BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 28.09.2022

Pronounced on : 14.11.2022

CORAM:

THE HON'BLE MR.JUSTICE **K.MURALI SHANKAR**

C.M.A.(MD)No.317 of 2022
and
C.M.P.(MD)Nos.2903, 7637 & 7639 of 2022

The Branch Manager,
Reliance General Insurance Company Limited,
Sri Meenakshi Plaza, First Floor,
No.HIG 55, 80 Feet Road,
Anna Nagar,
Madurai – 625 020.

...Appellant/2nd Respondent

Vs.

1. M.Apooravaraj ...1st Respondent/Petitioner
2. Antony Rambolan ...2nd Respondent/1st Respondent

Prayer : This Civil Miscellaneous Appeal filed under Section 30 of the Employee Compensation Act, to set aside the order dated 03.12.2021 passed in E.C.No.118 of 2018 on the file of the Commissioner for Employees Compensation Court at Madurai by allowing the Civil Miscellaneous Appeal.

For Appellant : Mr.V.Sakthivel

For Respondents : Mr.J.Sankara Pandian for R1
No appearance for R2

JUDGMENT

This Civil Miscellaneous Appeal is directed against the order passed in E.C.No.118 of 2018 dated 03.12.2021 on the file of the Commissioner for Employees Compensation, Madurai.

2. The appellant/Insurer, who was made liable to pay compensation of Rs.21,86,290/- with interest at 12% per annum to the first respondent/claimant for the disability suffered by him, consequent to an accident occurred on 24.01.2018, challenged the order directing them to pay interest for the entire amount awarded, which includes medical reimbursement at 12% per annum from the date of accident.

3. The first respondent/claimant has laid the above claim for compensation for the injuries sustained by him in a motor accident occurred on 24.01.2018 arising out of and the course of employment under the second respondent/owner of the vehicle. The Commissioner for Employees Compensation, after conducting enquiry, has passed the impugned order dated

03.12.2021 directing the appellant/Insurer to pay compensation of Rs.9,63,628/- and medical expenses to the tune of Rs.12,22,662/- totally Rs.21,86,290/- with interest at 12% per annum from the date of accident. Aggrieved by the said order, awarding interest on medical reimbursement amount, the appellant/Insurer has come forward with the present appeal.

4. At the time of admission, the following substantial questions of law were formulated:

(i) Whether the Commissioner has power and jurisdiction to entertain and pass the order in the given set of facts, directing the appellant Insurance Company to pay interest for the medical expenses incurred by the employee from the date of accident?

(ii) Whether the Commissioner has power and jurisdiction to direct the appellant Insurance Company to pay interest from the date of accident, when the medical bills are produced by the claimant only at the time of accident?

Point Nos.(i) and (ii) :

5. Admittedly, the accident was occurred on 24.01.2018; the claim petition was filed on 30.11.2018 and the impugned order was passed on 03.12.2021.

6. The learned counsel appearing for the appellant/Insurer would contend that the first respondent/claimant has not specifically mentioned about the actual medical expenses incurred by him for taking treatment, but he generally pleaded that he had spent Rs.30,00,000/- towards medical expenses in the claim petition, that the first respondent/claimant has not produced the medical bills before the Workmen Compensation Commissioner at the time of filing the claim petition, that the first respondent/claimant has produced the medical bills to the tune of Rs.12,22,662/- only at the time of taking the evidence, that the medical claims have come, after the date of accident and the same cannot be predicted as to what will be the actual medical expenses incurred by the first respondent/claimant, that the appellant/Insurer cannot be expected to pay interest from the date of accident for the amounts spent towards medical expenses subsequently, and that the newly inserted provision of Section 4(2A) of Employees Compensation Act contemplates that the employee shall be reimbursed the actual medical expenditure incurred by him for treatment of injuries caused during the course of employment and as such, the employee is not entitled to claim anything more than the actual expenditure.

7. The learned counsel appearing for the first respondent/claimant would contend that the Hon'ble Supreme Court in cantena of decisions has specifically

held that interest shall be paid on the compensation awarded from the date of accident and not the date of adjudication of the claim or any other subsequent date, that prior to the Amendment, vide Amendment Act 45 of 2009 the compensation would also include medical expenses, that compensation would fall due from the date of accident, that the claimants are entitled to interest from the date of accident and that therefore, there is nothing to interfere with the impugned order.

8. The Workmen's Compensation Act, 1923 provides for the payment of compensation to the workmen and their dependants in the case of injury by industrial accidents including certain occupational diseases arising out of and in the course of employment resulting in death or disablement.

