

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**WEDNESDAY, THE SEVENTEENTH DAY OF JUNE
TWO THOUSAND AND TWENTY**

PRESENT

THE HONOURABLE DR. JUSTICE SHAMEEM AKTHER

CIVIL MISCELLANEOUS APPEAL NO: 1495 OF 2008

Appeal under Section 30 of Workmen's Compensation Act against the Order made in W.C.No.67 of 2002 dated 24.05.2003 on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Hyderabad-II.

Between:

Sri Bikshapathi, R/o.Kolthuru (V), Shameerpet (M), Ranga Reddy District.

...APPELLANT

AND

1. P.Kumaraswami, R/o.114, Sastrinagar, Tirumalghiry, Secunderabad.
2. The New India Assurance Company Ltd, Alkareem Trade Centre, Ranigunj, Secunderabad.

...RESPONDENTS

Counsel for the Appellant: SRI. SUDARSHAN S REDDY

Counsel for the Respondents: None Appears

The Court delivered the following: JUDGMENT

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER
CIVIL MISCELLANEOUS APPEAL No.1495 of 2008

JUDGMENT:

This Civil Miscellaneous Appeal, under Section 30 of the Workmen's Compensation Act, 1923, is filed by the appellant/applicant, challenging the order, dated 24.05.2003, passed in W.C.No.67 of 2002, by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Hyderabad - II (for short, 'the Commissioner'), whereby, the learned Commissioner directed the respondent No.1/owner of the vehicle bearing registration No.AP-28-T-8114 and the respondent No.2/Insurance Company to pay a compensation of Rs.79,269/- to the appellant/applicant.

2. Heard the learned counsel for the appellant/applicant and perused the record. In spite of service of notice on the respondent No.1/insurer and the respondent No.2/Insurance Company and despite listing this matter under the caption "For Orders", there is no representation on their behalf.

3. The learned counsel for the appellant/applicant challenged the impugned order of the learned Commissioner on two grounds. It is contended that firstly, the learned Commissioner erred in granting a meagre compensation of Rs.79,269/- against a total claim of Rs.1,50,000/- without properly appreciating the evidence on record. Secondly, the learned Commissioner erred in not granting any interest on the amount granted as compensation. In support of his contention with regard to the

grant of interest on the compensation awarded, the learned counsel had relied on a decision of the Hon'ble Apex Court in **Oriental Insurance Company Limited Vs. Mohd. Nasir and another¹**.

4. In view of the above submissions, the point that arises for determination in this appeal is as follows:-

"Whether the order, dated 24.05.2003, passed in W.C.No.67 of 2002, by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Hyderabad - II, is legally sustainable?"

POINT:-

5. As regards the aspect as to whether the appellant/applicant sustained injuries in the subject accident during his course of employment under the respondent No.1, the learned Commissioner, relying on Ex.A.3-Certified copy of Charge-sheet, Ex.A.4-Medical certificate issued by Gandhi Hospital and Ex.A.5-Disability Certificate, concluded that the appellant/applicant sustained 30% disability in the subject accident occurred on 26.04.2002 during the course of his employment under the respondent No.1. As regards the age of the appellant/applicant, the learned Commissioner, relying on Ex.A.6-Driving Licence of the appellant/applicant, took the age of the appellant/applicant as 36 years as on the date of accident. As regards the wage of the appellant/applicant, the learned Commissioner, holding that there is no documentary proof to ascertain the wage of the appellant/applicant, took the statutory

¹ 2009 ACJ 2742

minimum wage of Rs.2,234/- as the wage of appellant/applicant. Thus, the learned Commissioner, taking the age of the appellant/applicant as 36 years, wage as Rs.2,234/-, relevant factor as 194.64 and disability suffered by him as 30%, granted a compensation of Rs.79,269/- (including advocate fee of Rs.1,000/-). The findings of fact recorded by the learned Commissioner on this aspect are based on evidence on record and do not suffer from any material irregularity.

6. Admittedly, the learned Commissioner did not grant any interest on the amount granted as compensation. In **Oriental Insurance Company Limited's** case *supra* relied by the learned counsel for the appellant/applicant, the Hon'ble Apex Court, while dealing with award of interest on the amount granted as compensation, held in Paragraphs 22 and 23 as follows:

22. The second question which arises for consideration is with regard to the payment of interest. There cannot be any doubt whatsoever that interest would be from the date of default and not from the date of award of compensation.

Section 4A(3) of the 1923 Act reads as under :

"4A. Compensation to be paid when due and penalty for default.--(1) and (2) ...

(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 (2 of 1934)."

