

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 76 OF 2002

Maharashtra State Electricity Board,
Through the Executive Engineer,
M.S.E.B. Divisional Office, Osmanabad.

Appellant

Versus

1. Sarubai w/o Ganpati Kolge
Age : major, occ : household
R/o Ruibhar, Taluka and
District Osmanabad.
2. Janabai w/o Bhagwat Kolge
Age : major, occ : household
R/o as above.
3. Vinod Bhagwat Kolge
Age : 18 years, occ : education
R/o as above.
4. Vilas Bhagwat Kolge
Age : 15 years, occ : education
R/o as above.

Respondents

WITH

FIRST APPEAL NO. 728 OF 2002

1. Sarubai w/o Ganpati Kolge
Age : 70 yrs, occ : household
R/o Ruibhar, Taluka and
District Osmanabad.
2. Janabai w/o Bhagwat Kolge
Age : 40 yrs, occ : household
R/o as above.
3. Vinod Bhagwat Kolge
Age : 22 years, occ : education
R/o as above.

4. Vilas Bhagwat Kolge
Age : 19 years, occ : education
R/o as above.

Appellants

Versus

Maharashtra State Electricity Board,
Through the Executive Engineer,
M.S.E.B. Divisional Office, Osmanabad.

Respondent

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Mr. S.S. Jadhavar, Advocate for the original claimants.
Mr. Avishkar Shelke, Advocate for original respondent
Maharashtra State Electricity Board.

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CORAM : SANDIPKUMAR C. MORE, J.

Judgment Reserved on : 13th February 2023

Judgment pronounced on : 13th April 2023

Judgment:

1. Both these appeals are arising out of one and the same judgment and award dated 23.11.2001 passed by the Commissioner, Workmen's Compensation Tribunal and Civil Judge, Senior Division, Osmanabad (hereinafter referred to as "the learned Commissioner") in W.C.A. No. 6/1997 whereby certain compensation has been awarded to the applicants – claimants who are the appellants in First Appeal No. 728 of 2002. First Appeal No. 76 of 2002 is filed by Maharashtra State Electricity Board (M.S.E.B.), who was the employer of deceased, for setting aside the said judgment and award. To avoid ambiguity, I have referred the parties as "claimants" and

“M.S.E.B.”. It is to be noted here that M.S.E.B. has filed First Appeal No. 76 of 2002 for cancellation of compensation amount granted by the learned Commissioner by contending that the deceased Bhagwat Ganpatrao Kolge did not die during the course of employment. On the contrary, the claimants, who are the dependents of deceased Bhagwat, have filed First Appeal No. 728 of 2002 for enhancement of compensation since the interest and penalty on the compensation amount is not granted.

2. The background facts are as under :-

On 21.09.1995 the deceased Bhagwat was on his duty of load shading and controlling the electric supply while working as a Junior Operator under Division of M.S.E.B. at Sub Division, Paranda and at Sub Division, Javla. At the relevant time Bhagwat was bitten by snake which was there in the panel boards wiring. The on duty watchman Shri Bhairu shifted him to the hospital, but during the treatment Bhagwat died. Since the M.S.E.B. did not pay any compensation to the claimants, they issued notice dated 08.10.1996 under the provisions of the Workmen's Compensation Act (for short, the “Act”). The respondents, despite receipt of such notice, did not pay any compensation,

and therefore, the claimants were constrained to file the aforesaid WCA No. 6/97 on 13.02.1997 in the Court of learned Commissioner. Under the impugned judgment dated 23.11.2001, the learned Commissioner awarded compensation of Rs. 2,00,000/- to the claimants. However, since the interest and penalty was not awarded, the claimants filed First Appeal No. 728 of 2002, whereas the M.S.E.B. being aggrieved by the finding of the learned Commissioner that the death of Bhagwat occurred during the course of his employment, challenged the impugned judgment for setting aside the same.