9. The Workmen's Compensation Act has been amended vide Act 45 of 2009 incorporating certain recommendations of the Department-related Parliamentary Standing Committees on Labour and one of the main recommendation, which was incorporated as Section 4(2A) of the said Act is that the employee shall be reimbursed the actual medical expenditure incurred by him for treatment of injuries caused during the course of employment and that the said provision came into force from 18.01.2010.

10. No doubt, as rightly contended by the learned counsel appearing for the first respondent/claimant, even before the insertion of the above provision of Sub Section (2A) to Section 4, the employees were entitled to get the medical expenses along with the compensation awarded. To put it in other way, previously, compensation would also include the medical expenses.

11. The learned counsel appearing for the appellant/Insurer has mainly relied on the decision of the Kerala High Court in ***V.T.Suresh Kumar vs. Managing Director, KSRTC, Transport Bhavan, Fort, Thiruvananthapuram and others in MFA.No.140 of 2019 dated 16.03.2020,*** wherein, the High Court of Kerala has held that the date of accident becomes relevant only for the purpose of computation of the compensation, but the same is not applicable to the reimbursement of the medical expenditure and the relevant passages are extracted hereunder:-

> *"32. As also seen above, the opinion of the learned Amicus Curiae, Sri.Jacob P. Alex, favours the appellant, with him asserting that since the benefit of reimbursement of medical expenses - granted through Sub Section 2A of Section 4 of the Act - are applicable for the MFA.No.140 OF 2019 treatment of all injuries caused during the course of employment, and not merely to those caused by accidents, it is not governed by the*

date of accident, but by the date on which they are actually incurred.

....

40. In fact, the same view is seen adopted in Alavi(supra), as is discernible from the extracted portions of the said MFA.No. 140 OF 2019 judgment in paragraph 20 herein; but it is without doubt that in the case of reimbursement of medical expenses this is not so, since it depends upon the actual expenses incurred and suffered by the claimant from time to time and is not a fixed sum related to the date of accident.

41. An insight to the intention of the Statute makers to draw a distinction between the "reimbursement of medical expenses" and "compensation" in the Act is also obtained from the explanation to Section 4(2) of the Act - which refers to compensation in the case of temporary disablement and which sanctions certain type of payments to the employee in such cases - wherein, it stipulates luculently that 'any payment or allowance which the employee has received from the employer towards his medical treatment shall not be deemed to be a payment or allowance MFA.No.140 OF 2019 received by him by way of compensation within the meaning of Clause A of the proviso'. The fact that Section 2A of Section 4 was introduced just beneath this explanation would make the position crystally clear; and consequently, am of the firm opinion that this Court will be fully *justified in accepting the submissions of the learned Amicus Curiae, that "reimbursement of medical expenses" under the Act is different and independent from the "compensation" payable under Section 4 of it.*

....

45. Obviously, therefore, the submissions of Sri.Ziyad Rahman, that Sub Section 2A of Section 4 should also relate to the date of accident, cannot find my favour because the date of accident becomes relevant only for the purpose of computation of the compensation, which is a certain and fixed sum under the Act; while the reimbursement of medical expenditure is not a sum that can be computed under the provisions of the Statute, but based on the actual medical bills, which will have to be produced and MFA.No.140 OF 2019 established by the claimant.

46. The crucial difference between the concepts of "compensation" and "reimbursement" under the Act, namely that the former is a fixed sum which relates to the date of the accident and the latter being a flexible one, depending upon the medical bills to be produced and established by the claimant, renders the scenario crystally clear; and therefore, the declarations of the Hon'ble Supreme Court in the afore cited judgments - that the date of accident is the only one relevant for the purpose of computation of "compensation" under the Act - will not apply to the case of "reimbursement of medical *expenses" under Sub Section 2A of Section 4. Axiomatically, the claimant becomes entitled to such reimbursement incurred by him after 18.01.2010."*

12. No doubt, "reimbursement" and "compensation" are different aspects. The Hon'ble Supreme Court in ***M/s.MSK Projects (I) (JV) Ltd., vs. State of Rajasthan and another*** reported in (***2011) 10 SCC 573*** has clearly noticed the distinction between "reimbursement" and "compensation" and according to the Hon'ble Supreme Court, "reimbursement" means an employee's restoration of any equivalent for something paid or expended; while "compensation" means anything to make the equivalent.

