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HIGH COURT OF CHHATTISGARH BILASPUR

M. A. (C) No. 181 of 2015

Ishwar Sahu, Aged About 23 Years, S/o Bhagirathi Sahu, R/o Village Shamoda, Thana-Arang Tahsil and District Raipur (C.G.).

---- Appellant

Versus

1. Balvinder Singh S/o Gurpal Singh R/o Village Behind of Gurudwara Devpuri Gurudwara Complex, Devpuri Raipur, Tahsil and District Raipur, (C.G.).
2. The New India Insurance Co. Ltd. Through Circle Manager Circle Office No.1, First Tal, Madina Bilding, Kachehari Chouk Raipur, (C.G.).

---- Respondents

For Appellant	: Shri A.L. Singroul, Advocate.
For Respondent No.1	: None.
For Respondent No.2	: Shri Shailesh Tiwari, Advocate

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

Judgment on Board

Per Parth Prateem Sahu, Judge

19.01.2021

1. Appellant/applicant has preferred this appeal under 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 judgment dated 18.11.2014 passed by the Commissioner for Employees Compensation-cum-Labour Court No.2, Raipur, Chhattisgarh (hereinafter referred to as 'Commissioner') in Case No.41/W.C.Act/2011/Non-Fatal whereby learned Commissioner allowed the application filed under Section 10 of the E.C. Act in part and awarded Rs.1,18,773/- as total compensation.

2. Facts relevant for disposal of this appeal, are that, appellant was working under the employment of respondent No.1/non-applicant No.1 as Conductor/Cleaner of Truck bearing No.CG-04/DC/9381. On 27.05.2010, at about 3.00 PM, when appellant under the instructions of non-applicant No.1 was checking stationary Truck owned by non-applicant No.1, at that relevant time, one unknown vehicle dashed him and caused accident. In the said accident, appellant suffered grievance injuries over his person.

3. After recovery from the injuries, he filed an application under Section 10 of the E.C. Act seeking compensation of Rs.1,40,140/- with interest at the rate of 12% along with penalty of 50% of amount of compensation.

4. Non-applicant No.1, who is owner of Truck/employer submitted reply to claim application, in which, employment of

appellant, accident arising out of and during the course of employment was admitted. It was pleaded that Truck was insured with non-applicant No.2/Insurance Company, hence, liability, if any, for payment of amount of compensation would be upon non-applicant No.2/Insurance Company.

5. Non-applicant No.2/Insurance Company resisted the claim, in which, employment, accident and permanent disability was denied. Employee-employer relationship between applicant and non-applicant No.1 as well as income of appellant was also denied.

6. Learned Commissioner on the basis of pleadings and evidence brought on record by the respective parties has formulated as many as six issues for consideration. After conclusion of proceedings, learned Commissioner held that on account of injuries suffered by appellant arising out of and during the course of employment, he suffered permanent disability leading to loss of 25% earning capacity; income of appellant was assessed as Rs.3,600/- per month and awarded Rs.1,18,773/- as compensation.

7. The appeal was admitted on 23.04.2015 on the following substantial questions of law :

> "(i) Whether the learned Commissioner has failed to award proper compensation and thereby failed to award the penalty?

> (ii) Whether, the learned Commissioner was justified to exonerate the Insurance Company of their liability?”

8. Shri A.L. Singroul, learned counsel for the appellant submits that learned Commissioner has not awarded interest on the amount of compensation calculated. He further submits that learned Commissioner has also not awarded amount of penalty though appellant in his application under Section 10 of the E.C. Act has very specifically sought both the reliefs i.e. award of interest at the rate of 12% per annum and award of penalty at the rate of 50% of amount of compensation. It is contended that learned Commissioner erroneously exonerated the Insurance Company from its liability on the ground that under the insurance policy, there is coverage of risk of only third party. He submits that under the provisions of Section 147 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act'), coverage of risk of employee of the vehicle is automatic. Once Commissioner arrived at a finding that there was employee-employer relationship between appellant and employer and injuries suffered by appellant in an accident arising out of and during the course of employment, then under the policy issued by respondent No.2/Insurance Company, risk of the appellant being an employee (Helper) is covered.