3. Learned Counsel for the M.S.E.B. i.e. the employer submits that though the deceased Bhagwat was Junior Operator at Sub Station, Javla, but when the incident of snake bite had taken place, he was not on duty, and therefore, not entitled for any compensation under the provisions of the Act. He pointed out that the M.S.E.B. has also examined one of its employees i.e. DW-1 Sudhir Chandrakant Baraskar, who brought on record a duty list whereby it was already revealed that the deceased was not on duty and he had no occasion to be there at Sub Station at the time of incident. Besides the oral submissions, learned

Counsel for the M.S.E.B. also relied on the following judgments :

- (i) Nandi Sahakari Sakhar Karkhana Limited vs Dnyanoba Kashinath Aare & ors, 2010 (1) ALL.M.R. 24.*
- (ii) Ved Prakash Garg vs Premi Devi, 1997 AIR (SC) 3854*
- (iii) National Insurance Co. Ltd vs Mubasir Ahmed 2007 AIR (SC) 1208*
- (iv) Uttar Pradesh State Road Transport Corporation Now Uttarakhand Transport Corporation vs Satnam Singh, 2011 DGLS (SC) 1178*
- (v) Palraj vs The Divisional Controller, Nekrtc, 2010 AIR (SCW) 6996*

4. On the contrary, learned Counsel for the claimants submits that the watchman, who was also the employee of M.S.E.B., has clearly deposed that the deceased Bhagwat was on duty at the time of incident of snake bite and the said watchmen had in fact taken Bhagwat to the hospital. He further submits that the duty list at Exh. 54 was in fact prepared subsequently to avoid the liability. According to him, in the said duty list chart, the duty of only 16 hours was mentioned, but in fact considering the urgent requirement, there was need of a person or a Junior Operator for 24 hours. Thus, he submitted that the duty list (Exh.54) is silent in respect of remaining 8 hours period. He also pointed out that despite receipt of notice dated 08.10.1996, the M.S.E.B. failed

to reply the same by raising the contention that the deceased was not on duty at the relevant time. He pointed out that the postmortem report and panchnama on record clearly indicated that the deceased was on duty and died due to snake bite at the relevant time. He also pointed out that the learned Commissioner, despite granting compensation to the tune of Rs. 2,00,000/-, did not award interest and penalty on the said amount of compensation which is clearly contrary to the provisions of the Act. He also relied on the judgments in the cases of *Saberabibi Yakubhbhai Shaikh and others vs National Insurance Co. Ltd and others* reported in *2014 AIR (SC) 1393* and *Ajaya Kumar Das and another vs Divisional Manager and another* reported in *2022 DGLS (SC) 104*.

5. With the assistance of the learned Counsel for rival parties, I have gone through the impugned judgment and award alongwith the original record and proceeding of WCA No. 6/97.

6. So far as First Appeal No. 76 of 2002 is concerned, it is filed by M.S.E.B. for setting aside the impugned judgment and award on the ground that the learned Commissioner wrongly held that the deceased was on duty at the relevant time when he was bitten by snake and

died consequently. The record shows that the claimants have examined two witnesses i.e. claimant Janabai, who is the wife of deceased Bhagwat and CW-2 Bharu Pophle, the watchman. CW-1 Janabai has stated that on 21.09.1995 deceased Bhagwat was on duty. Though this witness is not an eye witness to the incident, but according to her the deceased was on duty at the relevant time. Moreover, she has also denied the suggestion in the cross-examination that the deceased was not on duty at the relevant time when the incident took place. The evidence of another witness i.e. Bhairu Hari Pophale is very important, who was working as a watchman on the day of incident. He has specifically stated that the deceased Bhagwat was discharging his duty as an Operator on 21.09.1995. According to him, on the said day at about 2.00 a.m. he heard Bhagwat moaning in pain. When he got up and asked Bhagwat, Bhagwat told him that something had bitten him on his ear. This witness has further stated that he then carried Bhagwat to the hospital from the said Sub Station, Javla, but Bhagwat died in Barsi Civil Hospital due to snake bite. There is no dispute raised by the M.S.E.B. that the deceased was not its employee. However, M.S.E.B. is only claiming that Bhagwat did not die during the course of his employment as he was not on night

duty on 20.09.1995. However, this witness i.e. watchman Bhairu has clearly stated that the deceased was on duty when he was bitten by snake. Moreover, this witness, in his cross-examination, has clearly denied the suggestion that deceased Bhagwat was not on duty. It is very much surprising to note that this witness, despite being an employee of M.S.E.B., has deposed contrary to the case of M.S.E.B. Therefore, the testimony of this witness has acquired immense importance to ascertain whether the deceased died during the course of employment.