13. The Kerala High Court, by taking note of the above said distinction between "reimbursement" and "compensation", has observed that the compensation is a fixed sum which relates to the date of accident, but the reimbursement being a flexible one, depending upon the medical bills to be produced and established by the claimant and that therefore the date of accident is the only one relevant for the purpose of computation of "compensation" and the same will not apply to the case of "reimbursement of medical expenses".

14. It is pertinent to note that a Four Judge Bench of the Hon'ble Supreme Court in ***Pratap Narain Sindh Deo vs. Srinivas Sabata and another*** reported in ***1976 1 SCC 289*** has specifically held that an employer becomes liable to pay the compensation as soon as the personal injuries was caused to the workman in an accident which arose out of and in the course of the employment.

15. It is necessary to refer the judgment of the Hon'ble Supreme Court in ***North East Karnataka Road Transport Corporation vs. Sujatha*** reported in ***(2019) 11 SCC 514***,

> "*22. Another question analogues to the main question arose before the Three Judge Bench of this Court in the case of* ***Kerala State Electricity Board & Anr. Vs. Valsala K. & Anr. (1999) 8SCC 254: AIR 1999SC 3502*** *as to whether increased amount of compensation and enhanced rate of interest brought on statute by amending Act 30/1995 with effect from 15.09.1995 would also apply to cases in which the accident took place before 15.09.1995. Their lordships, placing reliance on the law laid down in* **Pratap Narain's case** *(supra) held that since the relevant date for determination of the rate of compensation is the date of accident and not the date of adjudication of the claim by the Commissioner and hence if the accident has taken place prior to 15.09.1995, the rate applicable on the date of accident would govern the subject.*

23. After these two decisions, this Court in two cases (both by the Two Judge Bench) viz. ***National Insurance Company Ltd vs. Mubasir Ahmed & Anr. (2007) 2 SCC 349 and Oriental Insurance Company Ltd. vs. Mohmad Nasir & Anr. (2009) 6 SCC 280*** *without noticing the law laid down in* ***Pratap Narain and Valsala cases*** *(supra) took a contrary view and held that 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.*

24. This conflict of view in the decisions on the question was noticed by this Court (Two Judge Bench) in ***Oriental Insurance Company Ltd vs. Siby George and others (2012) 12 SCC 540.*** *Justice Aftab Alam speaking for the Bench referred to afore?mentioned decisions and explaining the ratio of each decision held that since the two later decisions rendered in the cases of* ***Mubasir and Mohmad Nasir*** *(supra) which took contrary view without noticing the earlier two decisions of this Court rendered in* ***Pratap Narain and Valsala cases*** *(supra) by the larger Benches (combination of four and three Judges respectively) and hence later decisions rendered in* ***Mubasir and Mohmad Nasir cases*** *(supra) cannot be held to have laid down the correct principles of law on the question and nor can, therefore, be treated as binding precedent on the question.*

25. In other words, the law laid down in ***Pratap Narain and Valsala cases*** *(supra) was held to hold the field through out as laying down the correct principle of law on the subject. The Two Judge Bench in* ***Oriental Insurance Company Ltd vs. Siby George and others*** *(supra) accordingly followed the principle of law laid down in* ***Pratap Narain and Valsala cases*** *(supra) and decided the case instead of following the law laid down in* ***Mubasir and Mohmad Nasir*** *cases (supra) which was held per incuriam.*

26. Now coming to the facts of this case, we find that the Commissioner awarded the interest to the respondents at the rate of 12% per annum on the awarded sum but it was awarded from the expiry of 45 days from the date of order and that too, if the appellant failed to deposit the awarded sum within 45 days.

27. In other words, if the appellant had deposited the awarded sum within 45 days from the date of the order then the respondent was not entitled to claim any interest on the awarded sum, but if the appellant had failed to deposit the awarded amount within 45 days, then the respondent was entitled to claim interest at the rate of 12% per annum from the date of the order.

28. In our opinion, the afore mentioned direction of the Commissioner in awarding the interest on the awarded sum is contrary to law laid down by this Court in ***Pratap Narain's case*** *(supra) and hence not legally sustainable.*

29. In the light of the forgoing discussion, even though the respondent did not challenge this direction by filing any appeal in the High Court nor challenged it by filing any appeal in this Court too, yet the question being a pure question of law, this Court with a view to do substantial justice to the respondent consider it just and proper to modify the order of the Commissioner in respondent's favour so as to make the same in conformity with the law laid down by this Court in the above referred two decisions (supra).

30. Accordingly and in view of the foregoing discussion, the order of the Commissioner dated 23.04.2002 is modified in favour of the respondent to the extent that the awarded sum of Rs. 3,79,120/- shall carry interest at the rate of 12% per annum from the date of accident i.e. 06.04.1999."

