
(2008) 10 CAL CK 0004

In the Calcutta High Court

Case No : F.M.A. No. 1736 of 2008 and C.A.N. No. 3487 of 2008

Bulbul Mondal alias Bhola Mondal

APPELLANT

Vs

National Insurance Co. Ltd. and Another

RESPONDENT

Date of Decision : 01-10-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34
Constitution of India, 1950 — Article 141
Motor Vehicles Act, 1988 — Section 147, 147(1)(b), 163A, 166, 171
Workmens Compensation Act, 1923 — Section 4A, 4A(3)

Citation : (2008) 10 CAL CK 0004

Hon'ble Judges : Rudrendra Nath Banerjee, J; Bhaskar Bhattacharya, J

Bench : Division Bench

Advocate : Krishanu Banik and Sanchita Ghosh, for the Appellant; Rajesh Singh for Respondents and K.K. Das for Amicus Curiae, for the Respondent

Judgement

Bhaskar Bhattacharya, J.—This appeal is at the instance of a claimant and is directed against an award dated 31st May, 1995 passed by the learned Judge, Motor Accident Claims Tribunal, Third Court, Burdwan in M.A.C. Case No. 229 of 1992 thereby disposing of an application u/s 166 of the Motor Vehicles Act by directing the Insurance Company to pay a sum of Rs. 50,400/- as compensation for the injury sustained by him while acting as "Khalasi" of the offending vehicle itself.

2. Being dissatisfied, the claimant has come up with the present appeal.

3. There is no dispute that the appellant was a Khalasi of the lorry bearing No. WMK-1988 which caused the accident, as a result, the left leg of the appellant was amputated at Burdwan Medical College and Hospital. He claimed Rs. 1,50,000/- as compensation on the allegation that the owner of the vehicle used to pay Rs. 1,200/- a month as his salary. There is no dispute that the claimant was aged 29 years at the time of accident.

4. The learned Tribunal below accepted the position that the claimant was a

Khalasi and that he had no contributory negligence. The age of the victim was also established to be 29 years at the time of accident. The learned Tribunal below was of the view that under normal circumstances, the workable age of a person is 60 years and in that respect, the petitioner could work at least 31 years more in effective condition; but according to the Tribunal, there were chances of accident, disease, death, etc. and considering all these factors, it should take the normal reasonable period to be up to the age of 50 years on that basis. The learned Tribunal opined that for assessing the compensation, first, the income of the claimant might be calculated for 21 years and as a labourers could earn Rs. 30/- a day, he could earn Rs. 900/- a month. But as the availability of work is also a factor to be reckoned, one could reasonably assume that he should, at least, get Rs. 700/- a month out of which he would spend Rs. 300/- for himself and Rs. 400/- for his family. So in a year, he would reasonably spend Rs. 4,800/- for his family and as such, for 21 years, he was required to spend Rs. 1,00,800/- for his family. The learned Tribunal further held that as the petitioner lost his left leg, he could still earn at least Rs. 200/- a month while sitting and so, he would be in a position to earn Rs. 2,400/- a year. In computing the total amount of compensation as Rs. 50,400/-, this amount was deducted from the total earning of the petitioner at the rate of Rs. 400/- a month for a period of 21 years and thus, the amount arrived at a figure of (Rs.1,00,800/- - Rs. 50,400/-) = Rs. 50,400/-, which, in his opinion, should be the fair amount of compensation.

5. Being dissatisfied, the victim has come up with the present appeal.

6. After hearing Mr Banik, appearing on behalf of the appellant and Mr Singh, appearing on behalf of Insurance Company, we are of the view that the approach of the learned Tribunal below was totally wrong. We are quite conscious that the accident took place at a point of time when the provision contained in Section 163A was not incorporated in the Motor Vehicles Act. The appellant having claimed compensation against his employer, in view of the provision contained in Section 147 of the Motor Vehicles Act, the liability of the employer to pay compensation in accordance with the Workmen's Compensation Act would devolve upon the Insurance Company.