9. Shri Shailesh Tiwari, learned counsel for respondent No.2 vehemently opposes the submission made by learned counsel for the appellant and submits that learned Commissioner justified in passing the impugned judgment and exonerating the Insurance Company from its liability. The risk of appellant would not be covered under the policy unless and until premium to this effect is paid and no such premium is paid by insured covering the risk of appellant i.e. Cleaner/Helper.

10. We have heard learned counsel for the respective parties, at length.

11. So far as second question of law with regard to exoneration of Insurance Company from its liability is concerned, we find it appropriate to extract Section 147 of the M.V. Act, which talks about the requirement of policies and limits of liability, which is extracted below for easy reference :

> "**147. Requirements of policies and limits of liability**. - (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which-
>
> (a) is issued by a person who is an authorised insurer; and
>
> (b) insures the person or classes of persons specified in the policy to the extent specified in sub-section(2) -
>
> (i) against any liability which may be incurred by him in respect of the death

of or bodily [injury to any person, including owner of the goods of his authorised representative carried in the vehicle] or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:

Provided that a policy shall not be required-

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923) in respect of the death of, or bodily injury to, any such employee-

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle engaged as conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability."

12. Necessity of insurance against third party risk is prescribed under Section 146 of the M.V. Act. Under Section 147 of the M.V. Act, it is envisaged that policy of insurance must be a policy for the requirements as specified under Clause (1)(a)(b)(i)(ii) of Section 147. Further stipulation is there under proviso to Section 147(1), wherein it is mentioned that policy shall not be required for covering the risk of employee of a person insured by the policy who suffered accidental injuries arising under the E.C. Act. The case at hand deals with 'Goods Vehicle', hence, proviso (i)(c) of Section 147(1) of the M.V. Act would apply to the case as appellant being Helper.

13. This Court in MAC No.70 of 2015 (Smt. Santoshi Sahis & Others v. Vijay Kumar Verma & Another) decided on 28.08.2020 while considering the identical issue with regard to coverage of risk under Section 147 of the M.V. Act of an employee engaged in Goods Vehicle, considered the ruling of Hon'ble Supreme Court in case of **Ved Prakash Garg v. Premi Devi & Others** reported in **(1997) 8 SCC 1, Kerala State Electricity Board & Another v. Valsala K. & Another** reported in **AIR 1999 SC 3502, Sanjeev Kumar Samrat v. National Insurance Company Ltd. & Others** reported in **AIR 2013 SC 1125; (2014) 14 SCC 243** and held thus :

> “18. The Apex Court (3 Members Bench) considered the scope of the Insurance Policy issued to the cover the 'Act liability'

in respect of a motor vehicle with reference to the extent as arising under the Act of 1923 and has held in ***Kerala State Electricity Board & Another vs. Valsala K. & Another*** reported in **AIR 1999 SC 3502** that the eligibility to get compensation for the particular class of employees under sub-clauses (a), (b) and (c) of proviso (i) of clause (b) of sub Section (1) of Section 147 of the Act of 1988 includes the employees of the insured, such as '**Driver/Helper/ Cleaner**'. The Court held that the coverage to such employees, to the extent as payable under Act of 1923, is <u>automatic</u> in the case of employees under sub-clauses (a), (b) and (c) of proviso to Section 147(1) (b) of the Act of 1988, but if any wider coverage was required beyond the extent under the Act of 1923, the owner of the vehicle was to take such a policy by making payment of extra premium and the policy should also contain a clause to that effect. However, where the policy mentioned “a policy for Act liability” or 'Act Policy', the liability of the Insurance Company, qua the employees as aforesaid, would not be unlimited, but would be limited to that arising under the Act of 1923. The aforesaid decision was referred to in the subsequent verdict passed by a '2 Judges Bench of the Apex Court' in **Sanjeev Kumar Samrat (supra)**. In the said circumstances, we answer the

> Substantial Question of Law in favour of the Appellants/Claimants holding that the deceased **Helper/Cleaner** comes within the policy issued to cover the statutory liability.”