16. It is also necessary to refer the judgment of the Hon'ble Supreme Court in ***Ajaya Kumar Das and another vs. Divisional Manager and another*** reported in ***2022 LiveLaw (SC) 102***. In that decision case, the Insurer has filed an appeal before the High Court, challenging the order granting compensation for the disabilities suffered, with a delay of 619 days, that the High Court, while dismissing the application for condonation of delay on the ground that there was an unexplained delay of 619 days further directed that the claimants are not entitled to any interest on the compensation awarded and that when the same

was challenged before the Hon'ble Supreme Court, the Hon'ble Supreme Court, by referring to its earlier decision, has reiterated the position that the interest shall be paid on the compensation awarded from the date of accident and thereby setting aside the direction of the High Court above referred and the relevant passages are extracted hereunder:-

> "5. ..... *In* ***Saberabibi Yakubhai Shaikh v. National Insurance Co. Ltd.,*** *(2014) 2 SCC 298 this Court held that interest shall be paid on the compensation awarded from the date of the accident and not the date of adjudication of the claim in view of the decision of this Court in* ***Oriental Insurance Co. Ltd. v. Siby George,*** *(2012) 12 SCC 540 where it was held that compensation would fall due from the date of the accident. Further, in the recent decision in* ***P. Meenaraj v. P. Adigurusamy & Anr;*** *Civil Appeal No.209 of 2022, decided on 6 January 2022 this Court reiterated that the applicant is entitled to interest from the date of accident while rejecting the submission that the award of interest should be after the expiry of 30 days from the date of accident. Thus, there was no legal basis for the High Court to delete the order of payment of interest."*

17. The Hon'ble Supreme Court in ***Shobha and others vs. Chairman, Vithalrao Shinde Sahakari Sakhar Karkhana Ltd., and others*** reported in

2022 SCC OnLine SC 308, has specifically held that the compensation and interest on the amount of arrears/compensation is to be awarded from the date of accident.

18. The learned counsel appearing for the first respondent/claimant has produced the copy of the Circular Memorandum issued by the Commissionerate of Labour, Chennai dated 24.01.2019, wherein, the Commissioners for Employees Compensation / Regional Joint Commissioners of Labour were directed to adhere to the directions of the Hon'ble Supreme Court and Madras High Court to award 12% interest on the award amount from the date of accident and on failure to follow the said direction, the same would amount to "Contempt of Court".

19. The learned counsel appearing for the first respondent/claimant has also relied on the following decisions of this Court,

(i) CDJ 2018 MHC 785 :

The Superintending Engineer, Tamil Nadu Electricity Board, Madurai and another vs. Kannan

"*6. But, the learned counsel for the workman rightly* *pointed out that on account of the injury, ie., amputation suffered by him, the workman cannot get any promotion. So to that extent, there is loss of earning capacity. This Court must bear in mind that he was aged just 40 years when the accident took place. Amputation of one hand has necessarily disabled the respondent from pursuing promotions in his career. Therefore, this Court is inclined to hold that the pecuniary loss suffered by the workman in this regard would be Rs.3,00,000/-. Section 4(1)(c) of Employees Compensation Act refers to loss of earning capacity caused by the injury. Foregoing promotional prospects would also fall within the scope of the said expression. Therefore, the respondent herein is necessarily entitled to a sum of Rs.3,00,000/- on that account. He had incurred Rs.42,815/- by way of medical expenses. As rightly held in* ***Palraj case*** *following the decision reported in* ***AIR 1976 SC 222 – Pratap Narain Singh Deo V. Srinivas Sabata and another,*** *the compensation awarded in favour of the workman will carry interest from the date of accident. The appellant is therefore is liable to pay the said sum of Rs.3,42,815/- at the statutory interest rate laid down in Employees Compensation Act. The respondent is permitted to withdraw the said amount from the deposit made by the appellant to the credit of W.C.No.W.C.No.221 of 2010 on the file of the Commissioner Workman Compensation, Madurai."*

(ii) CDJ 2020 MHC 2923 :

A.Kamal Basha vs. P.Chandrasekaran and another

"13. Mrs.I.Malar, learned counsel for the Insurance Company, has also argued that the claimant has not adduced any evidence to show that he was undertaking treatment as inpatient for 40 days and therefore, learned Deputy Commissioner of Labour has rightly fixed Rs.86,005/- towards medical expenses. But, the said submission is not legally sustainable, for the reason that the claimant has adduced sufficient series of medical bills/Ex.P9 showing that he has spent a sum of Rs.2,28,369/-, however, without any discussion, learned Deputy Commissioner of Labour has fixed only Rs.86,005/- and therefore, based an Ex.P9-Medical Bills, Rs.2,28,369/- is hereby awarded towards medical expenses.