7. It is significant to note that to prove that the death of Bhagwat did not occur during the course of employment, the M.S.E.B. has examined one of his employees at Exh. 53 namely Sudhir Chandrakant Baraskar i.e. Sub Engineer of M.S.E.B. Paranda. Though this witness has produced duty chart at Exh. 54 and pay sheet of deceased Bhagwat at Exh.55, but the duty chart (Exh.54) is only an extract from the original duty register. It is important to note that this witness had not brought original duty register to ascertain the true duty list. On perusal of the said duty register only two shifts are mentioned for Operators. First shift is from 6.00 a.m. to 2.00 p.m. and second shift is from 2.00 p.m. to

10.00 p.m. Third shift is not shown in the said duty chart. It is extremely important to note that the work of Junior Operator is to regulate the electric supply, and therefore, there is requirement of such operator at Sub Station for 24 hours. However, the duty chart is showing only two shifts, and therefore, the evidence of CW-2 Bhairu Pophale i.e. the watchman of M.S.E.B. clearly supports the fact that the deceased Bhagwat was on night duty on 20.09.1995 from 10.00 p.m. which was supposed to end at 6.00 a.m. of 21.09.1995. This witness DW-1 Baraskar of M.S.E.B. has also admitted in his cross-examination that at the relevant time one watchman was also on duty at Sub Station, Javla and his name was Bhairav Hari Pophale. Thus, it has come on record that when the alleged incident of snake bite had taken place, Bhairu Hari Pophale was on duty, who has deposed that Bhagwat was bitten by snake while he was on night duty. Therefore, though DW-1 Sudhir Baraskar has stated that the deceased was not on duty at the relevant time, but the evidence of CW-2 watchman Bhairu Pophale has established the fact beyond all reasonable doubts that the deceased was bitten by snake during the course of his employment. As such, I find observation of the learned Commissioner that the claimants proved the fact that deceased died during the

course of his employment, is made appropriately. Therefore, considering the evidence of all these witnesses, it has been established by the claimants that the deceased was on duty and died in the course of his employment due to snake bite as aforesaid. Thus, I find no substance in the appeal filed by the M.S.E.B. which deserves to be dismissed.

8. So far as the appeal by the claimants i.e. First Appeal No. 728 of 2002 is concerned, it is in respect of enhancement of compensation amount. Admittedly, the learned Commissioner has come to the conclusion that the claimants are entitled for compensation to the tune of Rs. 2,03,850/-, but he restricted the compensation amount to the tune of Rs. 2,00,000/- as claimed by the claimants. The claimants have disputed the amount of compensation by contending that the learned Commissioner considered the monthly income of deceased only to the tune of Rs. 2,000/-, despite he was getting monthly salary of Rs. 2,854/- at the time of incident.

9. The determination of compensation is governed by Section 4 of the Act and in case of death resulting out of the injury, the amount equal to fifty percent of the monthly wages of the deceased is to be multiplied by the relevant factor as

per Schedule IV under this Section or an amount of fifty thousand rupees, whichever is more. It appears that the learned Commissioner, by considering the relevant factor of 203.85, has determined the amount of compensation to the tune of Rs. 2,03,850/- by taking the monthly income of deceased as Rs. 2,000/-. Further, the restriction upto Rs. 2,00,000/- of the said compensation considering the claim of the claimants to that effect, also appears quite reasonable and appropriate. Now the learned Counsel for the claimants is asking to determine the compensation by considering monthly salary of the deceased of Rs. 2,854/-.

10. It is significant to note that there was amendment to Section 4 of the Act w.e.f. 15.09.1995 and as per the said amendment, it was suggested in the Explanation II that where the monthly wages of a workman exceed two thousand rupees, his monthly wages for the purposes of clause (a) and clause (b) of Section 4 shall be deemed to be two thousand rupees only. This position remained unchallenged till the new amendment to aforesaid Section came into force w.e.f. 08.12.2000 whereby the words "two thousand rupees" were replaced by "four thousand rupees". It is significant to note that the accident in the present matter had taken place on

21.09.1995 and therefore, the amendment w.e.f. 15.09.1995 is applicable according to which the salary of the deceased though was more than Rs. 2,000/- per month, but it was to be taken Rs. 2,000/- for determination of compensation under Explanation II as aforesaid. Therefore, I do not find any perversity in the calculation for determination of compensation made by the learned Commissioner. As such, the compensation of Rs. 2,00,000/- determined by the learned Commissioner is proper.