14. In view of aforementioned ruling of Hon'ble Supreme Court and judgment passed by this Court, we are of the considered view that appellant being Helper/Cleaner of Truck is covered under the policy by application of Section 147 of the M.V. Act. Learned Commissioner erred in exonerating the Insurance Company from its liability considering that risk of appellant (Cleaner/Helper) is not covered. The said finding of learned Commissioner is set aside. Being so, we answer substantial question of law No.2 in favour of appellant accordingly.

15. So far as the first question of law with regard to non-award of proper compensation and penalty is concerned, as per submission made by learned counsel for the appellant that award of interest to be mandatory as also award of penalty. Section 4A(3)(a) of the E.C. Act provides for award of interest on amount of compensation calculated by the Commissioner. As per language of Section 4A itself, it is clear that amount of compensation is to be paid as soon as it falls due. Section 4A(3) further stipulates that if the employer fails to pay the amount of compensation within a period of one month from the date it fell due, the Commissioner shall

direct the employer to pay simple interest at the rate of 12% and further if in his opinion, there is no justification for delay in payment of compensation, then to impose 50% of further sum of amount of compensation calculated by way of penalty. The language used in Section 4A(3) of the E.C. Act is very clear that the employer has to pay the amount of compensation within a period of 30 days from the date it fell due.

16. The word 'fell due' has been considered by Hon'ble Supreme Court in the matter of **Pratap Narayan Singh Deo v. Srinivas Sabata** reported in **(1976) 1 SCC 289 : AIR 1976 SC 222** and recently, in case of **Oriental Insurance Company Ltd. v. Siby George and Others** reported in **(2012) 12 SCC 540** following its earlier decision in **Pratap Narayan Singh Deo** (supra) 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 :

> “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. v. 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."

17. Recently, Hon'ble Supreme Court in case of **Mohamadi and Others v. Union of India** reported in **(2019) 12 SCC 389** held that relevant date for determination of compensation payable is 'date of accident'. In view of aforementioned settled legal position with respect to award of interest by learned Commissioner under the E.C. Act is from the 'date of accident' and award of interest is mandatory under the provisions of E.C. Act.

18. For the foregoing reasons and discussions, we are of the considered view that learned Commissioner erred in not awarding interest on amount of compensation awarded to the appellant. We hold the amount of compensation shall carry interest at the rate of 12% per annum from the 'date of accident'.

19. With regard to second limb of first question of law with regard to penalty is concerned, provisions of Section 4A(3)(b) of the E.C. Act stipulates that if in the opinion of Commissioner, there is no justification for delay in payment of amount of compensation, then penalty is to be awarded

not exceeding 50% of amount of compensation. Under the E.C. Act, proviso to Section 4A(3)(b) envisaged that the order of payment of penalty shall not be passed without giving reasonable opportunity to the employer to show cause why it should not be passed. The issue with regard to penalty was considered by Hon'ble Supreme Court in case of **Ved Prakash Garg** (supra).

20. In the case at hand, Commissioner has not drawn such proceedings, hence, we find it appropriate to remit back the case only with regard to deciding the award of amount of penalty under Section 4A(3)(b) of the E.C. Act after providing reasonable opportunity to the parties concerned. Being so, first question of law is decided in favour of the appellant.

21. In the result, appeal is allowed in following terms :

(i) risk of appellant is covered under the policy, hence, liability to pay the amount of compensation is upon respondent No.2/Insurance Company. The liability to satisfy the amount of compensation with interest is on the respondent No.2/Insurance Company.

(ii) appellant is entitled for interest at the rate of 12% per annum from the date of accident i.e. 27.05.2010 on the amount of compensation calculated by Commissioner.

(iii) case is remanded back to the Commissioner for considering and passing appropriate order under Section

4A(3)(b) of the E.C. Act with regard to award of penalty. Learned Commissioner shall decide the issue of award of penalty after issuing show cause notice to the employer and further providing reasonable opportunity of hearing to all the parties concerned. The liability of payment of penalty if awarded by the Commissioner will be upon the employer.

Sd/-	Sd/-
(P. R. Ramachandra Menon)	**(Parth Prateem Sahu)**
Chief Justice	**Judge**

Yogesh