

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.433 of 2017

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The IFFCO - TOKIO General Insurance Company Limited, through its Executive Legal, Express Tower, 3rd Floor, Block A & B, 42 A, Shakespeare Sarani, Kolkata-700017. Appeal and appellant through Duly Constituted Attorney, IFFCO TOKIO General Insurance Co. Ltd. Express Tower, 3rd Floor, 42A, Shakespeare Sarani, Kolkata-700017

... .. Appellant/s

Versus

1. Shamima Khatoon, W/o Late Nasir Ahmad
2. Md. Sabir Ahmad, S/o Late Nasir Ahmad
3. Abdullah Khan, S/o Late Nasir Ahmad
4. Aatif Raja, S/o Late Nasir Ahmad
5. Ahtesham Raja, S/o Late Nasir Ahmad
6. Saba Praween, D/o Late Nasir Ahmad
7. Khalda Java, D/o Late Nasir Ahmad
8. Mahira Imam, D/o Late Nasir Ahmad (Res. 2-8 are minor and under the guardianship of natural guardian mother Res. 1 All the above are Resident of Village- Karhar Jaipur, P.O.- Bishunpura, P.S.- Sherghati, District- Gaya.
9. Mr. Gopal Prasad, S/o Mangho Sao, Resident of Lower Rajbari Road, Jhariya, Dhanbad, Jharkhand.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Durgesh Kumar Singh, Advocate
For the Respondent/s	:	Mr. Jai Prakash Verma, Advocate

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CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
CAV JUDGMENT

Date : 13-08-2024

This Miscellaneous Appeal has been filed under Section 30(1) (a) of the Employees' Compensation Act, 1923, being aggrieved by the order dated 07.01.2017 passed by the learned Deputy Labour Commissioner-cum-Commissioner -Workmen Compensation, Gaya, (hereinafter referred to as the



Commissioner) in CWC Case No. 06 of 2015 '*Shamima Khatoon & Ors. vs. The IFFCO TOKIO General Insurance Co. Ltd. & Another,*' by which the compensation of Rs. 12,80,890/- with 6 % *per annum* from 23.06.2013 (after one month of the date of incident) has been awarded in favour of applicants against the appellant/ Insurance Company. The Insurance Company has been directed to deposit the said amount within one month of the Order and in case the said amount of compensation if not deposited within the said period interest @ 9 % *per annum* shall be payable from the date of incident.

2. The case in brief is that late Nasir Ahmad, the husband of the applicant no.1, was employed as driver of respondent no. 9/ O.P. No. 2, Gopal Prasad for his Truck No. JH-10AB-8935 and during his employment he was going to *Kolkata* with that truck on 22.05.2013 and as he reached near *Bailkapi* Mod in District- *Hajaribag*, he was checking the tyre of his truck standing in the side of the road then another vehicle dashed him due to which Nasir Ahmad sustained grievous injury and died on the spot. The *post-mortem* was conducted at *Hajaribag* and with respect to said accident *Garehar* P.S. Case No. 20 of 2013, was registered. It has been claimed that the age of the deceased was 35 years at the time of his death and he was getting Rs. 12,000/- as his wages and Rs. 150/- per day for his



diet allowance. The said vehicle was insured with appellant/ O.P. No. 1 on the date of incident from whom the applicants, who are legal representative of the deceased being wife and minor children of deceased dependent upon the income of deceased are entitled for compensation.

3. On notice, O.P. No. 2, the owner of the vehicle appeared and filed his written statement and accepted the claim of the applicant, however, despite the notice served to the insurance company, no one appeared and accordingly *ex-parte* hearing against Insurance Company was proceeded in this case.

4. O.P. No. 2, the vehicle owner, in his written statement admitted that the deceased was employed as driver of his truck on the date of incident who died in accident. He has accepted deceased monthly salary of Rs. 10,000/- and Rs. 150/- for daily diet allowance. It is further stated that the vehicle had a valid permit no. NP/BR/2/072012/26187 which was valid for the year 2012-2017, the driver having driving licence bearing number-245/F/95 was valid on the date of accident. It is further stated that the deceased was skillful and diligent driver and his vehicle was insured with appellant/IFFCO-TOKIO General Insurance Company and he had given information of the death of his employee to the insurance company having no violation of the terms and conditions of the insurance policy. As such the



liability of payment of compensation is on the insurance company.