11. The learned Counsel for the claimants has also challenged the judgment on the ground that the learned Commissioner, despite granting compensation, failed to award interest and penalty as contemplated in Section 4-A of the Act. For quick reference, I would like to reproduce Section 4-A of the Act herein-below :

[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.

(2) In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts, and, such payment shall be deposited with the Commissioner or made to the¹[employee], as the case may be, without prejudice to the right of the ¹[employee] to make any further claim.

(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”.

As regards the determination of penalty, though it is mentioned that if there is no justification for delay in the payment, the Commissioner can direct the employer to pay a further sum not exceeding 50% of such amount of compensation by way of penalty, but the proviso to clause (b) of sub-section (3) of Section 4-A clearly indicates that such order for payment of penalty shall not be passed without giving a reasonable opportunity to the employer to show cause why it should not be passed.

12. In the instant matter, no such show cause notice appears to be given by the learned Commissioner to the M.S.E.B. Therefore, unless such opportunity is given to the M.S.E.B., no order for penalty can be passed.

13. Admittedly, clause (a) of sub-section (3) of Section 4-A mandates award of simple interest at the rate of Rs. 12% per annum on the compensation amount when it is not paid by the employer within one month from the date it fell due. Thus, it can be seen that the learned Commissioner has definitely erred in not awarding the interest on the compensation amount, as directed in the aforesaid section.

14. The learned Counsel for the M.S.E.B. disputed the date from which such interest is to be counted. According to him, such interest starts running from one month after the date of adjudication by the learned Commissioner i.e. the date of impugned judgment. However, this position is disputed by the learned Counsel for the claimants and according to him, the period for counting such interest shall start after one month of the date of accident.

15. Learned Counsel for the M.S.E.B. has relied upon the various judgments as mentioned earlier in this judgment. In the case of ***National Insurance Co. Ltd vs Mubasir Ahmed*** (supra) the Hon'ble Apex Court has made the following observation in para-9 :

"9. 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 4-A was dealt with

by this Court in Maghar Singh v. Jashwant Singh (1998 (9) SCC 134). By Amending Act, 14 of 1995, Section 4-A 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 4-A(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 4-A. 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".

Further, the Hon'ble Apex Court in the case of ***Uttar Pradesh State Road Transport Corporation Now Uttarakhand Transport Corporation vs Satnam Singh*** (supra) in para 6 has made the following observation :

"6. This Court has heard Learned Counsel for the parties. In National Insurance Co. Ltd. vs Mubasir Ahmed and another, this Court has held that there is no indication in Section 4-A (1) as to when the compensation payable u/s 4 falls due and, therefore, it has to be taken that compensation becomes due on the date on which the claim for compensation is adjudicated. In view of the above-mentioned

judgment of this Court, the direction given by the Workmen's Compensation Commissioner which is confirmed by the High Court, requiring the Appellant to pay the amount of compensation with 6 per cent interest from the date of the accident, will have to be substituted by the direction to the Appellant to pay the amount of compensation with 6 per cent interest from the date of the award made by Workmen's Compensation Commissioner".

Further, the Hon'ble Apex Court in the case of ***Palraj vs The Divisional Controller, Nekrtc*** (supra), in para-16, observed as under :

"It will be evident that compensation assessed under Section 4 is to be paid as soon as it falls due and in case of default in payment of the compensation due under the Act within one month from the date when it falls due, the Commissioner would be entitled to direct payment of simple interest on the amount of the arrears @12% per annum or at such higher rates which do not exceed the maximum lending rates of any scheduled Bank as may be specified by the Central Government. Both the Commissioner, Workmen's Compensation, as also the High Court, therefore, rightly held that interest under the 1923 Act cannot be claimed from the date of the filing of the application, but only after a default is committed in respect of the payment of compensation within 30 days from the date on which the payment becomes due".

16. In the light of the aforesaid observations, the learned Counsel for the M.S.E.B. submits that the date from which the interest starts to run, is the date of adjudication i.e. the date of impugned judgment and the amount of interest must be calculated after one month of such date of judgment till its realization.