7. Therefore, we should apply the principle of the Workmen's Compensation Act, 1923, as it stood at the relevant point of time of accident, in assessing the amount of compensation. Since the left leg (below knee) of the victim has been amputated, in accordance with the provision contained in Workmen's Compensation Act, the disability should be 50 percent; however, in view of the fact that the victim was a Khalasi and he has lost his leg, in our opinion, having regard to the nature of job he performed, we should by relying upon the principles laid down by the Apex Court in the case of Pratap Narain Singh Deo Vs. Srinivas Sabata and Another, should treat the disability to be 100 percent. In the aforesaid case, the victim was a carpenter who lost one of his hands by way of amputation from 8" from the tip of accordion and less than 5" below the tip of

colcannon and such injury, according to the said Act, was only partial disablement; but as a carpenter cannot perform his job by one hand, the Supreme Court approved the view adopted by the Commissioner that after considering the nature of his job, the victim should be treated to be 100 percent disabled. In the case before us, a Khalasi of a vehicle cannot do such job with one leg and thus, we propose to treat the disability to be 100 percent. In such view of the matter, by applying the factor of 209.92, as provided in the Workmen's Compensation Act, on the basis of salary of Rs. 1,000/- a month, the amount of compensation comes to Rs. 1,04,960/-.

8. The next question is what will be the amount of interest payable on that amount.

9. Mr Banik, the learned advocate appearing on behalf of the appellant, vehemently contended before us that his client had concurrent remedy both under Workmen's Compensation Act and the Motor Vehicles Act and his client having availed of the remedy under the Motor Vehicles Act, the interest should be paid in accordance with the provision contained in Section 171 of the latter Act and in such a case, the Court should pass direction for payment of interest at the rate of 12 percent per annum, the then bank rate of interest given by a nationalised bank on the deposit of one year, from the date of filing of the application till 31st December, 1999 and at the rate of 8 percent per annum from 1st January, 2000 till actual deposit of the amount.

10. Mr Singh, the learned advocate appearing on behalf of the Insurance Company, on the other hand, submitted that the liability of the employer under the provision of the Workmen's Compensation Act having fallen upon his client, the interest should be paid in accordance with the provision contained in Section 4A-(3) of the Workmen's Compensation Act, as it stood at the time of accident.

11. In view of the importance of the question involved, we requested Mr K.K. Das, the learned advocate, to assist us as *amicus curiae*.

12. Mr Das has submitted before us that by virtue of Section 147 of the Act, in this case, the Insurance Company is bound to bear the liability of the workman in terms of the Workmen's Compensation Act and that it is the interest payable under the said statute that should be borne out by the Insurance Company. Mr Das, however, submits that although the interest payable under the Workmen's Compensation Act by the employer is the liability of the Insurance Company, yet, the penalty provided therein for non-payment of interest would not devolve upon the Insurance Company. In support of such contention, he relied upon the decision of the Supreme Court in the case of Ved Prakash Garg Vs. Premi Devi and others, . Mr Das further submits that the rate of interest which has been subsequently enhanced from 6 percent to 12 percent with effect from 15th September, 1995 in Section 4-A of the Act of 1923 will have no application to a case of accident which occurred prior to the date of such amendment and in support of such contention Mr Das relies upon the decision of the Supreme Court

in the case of Kerala State Electricity Board and Another Vs. Valsala K and Another, . According to Mr Das, in this case, the interest will be payable at the old rate of 6 percent per annum. Mr Das, however, fairly concedes that the interest should be payable from the date after the expiry of one month from the date when the compensation falls due and such compensation really falls due from the date of accident and not from the date of the order assessing the liability and in support of such submission, Mr Das relies upon a decision passed by a Bench of the Supreme Court consisting of four Judges in the case of Pratap Narain Singh Deo Vs. Srinivas Sabata and Another,

13. Mr Das submits that a contrary view taken by a Bench consisting of two Judges in the case of National Insurance Company Ltd. vs. Mubasir Ahmed & Anr reported in AIR 2007 SCW 1265 cannot be held to be a good law as the attention of the said Bench was not drawn to the earlier decision of the Four- Judges-Bench in the case of Pratap Narain Singh Deo vs. Shrinivas Sabata & Anr. (Supra).

14. Mr Das, thus, submits that the appellant, in this case, should be entitled to get interest at the rate of 6 percent per annum after expiry of one month from the date of accident till actual payment.