5. The owner or the Insurance Company have not contested the claim petition and have not cross-examined the applicant and her witness. The employer has admitted the claim petition and there was no contest. In view of the notification issued under Section 20 of the Workmen Compensation Act, Deputy Labour Commissioner is Commissioner for uncontested cases under Workmen Compensation Act and as such he has jurisdiction to pass an order in uncontested cases.

6. During hearing, the applicant and another witness adduced their evidence in which they have supported the claim. In support of her claim, the applicant has submitted copy of FIR being Garehar P.S. Case No. 20/2013, copy of charge-sheet, copy of *post-mortem* report, owner-book of vehicle, insurance policy, road permit, and driving licence of driver.

7. On the basis of the documents filed by applicants, statement of witnesses and statement of owner of the vehicle, the learned Commissioner hold that the deceased was employed as workman on the truck in question and during the course of employment he died in the accident. The learned Commissioner considering the fact that in year 2010, the wages of workman was increased from Rs. 4,000/- to Rs. 8,000/- which was likely



to be increased in near future and considering the statement of owner of the vehicle monthly wages of the deceased was accepted as Rs. 10,000/- and by adding diet allowance total monthly wages was assessed as Rs. 13,000/- and calculated amount of compensation as half of Rs. 13,000/- i.e. Rs. 6,500/- x 197.06 (relevant multiplier/factor as stipulated under Schedule IV of The Workmen Compensation Act, 1923 considering the age of employee i.e. 35 years in this case) = Rs. 12,80,890/- along with interest at the rate of 6 % *per annum* after one month of the incident. It was also held that since the said vehicle was insured with appellant/ Insurance Company, he is liable to pay the compensation and accordingly, impugned order for payment, has been passed as stated above.

8. It appears from the Trial Court Record that the appellant Insurance Company has deposited principal amount Rs. 12,80,890/- with the Commissioner on 03.06.2017 vide DD No. 387491 dated 11.05.2017 which has been disbursed between the dependents of deceased which is evident from the Statement of Disbursements dated 14.12.2021 and 06.08.2022 under Section 8(4) of the Workmen's Compensation Act, 1923.

9. Heard learned counsel for the parties and perused the record.

10. Learned counsel for the appellant Insurance



Company has submitted that notice on the appellant had not been served and he was deprived from contesting the case. It is further submitted that the applicant has failed to establish the employer and employee relationship and there is no proof that the employer was making payment of wages to the deceased. Learned counsel has further submitted that at the relevant time the maximum amount as per the statutory provision was Rs. 8,000/- per month but the learned Commissioner has determined Rs. 13,000/- per month without any documentary proof. Learned counsel has further submitted that the appellant is not liable to pay the interest on compensation and it is the owner who would be liable to pay interest. It is further submitted that in view of the aforesaid facts and circumstances, the impugned award is against the law and facts of the present case and liable to be set aside.

11. On the other hand, learned counsel for the respondents has submitted that despite service of notice the appellant Insurance Company had not appeared before the learned Commissioner and the Insurance Company cannot take advantage to its own wrong. The employer has filed the written statement and admitted the fact with respect to employer-employee relationship and the wages and allowance paid to the deceased. He has further submitted that the law is well settled that interest on compensation amount is part of the compensation



and the insurance company is also liable to pay the simple interest @12% *per annum* on the awarded compensation amount. It is further submitted that only interest on delayed payment has been granted and not additional amount as penalty on Employer has been added to the principal amount of compensation contemplated by Section 4 A(3) of the Workmen's Compensation Act. Learned counsel has submitted that there is no merit in the present appeal and is liable to be dismissed and rate of interest in the impugned order is required to be modified accordingly.

12. Having heard the learned counsel for the parties and on perusal of record, it appears from the order dated 17.09.2015, in proceeding before the learned Commissioner that appellant/Insurance Company despite service of notice not appeared in the case and not contested the case. The employer has although filed his written statement but not contested the case. The applicant to prove the claim produce evidence oral as well as documentary evidence and the learned Commissioner has on the basis of material on record has passed the award.

(A) Service of Notice

13. On the point of service of notice, the Hon'ble Supreme Court in the case of **Ajeet Seeds Limited Vs. K. Gopala Krishnaiah** reported in **(2014) 12 SCC 685**, held that



when a notice is served to the proper address of the addressee, it shall be deemed to be served unless contrary is proved. The Hon'ble Supreme Court observed that Section 114 of the Evidence Act, 1872 enables the Court to presume that in the common course of natural events, the communication sent by the post would have been delivered at the address of the addressee. Further, Section 27 of the General Clauses Act, 1897 gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post. Unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business. In the present case, the appellant has not proved that notice has not been served to the appellant in the fact and circumstances of the case. Accordingly, the contention of the appellant that notice was not served to him cannot be accepted and is accordingly rejected.