17. However, the learned Counsel for the claimants also relied on the judgments in the cases of ***Saberabibi Yakubhbhai Shaikh vs National Insurance Co. Ltd*** and ***Ajaya Kumar Das vs Divisional Manager*** (supra). In the case of Saberabibi Yakubhbhai the Hon'ble Apex Court, by referring the judgments in it's earlier cases of Uttarakhan Transport Corporation vs Satnam Sing and National Insurance Co. Ltd. vs Mubasir Ahmed (supra), has made the following observation :

“10. We have perused the aforesaid judgment. We are of the considered opinion that the aforesaid judgment relied upon by the learned counsel for the appellants is fully applicable to the facts and circumstances of this case. This Court considered the earlier judgment relied upon by the High Court and observed that the judgments in the case of National Insurance Co. Ltd. v. Mubasir Ahmed [(2007) 2 SCC 349] and Oriental Insurance Co. Ltd. v. Mohd. Nasir [(2009) 6 SCC 280] were per incuriam having been rendered without considering the earlier decision in Pratap Narain Singh Deo v. Srinivas Sabata [(1976) 1 SCC 289]. In the aforesaid judgment, upon consideration of the entire matter, a four-judge Bench of this Court had held that the compensation has to be paid from the date of the accident.

11. Following the aforesaid judgments, this Court in Oriental Insurance Company Limited versus Siby George and others (supra) reiterated the legal position and held as follows:

“11. The Court then referred to a Full Bench decision of the Kerala High Court in United India Insurance Co. Ltd. v. Alavi and approved it insofar as it followed the decision in Pratap Narain Singh Deo.

12. The decision in Pratap Narain Singh Deo was by a four-judge Bench and in Valsala K. 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 K. were not brought to the notice of the Court in the two later decisions in Mubasir Ahmed and Mohd. Nasir.

13. In the light of the decisions in Pratap Narain Singh Deo and Valsala K., 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 K. do not express the correct view and do not make binding precedents."

12. In view of the aforesaid settled proposition of law, the appeal is allowed and the judgment and order of the High Court is set aside. The appellants shall be entitled to interest at the rate of 12% from the date of the accident".

The aforesaid observations are also reiterated by the Hon'ble Apex Court in its subsequently judgment in the case of Ajaya Kumar vs Divisional Manager (supra).

18. Thus, it can be seen that the judgments relied upon by the learned Counsel for the M.S.E.B. have been overruled by the Hon'ble Apex Court by its subsequent judgments and at present it is settled under the judgment of *Saberabibi Yakubbbhai Shaikh vs National Insurance Co. Ltd.*

(supra) that the claimants shall be entitled to the interest under Section 4-A of the Act at the rate of Rs. 12 % per annum from the date of accident. Therefore, in the light of this latest observation, the claimants in this matter are entitled to claim interest on the compensation amount of Rs. 2,00,000/- from lapse of one month from the date of accident till it's realization, at the rate of 12 % per annum.

19. In the instant case, the incident had taken place on 21.09.1995, and therefore, the aforesaid interest will start applying from 21.10.1995. The record shows that M.S.E.B. has deposited the amount of compensation with the learned Commissioner on 02.01.2002 and original receipt to that effect is also placed on the record. As such, the claimants are now entitled for simple interest at the rate of Rs. 12% per annum on the compensation amount of Rs. 2,00,000/- from 21.10.1995 to 02.01.2002. As such, the appeal of the claimants i.e. First Appeal No. 728 of 2002 needs to be allowed only to the extent of granting interest on the compensation amount, as discussed above.

20. In view of the above discussion, the following order is passed.

ORDER

- (i) First Appeal No.76 of 2002 stands dismissed.
- (ii) First Appeal No. 728 of 2002 filed by the claimants, is hereby partly allowed and the respondent M.S.E.B. is directed to pay the simple interest at the rate of Rs. 12% per annum on the compensation amount of Rs. 2,00,000/- from lapse of one month from the date of incident i.e. from 21.10.1995 to 02.01.2002 i.e. the date of deposit of such compensation, within three months from the date of this order, failing which the said amount of interest shall carry future interest at the rate of 6% per annum, till its realization.
- (iii) The appellants / claimants are permitted to withdraw the compensation amount which has been deposited by respondent M.S.E.B. with the Court of the learned Commissioner, alongwith interest accrued thereon till today, if not already withdrawn.
- (iv) The award be modified accordingly.

(SANDIPKUMAR C. MORE, J.)