapara, Tahsil- Abhanpur, District-
Raipur, ChhattisgarhClaimants

---- Appellants**Versus**

1. Adhir Das S/o Late Shri Jamni Das, R/o Gram- Piraud, Police
Station- Gobra Navapara, Tahsil- Abhanpur, District- Raipur,
Chhattisgarh.
2. Manager, The New India Insurance Company Limited, Address-
First Floor, Madeena Building, Kachahari Chowk, Raipur,
Chhattisgarh Non-Applicants, District : Raipur, Chhattisgarh

---- Respondents

For Appellants:	Ms. Pragya Pandey, Advocate.
For Respondent No.1:	None, though served.
For Respondent No.2:	Shri Sourabh Sharma, Advocate.

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

1. The Claimants have preferred this appeal under Section 30 of the Employee's Compensation Act, 1923 (hereinafter referred to as 'the Act, 1923') questioning the legality and propriety of the order dated 22.12.2014 passed by the Commissioner for Employee's Compensation-cum-Labour Court, Raipur (for short 'the Commissioner') in Case No.19/WCACT/2013/fatal, whereby, the learned Commissioner awarded

the amount of compensation to the tune of Rs.4,48,650/- with 12% interest per annum from 10.12.2012 till the date of actual payment. The parties to this appeal shall be referred hereinafter as per their description in the Labour Court.

2. Briefly stated the facts of the case are that on 09.11.2012, deceased Chhatturam alias Satturam, who was working as a driver under the employment of Non-applicant No.1 Adhirdas, while driving the vehicle in question bearing Registration No. CG04- ZG-3358 was going along with his friends from village Birbira to Pipraud. At the relevant time, the mud granulars (murum) was lying on the way of Torla Kathia, owing to which, the tyre of the vehicle slipped over and the vehicle was overturned. As a result of the alleged accident, the deceased came under it and died on the spot, giving rise to the institution of the claim petition by his legal representatives, who are his wife and minors under Section 22 of the Act, 1923. According to the Claimants, the deceased, a 32 years old, was a driver by profession and used to earn Rs.4,500/- per month under the employment of Non-applicant No.1 Adhirdas. The matter was reported to Police Station Gobra, Nayapara, where an offence punishable under Section 279, 304A of IPC was registered in connection with Crime No.252/12 and owing to the said demise of the deceased, the closure report was filed.

3. The owner of the vehicle in question, while admitting the fact that the deceased was working under his employment as a driver at monthly wages of Rs.4,500/-, pleaded further that since the alleged vehicle was insured with Non-applicant No.2/The New India Insurance Company Limited, therefore, in case of any liability being fastened, the same could

be indemnified by the said company. While, the insurer has denied the claim on the ground that since the vehicle in question was being used in violation of the policy, 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 Chhatturam alias Satturam died during the course of his employment owing to the alleged accident at the age of 34 years. It held further that the monthly income of the deceased was Rs.4,500/- and by holding that the vehicle in question was not being used in violation of the policy, awarded a total amount of compensation along with the interest as mentioned herein above.

5. Being aggrieved, the Applicants have preferred this appeal, which has been admitted vide order dated 29.01.2020 on the following substantial question of law:-

“Whether finding of the Commissioner for Employee's Compensation-cum-Labour Court, awarding interest @ 12% per annum on the amount of compensation from 10.12.2012 instead of 09.11.2012, is perverse?”

6. According to learned counsel for the Appellants, the Commissioner, while passing the award under appeal, erred in granting interest with effect from 10.12.2012 instead of awarding the same from the date of the occurrence of the accident which took place on 09.11.2012. In support, she placed her reliance upon the decision rendered by the Supreme Court in the matter of ***Oriental Insurance Co. Ltd. vs. Siby George and others***, reported in **AIR 2012 SC 3144**.

7. On the other hand, learned counsel for the Respondent No.2 has

supported the award under appeal.

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

9. Admittedly, the deceased was working as a driver under the employment of Non-applicant No.1, namely, Adhirdas, at the monthly wages of Rs.4,500/-, who died on an accident occurred on 09.11.2012 when he was driving the vehicle in question. On account of the alleged accident, the Claimants, being legal representatives of him, have made an application under Section 22 of the Act, 1923 seeking amount of compensation and the Commissioner after analysing the evidence led by the parties determined the amount of compensation to the tune of Rs.4,48,650/- with 12% interest per annum with effect from 10.12.2012, i.e., a month after the occurrence of the alleged accident, which took place on 09.11.2012.

10. The aforesaid interest as awarded by the Commissioner with effect from 10.12.2012 instead of the date of the accident, however, appears to be unreasonable and deserves to be modified, 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, wherein 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.....”

11. The aforesaid principle was reiterated by the Supreme Court in the matter of “***Oriental Insurance Co. Ltd. vs. Siby George and others (supra)***”, wherein 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.”

12. In the present case, the Commissioner, while determining the amount of compensation to the tune of Rs.4,48,650/- has, thus, erred in

awarding the interest with effect from 10.12.2012 instead of the occurrence of the alleged accident, i.e., 09.11.2012, by ignoring the aforesaid settled principles of law

13. Consequently, the substantial question of law as framed in this regard is, thus, answered in positive by holding that the Claimants are entitled to the said awarded sum of Rs.4,48,650/- along with the interest at the rate of 12% per annum from the date of the accident, i.e., 09.11.2012 instead of 10.12.2012 as awarded by the Commissioner.

14. The appeal is, accordingly, allowed. No order as to costs.

Sd/-

(Sanjay S. Agrawal)
JUDGE

Nikita