(B) Assessment of Wages of Deceased for Computation of Compensation

14. The Employees' Compensation Act, 1923 was formerly known as the "Workmen's Compensation Act, 1923". Workmen's has been substituted by Employees' by Act 45 of 2009 with effect from 18.01.2010. Section 5 of Employees' Compensation Act, 1923, defines term "monthly wages" to mean



an amount of wages deemed to be payable for a month's service.

15. Section 4 of the Act contained explanation II, which was in the following terms:

Explanation II – *Where the monthly wages of a workman exceeds four thousand rupees, his monthly wages for the purpose of clause (a) and clause (b) shall be deemed to be four thousand rupees only.*

16. By Act 45 of 2009, which came into force on 18 January 2010, Explanation II came to be deleted. Sub-Section (1-B) was introduced in Section 4 to read as follows:

“(1-B) The Central Government may, by notification in the official Gazette, specify for the purposes of sub-section (1), such monthly wages in relation to an employee as it may consider necessary.”

17. In exercise of the powers conferred by sub-Section (1B) of Section 4 of the Employees' Compensation Act, 1923, the Ministry of Labour and Employment vide notification dated 31.05.2010, published in the Gazette of India specifies, for the purpose of sub-Section (1) of the said Section, Rs. 8,000/- as monthly wages.

18. Under the payment of Wages Act, 1936, the onus is on employer to maintain the register and record of wages and if the employer has failed in his duty to maintain the proper records of wages of deceased, the claimants cannot be made to suffer for it.



19. In **Ved Prakash Vs. Premi Devi & Ors.** reported in **(1997) 8 SCC 1**, the Hon'ble Supreme Court observed that the Employee's Compensation Act is a welfare legislation enacted to secure compensation to the poor workman who suffer from injuries at their place of work. This becomes clear from a perusal of the preamble of the Act and statement of objects and reason. The Employees' Compensation Act is a social welfare legislation meant to benefit the workers and their dependents in case of death of workman due to accident caused during and in course of employment should be construed as such.

20. The Hon'ble Supreme Court in **Jaya Biswal Vs. Branch Manager, IFFCO TOKIO General Insurance Company** reported in **AIR 2016 SC 956**, observed that since neither of the parties produced any document on record to prove the exact amount of wages being earned by the deceased at the time of accident, to arrive at the amount of wages, the learned Commissioner accepted wages of deceased at the time of the accident as Rs. 4,000/- (per month) + daily *bhatta* (allowance) of Rs. 6,000/- (per month), which amounts to a total of Rs. 10,000/- but calculated on the basis of Rs. 8,000/- (wage limited to) i.e. $\text{Rs. } 8,000/- \times 50\% \times 213.57 = \text{Rs. } 8,54,280/-$ + interest at the rate of 12 % *per annum* from the date of accident, as well as Rs. 20,000/- as the cost of proceeding, the total amount comes to Rs.



10,75,253/-. However, the Hon'ble Supreme Court calculated compensation on the basis of wages Rs. 10,000/- per month as determined by the Commissioner i.e. (Rs. 10,000/- x 50% x Rs. 213.57 = Rs. 10,67,850/- + funeral expenses Rs. 25,000/- i.e. total amount of compensation payable comes to Rs. 10,92,850/-) with interest at the rate of 12% *per annum* from the date of accident, that is on 19.07.2011 and also awarded cost of Rs. 25,000/- payable by the Insurance Company directed to deposit the said amount within six weeks.

21. In **Pratap Narain Singh Deo Vs. Srinivas Sabata & Anr.** reported in **AIR 1976 SC 222** four Judge Bench of Hon'ble Supreme Court held that the Amending Act enhancing compensation would apply only to accidents that took place after the coming into force of the amendment.

