

NAFR

HIGH COURT OF CHHATTISGARH BILASPUR**M. A. (C) No. 427 of 2015**

1. Tulsiram Thakur, S/o Late Domar Singh Thakur, Aged About 50 Years, Caste Halba,
2. Smt. Banita Bai, W/o Tulsiram Thakur, Aged About 46 Years, Caste Halba,
3. Bhagwatram, S/o Tulsiram Thakur, Aged About 18 Years, Caste Halba,

All are resident of Village Bharda, Post-Tarri, Police Station Gurur, District Durg Chhattisgarh.

---- Appellants**Versus**

1. Durgesh Kumar Sahu, S/o Girdharilal Sahu, Aged About 35 Years, Occupation Driver of Vehicle Matador bearing registration No.C.G.-07/C.-8529, resident of Village Chhediya, Post Tarri, Police Station Gurur, District Durg Chhattisgarh.
2. Pratapchand Sahu, S/o Brijlal Sahu, Aged About 46 Years, Occupation Owner and Employer of deceased in vehicle Matador bearing registration No.C.G.-07/C.-8529, resident of Village Ramtara, Post-Tarri, Police Station Gurur District Durg Chhattisgarh.
3. Royal Sunderam Allianz Insurance Company Limited, Sunderam Towrs-45 & 46, White Road Chennai-600002, Through The Branch Manager, Branch Office Chawla Brothers Jeevan Beema Marg, Pandri Road, Raipur, District Raipur Chhattisgarh.
4. Smt. Leena Thakur, W/o Late Bhikhamram Thakur, Aged About 20 Years, Caste Halba, resident of Village Bharda, Post-Tarri, Police Station Gurur, District Durg Chhattisgarh.

---- Respondents

For Appellants	: Shri C.K. Sahu, Advocate.
For Respondents	: None

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

Per Parth Prateem Sahu, Judge

27.01.2021

1. Appellants/claimants have filed this appeal under the provisions of Section 30 of the Employee's Compensation Act, 1923 (hereinafter referred to as 'E.C. Act') (prior to 18/01/2010 known as Workmen's Compensation Act) challenging the impugned judgment/award dated 12/03/2015 passed by the Commissioner for Employees' Compensation Act, Labour Court, Durg, Chhattisgarh (hereinafter referred to as 'Commissioner') in Case No.32/W.C.Act/2010 Fatal whereby the learned Commissioner allowed the application filed under Section 10 of the E.C. Act in part and awarded total compensation of Rs.2,87,781/-.
2. Facts relevant for disposal of this appeal, are that, Bhikham Ram Thakur was working as coolie on the vehicle owned by non-applicant No.2 bearing No.CG-07/C/8529 (hereinafter referred to as 'offending vehicle'). On 02/06/2009, at about 12.00 PM., Bhikham Ram Thakur along with other labourers went to Dhanora Bhatta Murum Mine on offending vehicle, when they were loading Murum on the offending vehicle,

Murum fell down over Bhikham Ram Thakur. In the said accident Bhikham Ram Thakur died.

3. Appellants who are parents and siblings of deceased Bhikham Ram Thakur filed an application under the E.C. Act before learned Commissioner seeking compensation of Rs.3,32,055/- pleading therein that on the date of accident, deceased was earning Rs.3,000/- per month as wages/salary.
4. Non-applicant No.2 submitted reply to application under the E.C. Act and accepted the deceased to be his employee. Accident and place of accident was admitted. He has further admitted wages of Rs.100/- per day to be paid to the deceased. It was pleaded that on the date of accident, offending vehicle was insured with non-applicant No.3, hence, liability to satisfy the amount of compensation to be upon non-applicant No.3/Insurance Company.
5. Non-applicant No.3/Insurance Company submitted reply to applicant and accepted the insurance of offending vehicle. It was pleaded that there was no valid permit of offending vehicle. Accident not occurred during the course of employment and there was breach of policy conditions.
6. Learned Commissioner upon appreciation of the pleadings and evidence brought on record arrived at a finding that Bhikham Ram Thakur died during the course of his

employment with non-applicant No.2; breach of policy conditions was not found to be proved and upon assessing income of deceased as Rs.2,600/- per month, calculated the amount of compensation of Rs.2,87,781/-. Learned Commissioner further directed to deposit the entire amount of compensation within a period of 45 days and in default, it is directed that amount of compensation shall carry interest at the rate of 12%.