14. ..... A careful reading of the above clearly shows that grant of interest on the awarded amount remains no more res-integra as has been settled by the two decisions of the Hon'ble Apex Court that employer becomes liable to pay compensation as soon as the personal injury is caused to the workman in the accident which arose out of and in the course of employment and therefore, it is the law of the land that it is the date of the accident, not the date of adjudication of the claim for calculation of interest on the awarded sum. In the present case, accident had occurred on 31.03.2012 and therefore, interest at the rate of 12%

per annum is to be granted from the date of accident i.e. 31.03.2012, not from the date of award passed by the learned Deputy Commissioner of Labour i.e. 18.12.2013. Accordingly, interest stands modified.”

20. As rightly pointed out by the learned counsel appearing for the first respondent/claimant, both in the above decisions of this Court, the award amounts which include medical expenses were ordered to be paid with interest at 12% per annum from the date of accident.

21. As rightly contended by the learned counsel appearing for the first respondent/claimant, the accidents in the above decisions were occurred subsequent to the insertion of Sub Section 2A to Section 4 of the said Act vide Act 45 of 2009.

22. Now coming to the case on hand, the first respondent/claimant has produced medical bills under Ex.P.8, 11, 15, 18, 20 and 21, in which Ex.P.8 relates to the substantial portion of the medical expenses allegedly incurred by the first respondent/claimant i.e., for Rs.10,99,999/- issued by Hannah Joseph Hospital. The learned counsel appearing for the appellant/Insurer would

contend that the first respondent/claimant had taken treatment in the said hospital from 24.01.2018 to 27.04.2018 and hence, we can assume the bills were fully paid and the receipts were issued under Ex.P.8 only on 27.04.2018. According to the learned counsel appearing for the claimant/first respondent, other similar bills were also issued at the time of discharge or at the end of the treatment period.

23. As rightly contended by the learned counsel appearing for the first respondent/claimant, it is the usual practice of the private hospitals of collecting amounts periodically as advance and only at the time of discharge, they used to issue a comprehensive receipt.

24. Regarding the bills under Ex.P.8, as already pointed out, the first respondent/claimant had taken four months inpatient treatment at Hannah Joseph Hospital for the period between 24.01.2018 and 27.04.2018. As rightly contended by the learned counsel appearing for the first respondent/claimant, the contention of the appellant/Insurer that the bills of amounts were fully paid and receipts were issued on 27.04.2018 at the time of discharge, cannot be accepted and no private hospital would allow any patient to remain for four months under treatment without paying any amount.

25. It is pertinent to note that the first respondent/claimant has been taking treatment from the date of accident and substantial portion of medical expenses was incurred only at Hannah Joseph Hospital. More importantly, it is pertinent to note that the Workmen's Compensation Act is a beneficial piece of legislation and it has been enacted to compensate the workmen and their dependants in the event of accident during the course of employment.

26. As rightly contended by the learned counsel appearing for the first respondent/claimant, such a beneficial enactment cannot be interpreted in such a narrow way so as to affect the interest of workmen.

27. Considering the above, with due respect, this Court is not agreement with the view expressed by the learned Judge of Kerala High Court. Though the compensation and medical reimbursement are different aspects, the medical expenses/reimbursement are claimed only for treating the injuries sustained during the course of employment, for which compensation is claimed. Hence, this Court concludes that the first respondent/claimant is certainly entitled to get interest for the medical expenses from the date of accident and as such, the decision of the Commissioner for Employees Compensation cannot be found

fault with. Hence, this Court concludes that the appeal is devoid of merits and the same is liable to be dismissed.

28. In the result, this Civil Miscellaneous Appeal is dismissed and order passed in E.C.No.118 of 2018 dated 03.12.2021 on the file of the Commissioner for Employees Compensation, Madurai is hereby confirmed. The parties are directed to bear their own costs. Consequently, connected Miscellaneous Petitions are closed.

14.11.2022

Index :yes/No
Internet:yes/No
csm

K.MURALI SHANKAR,J.

csm

Pre-Delivery Order made in

C.M.A.(MD)No.317 of 2022
and
C.M.P.(MD)Nos.2903, 7637 & 7639 of 2022

14.11.2022