22. The Hon'ble Supreme Court in judgment dated 13.02.2020 in **K. Sivaraman & Ors. Vs. P. Sathish Kumar & Anr.** reported in **AIR Online 2020 SC 221** held in paragraph 26 as under:-

“Prior to Act 45 of 2009, by virtue of the deeming provision in Explanation II to Section 4, the monthly wages of an employee were capped at Rs. 4,000/- even where an employee was able to prove the payment of a monthly wage in excess of Rs. 4,000/-. The legislature, in its wisdom and keeping in mind the purpose of the 1923 Act as a social welfare legislature did not enhance the quantum in the deeming provision, but deleted it



*together. The amendment is in furtherance of the salient purpose which underlines the 1923 Act of providing to all employees compensation for accidents which occur in the course of an arising out of employment. **The objective of the amendment is to remove a deeming cap on the monthly income of an employee and extend to them compensation on the basis of the actual monthly wages drawn by them.***

(emphasis supplied)

23. In **Rathi Menon Vs. Union of India** reported in **2001 (3) SCC 714**, The Hon'ble Supreme Court distinguished the scheme of Workmen Compensation Act, 1923 and the Motor Vehicle Act, 1988, the Court held that

“.....The scheme of the provision under the W.C. Act is materially different from the scheme indicated in Chapter – XIII of the Railways Act. In the former, compensation payable is fixed in the Act itself though the schedule incorporated thereto. Section 4 of the W.C. Act shows that such compensation is to be linked with the monthly wages of workman concerned. It also provides that the liability to pay compensation on the employer would arise not when the commission passes the order but on the date of sustaining the injury itself. A provision is made in Section 4A of W.C. Act that where an employer is in default of paying the compensation due within one month the commission shall direct the employer to pay not only interest but in appropriate cases a penalty ranging upto 50 % of the amount payable. The said scheme cannot be equated with the scheme in Chapter XII of the Railways Act, as the principles involved have differences.....”

24. In the written statement of employer, it is categorically admitted by the employer that deceased was



drawing Rs. 10,000/- per month as wages and diet allowance at the rate of Rs. 150/- per day. The deceased was an experienced truck driver and the earning assessed by the learned Commissioner on the basis of statement made on oath by the applicant read with the written statement of employer cannot be construed as excessive or not commensurate with the wages earned by a truck driver in the year 2013.

(C) Substantial Question of Law

25. Section 30 of the Employees' Compensation Act, 1923 is quite explicit and prohibits entertaining of an appeal against an award of the Commissioner, unless it raises substantial questions of law. It is relevant to set out paragraphs 9, 10 and 11 of the judgment passed by the Hon'ble Supreme Court in **North East Karnataka Road Transport Corporation Vs. Smt. Sujatha** reported in **AIR 2018 SC 5593**

“9. At the outset, we may take note of the fact, being a settled principle, that the question as to whether the employee met with an accident, whether the accident occurred during the course of employment, whether it arose out of an employment, how and in what manner the accident occurred, who was negligent in causing the accident, whether there existed any relationship of employee and employer, what was the age and monthly salary of the employee, how many are the dependants of the deceased employee, the extent of disability caused to the employee due to injuries suffered in an accident, whether there was any insurance coverage obtained by the employer to cover the incident, etc. are some of the material



issues which arise for the just decision of the Commissioner in a claim petition when an employee suffers any bodily injury or dies during the course of his employment and he/his LRs sue(s) his employer to claim compensation under the Act.

10. The aforementioned questions are essentially the questions of fact and, therefore, they are required to be proved with the aid of evidence. Once they are proved either way, the findings recorded thereon are regarded as the findings of fact.

11. The appeal provided under Section 30 of the Act to the High Court against the order of the Commissioner lies only against the specific orders set out in clauses (a) to (e) of Section 30 of the Act with a further rider contained in the first proviso to the section that the appeal must involve substantial questions of law.”

26. The questions raised by the appellant with respect to monthly wages of the deceased employee is the question of fact which is proved with the aid of evidence on which the learned Commissioner has given findings and the same is not the substantial question of law in the fact and circumstances of the case.

(D) Interest on Compensation Amount and Penalty to Defaulting Employer

27. The law is well settled that interest on the principal amount due to delay in payment being part and parcel of the statutory liability would be payable by the Insurance Company along with the compensation and not by way of the additional amount is added to the principal amount of



compensation by way of penalty to be levied on the employer under circumstances contemplated by Section 4A (3) of the Act, as and when the Commissioner is of the view that there is no justification for such delay on the part of the employer and because of his unjustified delay and due to his personal fault he is held responsible for the delay, then the penalty would get imposed on him that would add a further sum up to 50 % on the principal amount by way of penalty to be made good by the defaulting employer. So far as penalty is concerned, it cannot be said that it automatically flows from the main liability incurred by the insured employer under the Act.

