IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

FIRST APPEAL NO.271 OF 2022

ICICI Lombard General Insurance Co. Ltd.
through its Branch Manager,
5th Floor, Landmark Building,
Wardha Road, Nagpur

...**APPELLANT**

VERSUS

1. Nandkishor Bapurao Shingane
Aged about 55 years, Occ. Labour,

2. Gahinabai Nandkishor Shingane
Aged about 50 years, Occ. Household,
Both R/o. Malipura, Deulgaon Raja,
Tq. Deulgaon Raja, District Buldhana

3. Vitthal Bhaguji Kharat
Aged adult, Occ. Vehicle owner,
R/o. Gayatri Mandir,
Pravin Bhai Chawl, Silvasa,
Gujarath,

At present – At post Jambhora,
Tq. Sindkhedraja,
District Buldhana

...**RESPONDENTS**

Ms. A.S. Athalye, Advocate for the appellant.
Shri G.R. Kothari, Advocate for the respondent Nos.1 & 2.

CORAM : M.S. KARNIK, J.
DATED : APRIL 19, 2022.

ORAL JUDGMENT

Heard.

2. **ADMIT** on the following substantial question of law :

i) Whether the Commissioner was justified in regarding the date relevant for the determination of compensation under the Employees Compensation Act, 1923 to be the date of adjudication?

3. Shri G.R. Kothari, learned counsel waives notice for respondent Nos.1 and 2. By consent heard forthwith.

4. The challenge in this appeal filed by the appellant – Insurance Company is to the judgment and order dated 19/11/2021 passed by the Commissioner for Employees Compensation & Judge, Labour Court, Buldana (hereinafter referred to as 'the Commissioner') in the matter of an application for compensation under the Employees Compensation Act, 1923 (hereinafter referred to as 'the EC Act' for short).

5. An application came to be filed for compensation before the Commissioner by the respondent Nos. 1 and 2 ('claimants' for

short) in their capacity as legal heirs of deceased Anil ('Anil' for short) who died in an accident on 09/05/2014. Anil was a skilled driver having a valid driving license and was serving with respondent No.3 – owner of the vehicle bearing registration No. DN-09-E-2747 of the make Maruti Suzuki. The said vehicle was insured with the appellant – Insurance Company (hereinafter referred to as the 'Insurance Company' for short). In the claim application filed under Section 22 of the EC Act, it is contended by the claimants that Anil was getting a monthly salary of Rs.8000/-. Over and above Anil was getting a daily bhatta of Rs.60/- which comes to Rs.1800/- per month. Anil was maintaining and looking after his parents – the claimants.

6. The Commissioner on the basis of the evidence on record came to the conclusion that Anil was in the employment of the present respondent No.3 as a driver and he died due to accident that occurred during the course of and arising out of the employment of respondent No.3. The Commissioner further held that the claimants proved that Anil was getting a monthly salary of Rs.8000/-. However, the Commissioner was of the opinion that the claimants failed to prove that the Anil was getting bhatta of Rs.60/-

per day from respondent No.3. The Commissioner relying on the decision of this Court in **Varsha Santosh Birajdar and ors. Vs. Sujata Ashok Pokharkar and anr. 2016 (4) Mh.L.J. 213** opined that the benefits to be conferred on the workmen have to be calculated on the date when the case is finally adjudicated and hence the Central Government Notification regarding payment of minimum wages applicable as on the date of the adjudication will be applicable. Though Anil was getting monthly salary of Rs.8000/- on the date of the accident i.e. 09/05/2014, the Commissioner was of the opinion that the Central Government Notification dated 03/01/2020 regarding payment of minimum wages which provides monthly wages of Rs.15,000/-, being the notification applicable on the date of adjudication will have to be regarded as applicable for the purpose of calculating the compensation to which the claimants are entitled under the provisions of the EC Act.

7. Learned counsel for the Insurance Company, assailing the impugned judgment and order of the Commissioner, contended that the monthly wages which the deceased was getting on the date of accident should be the relevant consideration for determining the compensation. According to her, the Commissioner committed

an error in calculating the benefits to be conferred on the basis of monthly wages being Rs.15,000/- as per Central Government Notification dated 03/01/2020 prevailing on the date of adjudication. In support of her contention that the monthly wages on the date of the accident must be the relevant date for reckoning of the calculation, learned counsel relied upon the decision of the Supreme Court in the case of **K. Sivaraman and ors. Vs. P. Sathishkumar and anr. (2020) 4 SCC 594**.