15. Mr Banik, however, in this connection relies upon a decision of the Supreme Court in the case of Abati Bezbaruah Vs. Dy. Director General Geological Survey of India and Another, where one of the Judges of the Bench, while concurring with the view taken by the other Judge that in the facts of the said case the rate of interest should be 9 percent per annum in terms of Section 171 of the Motor Vehicles Act, specifically laid down as a proposition of law that if the application was filed under the Motor Vehicles Act, the interest should be payable in accordance with the principle laid down in Section 171 of the Motor Vehicles Act notwithstanding any inconsistent provision contained in Section 4-A of the Workmen's Compensation Act. Although in the case of Abati Bez Baruah (supra), the victim was not a workman nor was the claim application filed against the employer of the victim, Justice AR. Lakshmanan while concurring with the rate of interest fixed by Justice S. B. SINHA made the following observations:

No principle could be deduced nor any rate of interest can be fixed to have a general application in motor accident claim cases having regard to nature of provision u/s 171 giving discretion to Tribunal in such matter. In other matters, awarding of interest depends upon the statutory provisions, mercantile usage and doctrine of equity. Neither Section 34, CPC nor Section 4-A (3) of the Workmen's Compensation Act are applicable in the matter of fixing rate of interest in a claim under the Motor Vehicles Act. The Courts have awarded the interest at different rates depending upon the facts and circumstances of each case. Therefore, in my opinion, there cannot be any hard and fast rule in awarding interest and the award of interest is solely on the discretion of the Tribunal or the High Court as indicated above.

16. While making the aforesaid observations, His Lordship, however, did not take

into consideration the earlier decision of the Supreme Court in the case of Ved Prakash Garg (supra) and the one, in the case of L.R. Ferro Alloys Ltd. Vs. Mahavir Mahto and Another, wherein it was decided that liability to pay interest under the Workmen's Compensation Act is part and parcel of legal liability that falls upon the Insurance Company but the Insurance Company is under no obligation to pay penalty there under for non-payment of interest by the employer as the same is personal default of the employer. His Lordship had also no occasion to consider the effect of Section 147 of the Motor Vehicles Act regarding the extent of liability of the Insurance Company to pay interest which is payable by the employer under the Workmen's Compensation Act as in that case, the victim was not an employee of the owner of the offending vehicle. At this juncture, it will be profitable to refer to the following observations of the Supreme Court in the case of State of Orissa and Others Vs. Md. Illiyas, regarding the scope of a valid precedent :

A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates - (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. (See : State of Orissa v. Sudhansu Sekhar Misra and Ors., (The State of Orissa Vs. Sudhansu Sekhar Misra and Others, and Union of India (UOI) and Others Vs. Dhanwanti Devi and Others, . A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in Act of Parliament. In Quinen v. Leathem, (1901) AC 495 (HL), Earl of Halsbury LC observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides.

17. We are also quite conscious that although the obiter dicta of the Supreme Court may not be binding upon the Judges of the said Court, yet, by virtue of Article 141 of the Constitution, those are binding upon all the subordinate Courts. In this connection, it will be appropriate to refer to the following observations of the Supreme Court in the case of Director of Settlements, Andhra Pradesh and

Others Vs. M.R. Apparao and Another,

An "obiter dictum" as distinguished from a ratio decidendi is an observation by Court on a legal question suggested in a case before it but not arising in such manner as to require a decision. Such an obiter may not have a binding precedent as the observation was unnecessary for the decision pronounced, but even though an obiter may not have a bind effect as a precedent, but it cannot be denied that it is of considerable weight. The law which will be binding under Article 141 would, therefore, extend to all observations of points raised and decided by the Court in a given case. So far as constitutional matters are concerned, it is a practice of the Court not to make any pronouncement on points not directly raised for its decision. The decision in a judgment of the Supreme Court cannot be assailed on the ground that certain aspects were not considered or the relevant provisions were not brought to the notice of the Court (See Ballabhadas Mathurdas Lakhani and Others Vs. Municipal Committee, Malkapur, When Supreme Court decides a principle it would be the duty of the High Court or a subordinate Court to follow the decision of the Supreme Court. A judgment of the High Court which refuses to follow the decision and directions of the Supreme Court or seeks to revive a decision of the High Court which had been set aside by the Supreme Court is a nullity. (See Narinder Singh Vs. Surjit Singh, (Emphasis supplied by us)