28. From a reading of Section 12 of the Workmen's Compensation Act, the object is apparent, that is to protect the workman and secure compensation for him from persons in a better position to pay, who then are to be indemnified by the contractor, for which the provisions is made in sub-section (2) of Section 12. By Workmen's Compensation (Amendment) Act, 1995 the rate of interest has been enhanced from 6 % to 12 % *per annum* which came into force with effect from August 19, 1995. Section 4 A of the Workmen's Compensation Act, 1923 stipulates that the Commissioner shall direct the employee to pay interest of 12 % *per annum* or at higher rate, not exceeding the lending rates of any scheduled banks specified.



29. The Hon'ble Supreme Court in **K. Sivaraman & Ors. Vs. P. Sathish Kumar** (*supra*) and in **Jaya Biswal Vs. Branch Manager, IFFCO TOKIO General Insurance Company** (*supra*), granted interest @ 12 % *per annum* from the date of the accident.

30. A reading of sub-section (3) of Section 4A shows that it is a beneficial provision made for the benefit of the employee having regard to the scheme of the Act, the provision for payment of interest and of penalty have been enacted with a view to deter the employer from taking false plea and avoiding payment of compensation which becomes payable.

31. In **Ved Prakash Vs. Premi Devi** (*supra*) the Hon'ble Supreme Court held that the Insurance Company will be liable to meet the claim for compensation along with interest from the date of accident till the date of payment on the principal compensation amounts by the Workmen's Commissioner on account of default of the insured in paying up the compensation amount within the period contemplated by Section 4-A(3) of the Compensation Act.

32. The Hon'ble Supreme Court in **Mamta Devi & Ors. vs. The Reliance General Insurance Company Limited & Anr.** reported in **2023(3) PLJR (SC) 44** the mandate of the Act insofar as payment of interest is concerned is clear and



unambiguous viz., the claimants would be entitled to interest @ 12% *per annum* from one month after the date of accident till date of payment. Thus, claimants would be entitled to the interest accordingly.

33. The Law is well settled that claimant is entitled for just compensation and this court in the exercise of the appellate powers can enhance the amount of compensation even in the absence of appeal or cross-examination.

34. Order XLI, CPC is the normal rule which applies to appeals before the High Court. Order XLI, Rule 33 CPC, empowers the appellate court to make whatever order it thinks fit. It is an enabling provision and the power is very wide. In **Pannalal Vs. State Of Bombay And Ors** reported in **AIR 1963 SC 1516**, it was observed that Order XLI, Rule 33 empowers the appellate court not only to give or refuse relief to the appellant by allowing or dismissing the appeal, but also to give such other relief to any of the respondents as “the case may be required”.

35. In **Chaya And Ors vs Bapusaheb And Ors** reported in **1994 (2) SCC 41** the Hon’ble Supreme Court held that order XLI, Rule 31, CPC is based on a statutory principle that the appellate Court should have the power to do complete justice between the parties. The rule confers a wide discretionary power on the appellate Court to pass such decree or



order as ought to have been passed or as the case may require, notwithstanding the fact that Appeal is only with regard to a part of the decree or that the party in whose favor the power is proposed to be exercised has not filed any appeal or cross-objection.

(E) Conclusion/Order

36. For the reasons given above, I do not find merit in appeal filed by the Insurance Company and the same is, accordingly, dismissed but with the modification in the impugned order with respect to the rate of interest. The impugned Order dated 07.01.2017 of learned Deputy Labour Commissioner-cum-Commissioner Workmen Compensation, Gaya is modified to the extent that the rate of interest on the compensation awarded be 12% *per annum* from the date of accident i.e. 22.05.2013 till the date of payment. The appellant/Insurance Company is directed to deposit the dues amount with concerned learned Commissioner within a period of two months. Needless to say that the Insurance Company is entitled to adjust the amount already paid.

37. This Miscellaneous Appeal is accordingly, disposed of with the aforesaid observation and modification in the rate of interest.

38. The certified copy of this Judgment and order



along with the Trial Court Records be sent back forthwith for compliance by the appellant/Insurance Company within the period of two months form today and disbursement of the said amount by the concerned Deputy Labour Commissioner-cum-Commissioner Workmen Compensation, Gaya in accordance with law.

(Sunil Dutta Mishra, J)

khushbu/-

AFR/NAFR	A.F.R.
CAV DATE	16.07.2024
Uploading Date	13.08.2024
Transmission Date	

