



C.M.A(MD)No.1208 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 26.07.2023

Pronounced On : 18.08.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.1208 of 2017

1.Muthulakshmi

2.Minor.Lekha Subhanu : Appellants /Applicants 1 & 2

(Minor/second respondent represented
by her mother and natural guardian/1st
respondent)

Vs.

1.P.Neppolian

2.The New India Assurance Company Limited,
Rep.by its Branch Manager,
M&acmillan House, 2nd Floor,
Patullos Road,
Chennai – 600 002. : Respondents 1 & 2/Opposite Parties

3.Krishnan (died)

2.P.Ganesan : 3rd Respondent/3rd Applicant

(Memo dated 06.11.2019 presented before the Court on 20.01.2023 is recorded as 3rd respondent died and the appellants, who are already on record, are recorded as Legal heirs of the deceased third respondent vide Court order dated 20.01.2023 made in CMA(MD)No.1208/2017)



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PRAYER:- Civil Miscellaneous Appeal filed under Section 30(i) of the Workmen Compensation Act VIII/23, to set aside the order dated 03.10.2012 passed in W.C.No.211 of 2007 on the file of the Commissioner of Workmen Compensation and Deputy Commissioner of Labour, Tiruchirappalli.

For Appellant : Mr.P.Vinoth,
for N.C.Ashok Kumar

For Respondents : Mr.B.Vijay Karthikeyan, for R2.

: No Appearance, for R1.

J U D G M E N T

The Civil Miscellaneous Appeal is directed against the order passed in W.C.No.211 of 2007, dated 03.10.2012 on the file of the Commissioner of Workmen Compensation and Deputy Commissioner of Labour, Tiruchirappalli.

2. The appellants, who were awarded with compensation of Rs.4,18,460/- with interest at 12% per annum from the date of accident, in case of failure of the insurer to deposit the amount within 30 days from



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the date of receipt of the order, for the death of Shanmugam, consequent to an accident occurred on 19.09.2006, challenging the order with respect to the interest and penalty.

3. The learned counsel for the appellants would submit that the Commissioner of Workmen in his order has observed that the respondents are liable to pay interest at 12% per annum in the event of their failure to deposit the compensation within one month from the date of order and that the Commissioner ought to have allowed the interest at the rate of 12% per annum as provided in the statute. He would further submit that the only challenge is with regard to the award of interest in the event of the respondents' failure to deposit the compensation amount within 3 days from the date of the impugned order.

4. The only point that arises for consideration is as to whether the conditional order for payment of interest passed by the Workmen Commissioner is proper and is in accordance with law ?

5. Before entering into further discussion, it is necessary to refer Section 4(A) of Employee's compensation Act.



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Section 4 A. 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 the workman, as the case may be, without prejudice to the right of the workman 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.



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6. The learned counsel for the appellants has relied on the judgment of the Hon'ble Supreme Court in ***Shoba and others Vs. Chairman, Vithalrao Shinde, Sahakarai Sakhar Karkhana Limited and others*** reported in ***2022(1) TN MAC 552 (SC)***, wherein the Hon'ble Apex Court has specifically held that the employer is liable to pay interest from the date of accident and the relevant passages is extracted hereunder :

“ 4.1...

Therefore, the liability to pay the compensation would arise immediately on the death of the deceased. Even as per Section 4A(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 the employee, as the case may be, without prejudice to the right of the employee to make any further claim. Therefore, the liability to pay the compensation would arise from the date on which the deceased died for which he is entitled to the compensation and therefore, the liability to pay the interest on the amount of arrears/compensation shall be from the date of accident and not from the date of the order passed by the Commissioner. As



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per Section 4A(3)(b), if the Commissioner is satisfied that there is no justification for the delay, it can direct the employer, in addition to the amount of the arrears and interest thereon, to pay a further sum not exceeding 50% of such amount by way of penalty. Thus, provision for interest and provision for penalty are different. As observed hereinabove, the provision for levy of interest would be under Section 4A(3)(a) and the provision for levy of penalty would be under Section 4A(3)(b). While directing the employer to pay the interest from the date of the order passed by the Commissioner, the High Court has not at all considered Section 4A(3)(a) and has considered Section 4A(3)(b) only, which is the penalty provision.

5. Under the circumstances, the impugned judgment and order passed by the High Court directing the employee to pay the interest on the amount of compensation as leviable under Section 4A(3)(a) from the date of the order passed by the Commissioner, i.e., 25.01.2017 is unsustainable.”

7. In ***Pratap Narain Singh Vs. Srinivas Sabata*** reported in **1976 (1) SCC 289**, the Hon'ble Supreme Court has held that an employer becomes liable to pay compensation as soon as the personal injury is caused to the workman by the accident which arose out of and in the course of employment and that the relevant date for determination of the



rate of compensation is the date of the accident and not the date of adjudication of the claim.

8. Recently, the Hon'ble Supreme Court in *Ajaya Kumar Das and another Vs. Divisional Manager and another* reported in *2022 Live Law (SC) 102*, by referring to its earlier decisions, has reiterated the legal position that the applicant is entitled to interest from the date of accident and the relevant passage is extracted hereunder :

5. In *Saberabibi Yakubhai Shaikh v. National Insurance Co. Ltd.1* , 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*, 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.* , 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.

6. For the above reasons, we set aside the direction contained in the order of the High Court dated 11 April 2018 by



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which the order for the payment of interest was deleted. The order for the payment of interest which was issued by the Additional Labour Commissioner-cum-Commissioner, Workmen Compensation shall together with the award of compensation stand restored.”

9. Considering the legal position settled by the Hon'ble Supreme Court, this Court has no hesitation to hold that the impugned order granting interest at 12% per annum in the event of the respondent's failure to deposit the compensation within 30 days from the date of receipt of the impugned order, is liable to be set aside and the appellants are entitled to get interest at 12% per annum from the date of accident. Accordingly, the above point is answered in favour of the claimants.

10. In the result, the Civil Miscellaneous Appeal is partly allowed and the impugned order dated 03.10.2012 passed in W.C.No.211 of 2007 on the file of the Commissioner of Workmen Compensation and Deputy Commissioner of Labour, Tiruchirappalli, with regard to the interest, is set aside. The second respondent is directed to deposit the award amount of Rs.4,18,460/- (Rupees Four Lakhs Eighteen Thousand Four Hundred and Sixty Only) with interest and costs before the Tribunal within a



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period of one month from the date of receipt of copy of this order, if not deposited and on such deposit, the claimants are permitted to withdraw the amount on due application. Parties are directed to bear their own costs. Consequently, connected miscellaneous petition is closed.

18.08.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
das

To

- 1.The Commissioner of Workmen Compensation/
Deputy Commissioner of Labour, Tiruchirappalli.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

das

Pre-delivery order made in
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