8. Learned counsel for the claimants on the other hand supported the order passed by the Commissioner. It is his contention that the EC Act is a beneficial piece of legislation and therefore the Commissioner was justified in reckoning the relevant date for calculation to be the date of adjudication of the claim application. Learned counsel assailed the findings of Commissioner in rejecting the contention of the claimants that Anil was in receipt of bhatta @ Rs.60/- per day despite cogent evidence on record. According to him, the Commissioner should have also included the bhatta of Rs.1800/- per month while determining the compensation payable. Learned counsel placed reliance on the decision of the

Supreme Court in the case of **Jaya Biswal and ors. Vs. Branch Manager, IFFCO Tokio General Insurance Co. Ltd. and ors. (2016) 11 SCC 201** to contend that the EC Act being a welfare legislation enacted to secure compensation to the poor workmen who suffer from injuries at their work place, the bhatta amount of Rs.1800/- per month should have been included while determining the compensation payable. Learned counsel further submitted that the claimants are entitled to the funeral expenses to the tune of Rs.25,000/-. According to him, the claimants are also entitled to costs as they had to suffer unnecessary litigation and the resultant hardship caused to them in getting compensation which was rightly due to them under the EC Act. Learned counsel for the claimants further contended that the entire compensation amount has been deposited by the Insurance Company in this Court including the penalty which is to be recovered from the respondent No.3 – the employer. He urged that the claimants be permitted to withdraw the said amounts including penalty as the penalty amount can be recovered by the Insurance Company from the employer applying the concept of pay and recover as done under 'The Motor Vehicles Act, 1988'.

9. In rejoinder, it is submitted by learned Counsel for Insurance Company that in the absence of any cross-objections/appeal filed by the claimants, the question of awarding funeral expenses or costs cannot arise in an appeal which is at the behest of the Insurance Company. To counter the submission of learned Counsel for claimants that the Insurance Company should pay and recover the penalty which is the liability of the employer, she relied upon the decision of the Supreme Court in the case of **L.R. Ferro Alloys Ltd. Vs. Mahavir Mahto and anr. (2002) 9 SCC 450** to contend that the payment of interest and penalty are two distinct liabilities. It is submitted that the penalty imposed on the insured employer is on account of his personal fault which Insurance Company cannot be made liable to reimburse.

10. Heard learned Counsel for the parties.

11. The question that arises for my consideration is whether the Commissioner was justified in regarding the date relevant for the determination of compensation under the EC Act to be the date of adjudication instead of the money value prevailing at the time of the accident.

12. Before dealing with this question let me first determine the monthly emoluments Anil was in receipt of on the date of the accident. The claim that Anil was getting a monthly salary of Rs.8000/- per month from the employer is not disputed. The finding of the Commissioner is based on the evidence of employer and is unassailable. Though this appeal is at the behest of the Insurance Company, I have considered the submission made by learned counsel for the claimants assailing the finding of the Commissioner that the claimants could not prove that Anil was in receipt of bhatta of Rs.60/- per day aggregating to Rs.1800/- per month. No doubt, the respondent No.3 – owner of the vehicle was in transport business. However, Anil was engaged as a driver on the personal vehicle of the employer. It is not the case of the claimants that Anil was engaged for driving transport vehicles which was the business of the employer in which case there could be some justification in inferring that Anil was in receipt of bhatta. The evidence on record and even the case of the claimants is that Anil was engaged as a driver on the personal vehicle of his employer. The employer denied payment of bhatta to Anil. The employer admitted that Anil was in receipt of salary of Rs.8000/- per month. In the absence of there being any cogent evidence on record, it is

not possible for me to find that Anil was in receipt of bhatta over and above the salary of Rs.8000/- per month. I find it difficult to accept the contention of the learned counsel for the claimants that Anil was in receipt of bhatta of Rs.60/- per day only on the bare statement of the claimants.

13. A reference needs to be made to a decision rendered by the Supreme Court relied upon by the learned counsel for the claimants in the case of Jaya Biswal and ors. (supra) in support of this contention. In my opinion the said decision will not have an application in the facts of the present case. Before the Supreme Court was a case where the Commissioner on the basis of materials on record came to a conclusion that the compensation cost would also include bhatta. This was upheld by the Supreme Court. In the present case there is absolutely no material to infer that Anil was in receipt of bhatta. The decision of the Supreme Court in Jaya Biswal and ors. (supra) therefore does not assist the claimants.

14. Having found thus, now let me proceed to consider what is the date relevant for determination of the compensation

under the EC Act i.e. the money value prevalent on the date of adjudication or is it on the date of accident. Counsel for the claimants placed reliance on the Government Resolution dated 03/01/2020 issued under the EC Act specifying Rs.15,000/- as monthly wages applicable on the date of adjudication of the claim application for the purpose of calculation of the compensation under the provisions of the EC Act. My attention is also invited to the notification dated 31/05/2010 issued in the exercise of powers conferred by sub-section (1-B) of Section 4 of the EC Act specifying an amount of Rs.8000/- as monthly wages applicable at the relevant time when the accident took place. In any case as Anil was getting a salary of Rs.8000/- per month, the monthly wages for the purpose of the EC Act on the date of accident will have to be regarded as Rs.8000/-. As on the date of the adjudication of the claim, the Central Government's notification dated 03/01/2020 issued under Sub-section (1-B) of Section 4 of the EC Act specified the monthly wages for the purpose of calculation of the compensation as Rs.15,000/-.