23. The said provision, as it appears from a plain reading, is penal in nature. It, however, does not take into consideration the chargeability of interest on various other grounds including the amount which the claimant would have earned if the amount of compensation would have been determined as on the date of filing of the claim petition. Workmen Compensation Act does not prohibit grant of interest at a reasonable rate from the date of filing of the claim petition till an order is passed. Only when sub-section (3) of Section 4A would be attracted, a higher rate of interest would be payable wherefor a finding of fact as envisaged therein has to be arrived at. Only because in a given case, penalty may not be held to be leviable, by itself may not be a ground not to award reasonable interest.

Reliance has been placed on Mubasir Ahmed (surpa), wherein it was held :

"8. Interest is payable under Section 4-A(3) if there is default in paying the compensation due under this Act within one month from the date it fell due. The question of liability under Section 4A was dealt with by this Court in Maghar Singh v. Jashwant Singh [(1998) 9 SCC 134]. By Amending Act, 14 of 1995, Section 4A of the Act was amended, inter alia, fixing the minimum rate of interest to be simple interest @ 12%. In the instant case, the accident took place after the amendment and, therefore, the rate of 12% as fixed by the High Court cannot be faulted. But the period as fixed by it is wrong. The starting point is on completion of one month from the date on which it fell due. Obviously it cannot be the date of accident. Since no indication is there as when it becomes due, it has to be taken to be the date of adjudication of the claim. This appears to be so because Section 4A(1) prescribes that compensation under Section 4 shall be paid as soon as it falls due. The compensation becomes due on the basis of adjudication of the claim made. The adjudication under Section 4 in some cases involves the assessment of loss of earning capacity by a qualified medical practitioner. Unless adjudication is done, question of compensation becoming due does not arise. The position becomes clearer on a reading of Sub-section (2) of Section 4A. It provides that provisional payment to the extent of admitted liability has to be made when employer does not accept the liability for compensation to the extent claimed. The crucial expression is "falls due". Significantly, legislature has not used the expression "from the date of accident". Unless there is an adjudication, the question of an amount falling due does not arise."

As therein this aspect of the matter has not been considered, we are of the opinion that interest will also

payable at the rate of 7% per annum from the date of filing of the application till the date of award. The rate of interest thereafter shall be payable in terms of the order passed by the Commissioner.

7. A plain reading of the aforementioned extract makes it clear that in the event of default in depositing the compensation within 30 days from which it has fallen due, interest @ 7% is payable from the date of filing of the application till the date of award. In the instant case, the learned counsel for the appellant/applicant brought to the notice of this Court that though the award was passed on 24.05.2003, the respondent No.2/Insurance Company had deposited the compensation amount, i.e., Rs.79,269, in the month of August, 2003. Therefore, in view of the law laid down by the Hon'ble Apex Court in the aforementioned decision, the appellant/applicant is entitled for interest @ 7% per annum on the amount granted as compensation, i.e., 79,269/-, from the date of filing of the application till the date of deposit of Rs.79,269/-.

8. With the above modification to the impugned order, this appeal is disposed of. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this appeal shall stand closed.

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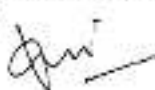
SD/-B.S.CHIRANJEEVI
JOINT REGISTRAR

SECTION OFFICER

To,

1. The Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Hyderabad-II, Hyderabad. (with record)
2. One CC to Sri. Sudarshan S Reddy, Advocate [OPUC]
3. One CC to Sri. Naresh Byrapaneni, Advocate [OPUC]
4. Two CD Copies

gbr



HIGH COURT

DATED: 17/06/2020

DECREE

CMA.No.1495 of 2008



DISPOSING OF THE CMA

NO COSTS

SV
5 copies
Dr 1/7/2020

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...RESPONDENTS

Appeal under Section 30 of Workmen's Compensation Act against the Order of the Commissioner of Workmen's Compensation and Assistant Commissioner of Labour, Hyderabad-II in W.C.No.67 of 2002 dated 24.05.2003.

ORDER: This appeal coming on for hearing and upon perusing the grounds of appeal, order of the Commissioner and the material papers in the case and upon hearing the arguments of Sri. Sudarshan S Reddy, Advocate for the Appellant and none appearing for respondents.

This Court doth Order and Decree as follows;

1. That the appeal be and hereby is disposed of with following modification of the impugned order;
2. That the appellant/applicant be and is hereby is entitled to interest @ 7% per annum on the amount granted as compensation i.e. Rs.79,269/- (Rupees seventy nine thousand and two hundred sixty nine only) from the date of filing of the application till the date of deposit of Rs.79,269/- ; and
3. That there shall be no order as to costs in this appeal.

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SD/-B.S.CHIRANJEEVI
JOINT REGISTRAR

SECTION OFFICER

To,

1. The Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Hyderabad-II, Hyderabad.

2. Two CD Copies

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HIGH COURT



DATED: 17/06/2020

JUDGMENT

CMA.No.1495 of 2008

DISPOSING OF THE CMA

NO COSTS