18. If we apply the principles laid down by the Supreme Court in the aforesaid cases of State of Orissa (supra) and Director of Settlements, A. P. and others (supra), in the light of the provision contained in Article 141 of the Constitution of India, it is apparent that the proposition of law laid down by Lakhsmanan, J. in the case of Abati Bez Baruah (supra), that if an application is filed under the Motor Vehicles Act, the interest should be payable in accordance with Section 171 thereof and not u/s 4-A of the Workmen's Compensation Act, is binding so far as the owners of the vehicles are concerned but such observation is not binding upon the Insurance Company because His Lordship, in the facts of the said case, had no occasion to consider the question of limited liability of the Insurance Company as provided in Section 147 of the Motor Vehicles Act which has been recognised by the Supreme Court itself in the earlier decisions.

19. All the decisions cited by Mr Das arose out of the proceedings under the Workmen's Compensation Act and therefore, in those decisions, the Supreme Court had also no occasion to consider the question as to the rate of interest payable by the employer if an employee or his heir invokes concurrent jurisdiction by applying u/s 166 of the Motor Vehicles Act for the relief against the employer and the Insurance Company. In our opinion, the decisions cited by Mr Das, laying down proposition on the question of rate of interest, would be binding against the employer, the owner of the vehicles, if the proceeding is initiated under the Workmen's Compensation Act; but those will not be a precedent, if the proceedings are initiated under the Motor Vehicles Act inasmuch as such question was not decided therein. In such circumstances, by following

the decision of the Supreme Court in the case of Abati Bez Baruah (supra), we should hold that the employer would be bound to pay interest in accordance with the principles laid down in Section 171 of the Motor Vehicles Act notwithstanding the inconsistent provision contained in Section 4-A of the Act of 1923. But the liability of the Insurance Company will be limited to the liability of the employer as assessed in accordance with the provision of the Workmen's Compensation Act as provided in the decision of the Supreme Court in the case of National Insurance Co. Ltd. Vs. Prembai Patel and Others, The following observations of the Supreme Court in the said decision are quoted below:

It is thus clear that in case the owner of the vehicle wants the liability of the insurance company in respect of death of or bodily injury to any such employee as is described in clauses (a) or (b) or (c) of proviso (i) to Section 147(1)(b) should not be restricted to that under the Workmen's Act but should be more or unlimited, he must take such a policy by making payment of extra premium and the policy should also contain a clause to that effect. However, where the policy mentions "a policy for Act Liability" or "Act Liability", the liability of the insurance company qua the employees as aforesaid would not be unlimited but would be limited to that arising under the Workmen's Act.

20. Thus, the Insurance Company, in this case will be bound to pay the compensation of Rs. 1,04,960/- payable in accordance with the Workmen's Compensation Act and the interest payable under the said Act will be at the rate of 6 percent per annum from the expiry of one month from the date of accident. In our opinion, the proceedings having been initiated under the Motor Vehicles Act, 1988, in view of the decision of the Supreme Court in the case of Abati Bez Baruah (supra), the employer should be asked to pay interest in accordance with the principles mentioned in Section 171 of the Motor Vehicles Act and the same should be at rate of 12 percent per annum from the date of filing the claim application till December 31, 1999 and at the rate of 8 percent per annum from January 1, 2000 till deposit of the amount. If the interest ordered by us above is found to be more than the one payable by the Insurance Company in accordance with the Act of 1923 mentioned above, the claimant will be entitled to realise the said excess amount of interest by executing the award against the owner of the vehicle alone.

21. The Insurance Company is directed to deposit the enhanced award within one month from the date of reopening of the Tribunal after the annual vacation.

22. We record our appreciation of the valuable assistance rendered by Mr Das as *amicus curiae*.

23. In the facts and circumstances, there will be, however, no order as to costs.

Rudrendra Nath Banerjee, J.

24. I agree.