15. The question as to what would be the relevant date for determination of compensation payable came up for consideration

in K. Sivaraman (supra). Their Lordships in the case of K. Sivaraman (supra) have held that the relevant date for determining the compensation payable is the date of accident. A useful reference to paragraph 30, 31 and 32 may be had in the context of answering the question that falls for determination in the present appeal. Paragraph 30, 31 and 32 reads thus :

> *30 Recently, a two Judge Bench of this Court in Union of India v Rina Devi, considered an apparent conflict between the judgments in Rathi Menon and Kalandi Charan Sahoo v South-East Central Railways(Kalandi) regarding the date relevant for the determination of compensation under the 1989 Act. It was contended that the judgment in Rathi Menon was premised on the basis that there was no provision for the payment of interest under the 1989 Act and that there would be injustice if compensation is paid at money value prevalent at the time of the accident. It was on this basis that the judgment in Pratap Narain Singh was distinguished. This Court noted that in Thazhathe Purayil Sarabi v Union of India (Thazhathe), it was held that under the 1989 Act, a claimant is also entitled to the payment of interest which accrues from the date of the incident. The decision in Thazhathe was subsequently followed by this Court in Kalandi and Mohamadi v Union of India. Consequently, this Court held that since interest is now payable under the 1989 Act, the basis of the judgment in Rathi Menon has changed. The Court held: (Rina Devi case, SCC pp 582-83, paras 18-19)*
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> > *"18….We are of the view that law in the present context should be taken to be that the liability will accrue on the date of the accident and the amount applicable as on that date will be the amount recoverable but the claimant will get interest from the date of accident till*

> *the payment at such rate as may be considered just and fair from time to time. In this context, rate of interest applicable in motor accident claim cases can be held to be reasonable and fair. Once concept of interest has been introduced, principles of Workmen's Compensation Act can certainly be applied and judgment of four Judge Bench in Pratap Narain Singh will fully apply. Wherever it is found that the revised amount of applicable compensation as on the date of award of the Tribunal is less than the prescribed amount of compensation as on the date of accident with interest, higher of the two amounts ought to be awarded on the principle of beneficial legislation…*
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> *19. Accordingly, we conclude that compensation will be payable as applicable on the date of the accident with interest as may be considered reasonable from time to time on the same pattern as in accident claim cases. If the amount so calculated is less than the amount prescribed as on the date of the award of the Tribunal, the claimant will be entitled to higher of the two amounts… The four-Judge Bench judgment in Pratap Narain Singh holds the field on the subject and squarely applies to the present situation."*

This Court held that compensation under the 1989 Act would be calculated with reference to the date of the accident along with interest payable. However, if the amount calculated is less than the amount prescribed as on the date of the award of the Tribunal under the 1989 Act, the claimant will be entitled to higher of the two amounts.

31. The judgments in Rathi Menon and Rina Devi were both rendered by a Bench of two Judges of this Court. In Rina Devi, this Court resolved the apparent conflict between Rathi Menon and Kalandi by taking into account

> *the judgment in Rathi Menon as well as the change in the position of law following the judgment. The position of law under the 1989 Act has thus been brought closer to the judgment of this Court in Pratap Narain Singh which held that the date relevant for the determination of compensation would be the date of the accident. The judgment in Rina Devi was recently followed by this Court in Union of India v Radha Yadav.*
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> *32. It is pertinent to note that no similar position of law for the determination of the higher amount of compensation payable was adopted under the 1923 Act by this Court in Pratap Narain Singh and Valsala. This Court, being a Bench of two Judges, is bound by the categorical position of law laid down in Pratap Narain Singh and Valsala, both being judgments rendered by larger Benches of this Court. Consequently, we hold that the relevant date for the determination of compensation payable is the date of the accident and the benefit of Act 45 of 2009 does not apply to accidents that took place prior to its coming into force.*

16. In the context of the present claim, following the dictum in K. Sivaraman (supra), the liability will accrue on the date of the accident and not on the date of adjudication. The claimants will get interest as per sub-Section 3(a) of Section 4A of the EC Act. It is pertinent to note that sub-Section 3(b) of Section 4A of the EC Act provides that the Commissioner may direct the employer to pay a further sum not exceeding 50% of such amount by way of penalty if, in his opinion, there is no justification for the delay in paying the

compensation. Having regard to the dictum of their Lordships in the case of K. Sivaraman (supra), in my opinion, the determination of the compensation by the Commissioner taking the relevant date for reckoning of the monthly wages as the date of adjudication of the matter is erroneous and calls for interference. The relevant date for reckoning is the date of the accident, on which date the monthly wages determinable are Rs.8000/- per month. The order passed by the Commissioner to this extent calls for interference and therefore the calculation has to be reworked by taking the relevant date as the date of accident for determining the compensation payable, on which date the monthly wages for the purposes of calculating the compensation has to be regarded as Rs.8000/-.

