

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 480 of 2015**

- Smt. Rukmani Dewangan, W/o late Manohar Dewangan, Presently aged about 40 years, R/o Village-Atari, Tahsil Patan, Dist. Durg C.G.

----Appellant**VERSUS**

1. Atul Agrawal, S/o Shri Ramesh Chandra Agrawal, Presently aged about 33 years, Manager and Director, Saraswati Repellars Indian Re-Rollers, Near Mandi Gate, Pandri, Raipur C.G.
2. National insurance Company Limited, through The Branch Manager, Branch No. 1, Naveen Bazar, Phool Chowk, G.E. Road, Raipur C.G.

----Respondents

For Appellant	:	Mr. B.P. Rao, Advocate
For Respondent No. 2	:	Mr. Dashrath Gupta, Advocate

Hon'ble Shri Justice Parth Prateem Sahu**Order on Board****09/11/2020**

1. This appeal under Section 30 of the Workmen's Compensation Act, 1923 (for short "the WC Act") has been filed by the applicant challenging the impugned judgment/ award dated 13.08.2014 passed by Commissioner, Workmen's Compensation Act, Labour Court, Durg in case no. 36/WC Act/ 2011 Fatal. Appellant, in this appeal, has only challenged the non-award of the interest by the Commissioner on calculated amount of compensation from the date of accident. The Commissioner, while allowing the application under Section 10 of the WC Act, awarded Rs. 4,48,000/- as compensation, fastened the liability upon non-applicant 2-Insurance Company and awarded conditional interest @ 12% p.a., ie. if

the amount of compensation is not deposited within a period of 2 months from the date of passing of impugned award, amount of compensation to carry interest @ 12%.

2. Facts of the case relevant for disposal of this appeal are that the appellant's only son by name Jitendra Dewangan was working with non-applicant 1. On 11.01.2011 when Jitendra was working at place of his work and carrying scrap wire, one portion of the wire came into contact with fan of wire machine, resulting forceful drag of Jitendra towards the running machine due to which Jitendra Dewangan suffered head injury, during the course of treatment, he died.
3. Appellant-claimant filed an application under Section 10 of the WC Act pleading therein that on the date of accident, Jitendra was aged about 20 years and earning Rs. 4,000/- per month. Non-applicants have not paid any amount of compensation on account of the employment, injuries suffered by late Jitendra Dewangan.
4. Non-applicant 1 submitted its reply and denied the pleading made therein with regard to nature of work as pleaded in the application filed under Section 10 of WC Act. Factory was insured with non-applicant 2- Insurance Company and the liability to pay the amount of compensation is upon non-applicant 2/ Insurance Company.
5. Non-applicant 2/ Insurance Company submitted reply to the claim application, denying the pleadings made therein, It was further pleaded that the deceased was not under the employment of non-applicant 1. Accident was not reported to Insurance Company nor claim form was deposited. There was breach of policy conditions.

6. Learned Commissioner, upon appreciation of pleadings and evidence brought on record, allowed the application under Section 10 of WC Act, recorded finding that the deceased suffered injuries by accident arising out and during the course of his employment. Income of the deceased to be Rs. 4,000/- per month and calculated the amount of compensation as Rs. 4,48,000/-. Liability to satisfy the amount of compensation was upon non-applicant 2/ Insurance Company. The Commissioner under WC Act has further directed that if the calculated amount of compensation is not deposited within a period of 2 months then the amount of compensation shall carry interest @ 12% p.a. from the date of accident till its realization.
7. Mr. B.P. Rao, learned counsel for the appellant submits that the award of conditional interest by the Commissioner is contrary to the provisions under Section 4A(3)(a) of the Act. He submits that the liability to pay the amount of compensation to the injured employee/ workman is automatic on the date of accident in view of the provisions as envisaged under Section 4A of the WC Act. He further submits that the liability to pay the amount of compensation upon the employer and insurer as per Section 4A of the said Act is to be paid as soon as it falls due. In the case at hand, non-applicants have not deposited any amount of compensation after the accidental injury suffered by the deceased. Referring to the aforementioned provisions of law, he submitted that the Commissioner erred in not awarding the interest in terms of Section 4A(3)(a) of the WC Act ie. from the date of accident. In support of his contention, he places his reliance in the matter of **Pratap Narain Singh Deo vs Srinivas Sabata and Anr** reported in **(1976) 1 SCC 289**, **Kerala SEB v. Valsala K and another** reported in **(1999) 8 SCC 254** and **Oriental Insurance Co. Ltd. v**

Siby George and others reported in **(2012) 12 SCC 540**.

8. Mr. Dashrath Gupta, learned counsel for the Respondent 2/ Insurance Company would support the judgment passed by the Commissioner under WC Act.
9. I have heard learned counsel for appellant and also perused the record.
10. The appeal was admitted on the following substantial question of law.

“Whether the Commissioner for Employee's Compensation, Labour Court, Durg, was justified in not granting interest upon the awarded sum from the date of the application by ignoring the provisions prescribed under clause (a) of sub-section (3) of Section 4-A of the Employee's Compensation Act, 1923?”

11. To appreciate the submission made by the learned counsel for the appellant, I find it appropriate to have a glance of relevant provisions of the WC Act. Section 4-A of the Act is reproduced below for ready reference.

“[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

(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.]”

12. Perusal of Section 4-A(1) of the Act, in very clear terms, envisages that the compensation shall be paid as soon as it falls due. The word “*as soon as it falls due*” has been considered by the Hon'ble Supreme Court in the case of **Pratap Narain Singh Deo (supra)** 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.

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."

Yet, in another case of **Siby George (supra)** taking into consideration the case of **Pratap Narain Singh Deo (supra)**, **Valsala K (supra)**, hon'ble Supreme Court has held thus:

"10. The matter once again came up before the Court when by amendments introduced in the Act by Act 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 Section 4 and 4-A of the Workmen's Compensation Act, 1923, made by Act 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.'

13. 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, (2007) 2 SCC 349 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 rulings of the Supreme Court, the appellant is entitled for the interest from the date of accident ie. 10.01.2011. As per the evidence of Gurucharan Singh, Assistant Manager of Insurance Company, he

admitted about the intimation of accident dated 11.01.2011 through letter dated 12.01.2011 of non-applicant 1. Non-applicant 2-Insurance Company has not taken any step for payment of the amount of compensation nor placed on record any reply to the letter dated 12.01.2011 or any information that claim cannot be awarded. True it is that under the Act of 1923, it is the liability of employer to pay the compensation but when the employer has purchased the insurance policy covering the risk of workmen/ employee, it is now for the insurer to indemnify the insured if after intimation, claim is not rejected for any reason.

In the case at hand, non-applicant 1 employer immediately on next day of accident informed non-applicant 2 about the accident ie. within 30 days of the accident but non-applicant 2 has not paid the compensation for which it received premium.

14. In the aforementioned facts of the case, It is directed that non-applicant 2/ Insurance Company shall pay the interest @ 12% from the date of accident on the calculated amount of compensation.
15. In view of the above, the substantial question of law as framed above is answered accordingly.
16. In the result, appeal is allowed. Impugned award is hereby modified to the extent as indicated hereinabove. Rest of the conditions imposed by the Commissioner will remain intact.

Sd/-
(Parth Prateem Sahu)
Judge