7. Shri C.K. Sahu, learned counsel for the appellants/claimants submits that appellants are raising sole ground with regard to non-award of interest from the date of accident. He further submits that in view of provisions of Section 4A(3)(a) of the E.C. Act, the Commissioner is required to award interest at the rate of 12% from the date of accident.
8. No one appeared on behalf of the respondents even in the second round.
9. We have heard learned counsel for the appellants/claimants and perused the record of claim case.
10. This is an admitted appeal. The substantial question involved for consideration before this Court is whether Commissioner under the E.C. Act erred in not awarding interest in terms of provisions of Section 4A(3)(a) of the E.C. Act ?

11. As it is an appeal by the appellants/claimants under Section 30 of the E.C. Act seeking award of interest at the rate of 12% from the date of accident, we find it appropriate to extract the relevant provisions, which is as under :

“[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.

* * * *

(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”

12. The provisions under the E.C. Act is very specific and clear that compensation under Section 4A to be paid as soon it falls due and further amount of compensation to carry interest if the amount of compensation due is not paid within one month from the date it fell due.
13. The word 'fell due' has been considered by Hon'ble Supreme Court in case of **Pratap Narain Singh Deo v. Srinivas**

Sabata and Another reported in **(1976) 1 SCC 289**, in which, it has held thus:

“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 subsection (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 and 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.”

14. Recently, Hon'ble Supreme Court has again considered the issue in case of **Oriental Insurance Company Limited v. Siby George and Others** reported in **(2012) 12 SCC 540**, in which, it has held thus :

“11. The Court then referred to a Full Bench decision of the Kerala High Court in *United India Insurance Co. Ltd. v. Alavi* [(1998) 1 KLT 951] and approved it insofar as it followed the decision in *Pratap Narain Singh Deo* (supra).

12. The decision in *Pratap Narain Singh Deo* (supra) was by a four-judge Bench and in *Kerala SEV v. Valsala K.* [(1999) 8 SCC 254] by a three-judge Bench of this Court. Both the decisions were, thus, fully binding on the Court in *National Insurance Co. Ltd. v. Mubasir Ahmed* [(2007) 2 SCC 349] and *Oriental Insurance Co. Ltd. v. Mohd. Nasir* [(2009) 6 SCC 280], each of which was heard by two Judges. But the earlier decisions in *Pratap Narain Singh Deo* (supra) and *Valsala K.* (supra) were not brought to the notice of the Court in the two later decisions in *Mubasir Ahmed* (supra) and *Mohd. Nasir* (supra).

13. In the light of the decisions in *Pratap Narain Singh Deo* (supra) and *Valsala K.* (supra), 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 (supra) and Mohd. Nasir (supra) insofar as they took a contrary view to the earlier decisions in *Pratap Narain Singh Deo (supra)* and *Valsala K. (supra)* do not express the correct view and do not make binding precedents.”

15. In view of aforementioned authoritative pronouncements of Hon'ble Supreme Court in case of **Pratap Narain Singh Deo (supra)** and **Siby George (supra)**, appellants/claimants are entitled for interest at the rate of 12%, if the amount of compensation is not paid within one month due from the date it fell due, the date when the amount of compensation fell due has been considered to be the date of accident. Admittedly, in the case at hand, as per material available on record, the amount of compensation has not been paid to the appellants/claimants within 30 days' the amount of compensation fell due, hence, the appellants/claimants are entitled for the interest on the calculated amount of compensation at the rate of 12% from the date of accident.
16. Learned Claims Tribunal erred in not awarding interest from the date of accident, but awarding default interest if amount of compensation calculated is not paid within 45 days' from the judgment/award.
17. For the foregoing reasons, we hold that the amount of compensation calculated by learned Commissioner shall carry interest at the rate of 12% from the date of accident.

Accordingly, appeal is allowed, the question of law is decided in favour of appellants and impugned award is modified to the extent as indicated herein-above.

Sd/-

(P.R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Yogesh