17. The decision of learned Single Judge of this Court in Varsha Santosh Birajdar and ors. (supra) relied by the claimants was rendered prior to the decision of the Apex Court in K. Sivaraman (supra). The decision in K. Sivaraman (supra) binds me.

18. Though the entire amount of compensation as directed by the Commissioner has been deposited before the Labour Court,

Buldhana, I am not inclined to permit the withdrawal of the penalty amount in favour of the claimants which is payable by the employer from out of the amount deposited by the Insurance Company. The pay and recover order so far as penalty is concerned is not permissible under the EC Act in view of the law laid down by the Supreme Court in the case of L.R. Ferro Alloys Ltd. (supra). Paragraph No.5 of the said decision is a complete answer to the contention of Insurance Company to pay and recover from the employer the penalty, raised on behalf of the claimants. Paragraph No.5 reads thus :

> *"5. The only contention put forth before us is that the entire liability including penalty and interest will have to be reimbursed by the insurance company and this aspect has not been examined by the learned Single Judge in the High Court and needs examination at our hands. In Ved Prakash Garg v. Premi Devi and Ors., this Court after examining the entire scheme of the Act held that payment of interest and penalty are two distinct liabilities arising under the Act, while liability to pay interest is part and parcel of legal liability to pay compensation upon default of payment of that amount within one month. Therefore, claim for compensation along with interest will have to be made good jointly by the insurance company with the insured employer. But, so far as the penalty imposed on the insured employer is on account of his personal fault the insurance company cannot be made liable to reimburse penalty imposed on the employer. Hence the compensation with interest is payable by the insurance company but not penalty. Following the said decision and for the reasons stated therein, we modify the order made by the High Court to that extent. The appeal is allowed in part accordingly."*

19. Drawing support from the decision in L.R. Ferro Alloys Ltd. (supra), I have no hesitation in holding that the compensation with interest is payable by the Insurance Company but not penalty. It is open for the claimants to recover the penalty from the employer.

20. Learned counsel for the claimants prayed for costs and funeral expenses. The EC Act is a social welfare legislation for the benefit of employees. Taking guidance from the decision of the Supreme Court in the case of Jaya Biswal and ors. (supra), I am inclined to award funeral expenses to the tune of Rs.25,000/- to the claimants. I am conscious that this is an appeal filed by the Insurance Company. Nonetheless, interest of justice compels me to ensure that the claimants are not deprived of the statutory benefit and costs. Sub-Section (4) of Section 4 of the EC Act makes a provision for payment of funeral expenses. So far as imposing costs are concerned, in a strict sense it cannot be said that this is a case of an unnecessary litigation on the part of the Insurance Company. Nonetheless, the parents have lost their son in the accident who was looking after them. In this view of the matter, in the interest of

justice, to mitigate the hardships of the claimants, I am inclined to award costs quantified at Rs.10,000/-.

21. Having so discussed, the amount of compensation payable to the claimants is calculated as under :

Date of Accident –	09/05/2014
Salary of deceased on the relevant date –	Rs.8000/- per month
Age of deceased –	24 years.
Amount deposited by the appellant –	Rs.31,45,789/- on 4/2/2022.

<u>Compensation as per Section 4(1)(a) r/w Schedule IV</u>

4000 x (age factor) 218.47	Rs.8,73,880/-
Interest on 8,73,880 @ 12% p.a. from 9.5.2014 to 4.2.2022	Rs.8,12,783/-
Principal + interest (8,73,880 + 8,12,783)	Rs.16,86,662/-
Funeral expenses + costs (25,000 + 10,000)	(+)Rs.35,000/-
Total	**17,21,662/-**
Amount deposited – Amount receivable i.e. (Rs.31,45,789 – Rs.16,86,662)	14,59,127/-
(-) Funeral expenses + costs (25,000 + 10,000)	(-)Rs.35,000/-
Total	**14,24,127/-**

22. The respondent – Insurance Company has deposited the amount of Rs.31,45,789/- with the Commissioner. After permitting withdrawal of the amount of Rs.17,21,662/- with accrued interest,

if any, by the claimants, the balance amount of Rs.14,24,127/- be paid over to the appellant – Insurance Company with accrued interest, if any.

23. The claimants are entitled to recover 50% penalty amount of Rs.4,36,940/- from respondent No.3 – the employer.

24. The appeal is partly allowed in the above terms.

(M.S. KARNIK, J.)

**DB*