

(2019) 04 JH CK 0037

In the Jharkhand High Court

Case No : Miscellaneous Application No. 36 Of 2017

Divisional Manager

APPELLANT

Vs

Leela Devi And Ors

RESPONDENT

Date of Decision : 26-04-2019

Acts Referred:

Indian Penal Code, 1860 — Section 279, 304A

Motor Vehicles Act, 1988 — Section 149(2)

Employees Compensation Act, 1923 — Section 2(n), 3, 4, 4A, 4A(1), 4A(2), 4A(3), 4A(3)(a), 4A(3)(b)

Essential Commodities Act, 1955 — Section 3

Citation : (2019) 04 JH CK 0037

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Alok Lal, Santosh Kumar, Nikhil Ranjan, Ashutosh Anand, Nikhil Kumar Mehta

Final Decision : Dismissed

Judgement

1. Heard the learned counsel for the appellant, learned counsel for respondent no.6 and learned counsel for respondent nos. 1 to 5.

2. The appellant, who is opposite party no.2 in W.C. Case No. 08 of 2014 is aggrieved of order dated 26.4.2016 passed by the learned Presiding Officer, Labour Court, Ranchi by which the tribunal directed the opposite party no.2 to pay compensation of Rs 7,69,283.00 within 60 days from passing of the order failing which the amount will carry interest @ 12% per annum till the realization.

3. The W.C. Case No.08 of 2014 was instituted under Section 4 (A) of The Employees Compensation Act, 1923 (hereinafter referred to as Act) by wife, minor sons and mother of deceased Balchand Sahu who was driver of the tempo bearing registration no. JH01AQ- 5036. Balchand Sahu was employed with respondent no.6, Raju Sahu as driver and he was getting Rs.6000/- per month from his work and Rs 50/- per day as "Khuraki" from respondent no.6. On

21.1.2014 at about 10.30 am Balchand Sahu was driving the above tempo and he was going to Nagri Bazar from Bhooro. When he reached near power Grid situated within Bero P.S., then the aforesaid tempo met with an accident and the driver Balchand Sahu received grievous injury and he was taken to Nagri Hospital, Ranchi for treatment, but on the way he died. He died during course of his employment working under the respondent no.6. That a criminal case was registered with respect to the above accident which was numbered as Bero P.S. Case no. 10 of 2014, corresponding to G.R.no. 516 of 2014 for the offence punishable under Section 279 and 304A of the Indian Penal Code. The deceased at the time of death was 39 years old and claimants are the only legal heirs and successors of the deceased who are fully dependent upon the earning of the deceased and due to sudden death of Balchand Sahu claimants are facing a lot of economic problem to maintain themselves. The offending vehicle in question was insured with the appellant vide Policy No. 332204/31/2014/4813 which was valid from 13.12.2013 to 12.12.2014. The notice of accident was given to respondent no.6 but matter was not settled and lastly claimants were compelled to file aforesaid claim case for lump sum payment of Rs. 7,00,000/- as compensation as well as Rs 5,000/- as medical, funeral expenses and interest thereon.

4. After notice, insurance company appeared and contested the claim on various ground including that there is no employer employee relationship between the respondent no.6 and deceased was not workman as defined under section 2 (n) of the Act.

5. The appellant and respondent no. 6 did not adduce any oral or documentary evidence in support of their case. The evidence adduced by the claimants remained the basis of determination of the case.

6. The claimants have adduced oral as well as documentary evidence. The claimants relied on Photocopy of the formal FIR relating to accident (Exhibit-1), photocopy of fardbeyan of Ajay Kumar Sahu (Exhibit-2), photocopy of certified copy of charge-sheet in Bero P.S. Case no. 10/2014, corresponding to G.R. No.456/2014 (Exhibit-3), photocopy of certificate of fitness of vehicle no. JH01AQ-5036 (Exhibit-4) and photo copy of tax token of the same vehicle (Exhibit-5), photocopy of certificate of driving license of Balchand Sahu (Exhibit-6), photocopy of the certificate of registration of vehicle no. JH01AQ-5036 (Exhibit-7), photocopy of the motor insurance certificate cum policy schedule issued by appellant regarding offending vehicle no. JH1AQ-5036 (Exhibit-8), photocopy of the postmortem report of deceased Balchand Sahu (Exhibit-9). The Presiding Officer after discussing the evidences and exhibits came to the conclusion that there was employer employee relationship between the deceased and the respondent no.6, he was having the valid driving license, it is admitted fact that offending vehicle was insured with the appellant, fitness certificate, registration certificate were up-to-date and insurance was valid at the time of accident, claimants have shown themselves as legal heirs of the deceased and they are also dependent upon the deceased, on the date of

accident age of the deceased was 39 years, 10 months and 20 days, principle of minimum wage Act will apply so far income is concerned.

7. The Presiding Officer came to the conclusion that claim case is maintainable and claimants are entitled for compensation of Rs 7,69,283.00 from the appellant and directed the appellant to pay compensation of Rs 7,69,283.00 within 60 days from passing of the order failing which the amount will carry interest @ 12% per annum till the realization.

8. Mr. Alok Lal, appearing for appellant assailed the order on the only law point that interest is not payable under the Act by the appellant.

9. Mr. Ashutosh Anand, learned counsel appearing for the respondent 6, the owner submitted that the terms of a contract of insurance would depend upon the volition of the parties. A contract of insurance is governed by the provisions of the Insurance Act. In terms of the provisions of the Insurance Act, an insured is bound to pay premium which is to be calculated in the manner provided therein. With a view to minimize his liability, an employer can contract out so as to make the insurer not liable as regards indemnifying him in relation to certain matters which do not strictly arise out of the mandatory provisions of any statute. Contracting out, as regards payment of interest by an employer, therefore, is not prohibited in law. In the policy of the offending vehicle exclusion clause was not added.

10. Sections 3 of the Act provides for employers liability for compensation and reads as under:

"3. Employer's liability for compensation.

(1) If personal injury is caused to [an employee] by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter".

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 the [employee], as the case may be, without prejudice to the right of the [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.

Explanation: For the purposes of this sub-section, "scheduled bank" means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934).

(3A) The interest and the penalty payable under sub-section (3) shall be paid to the [employee] or his dependant, as the case may be.

11. Mr. Lal, learned counsel for the appellant to substantiate his argument relied in the case of National Insurance Co.Ltd. Versus Mastan and others, reported in (2006) 2 SCC 641, the issue in this case before the Hon'ble Supreme Court was that as to whether an insurer, while defending an action initiated under the Act is precluded from raising any defense as envisaged in under Sub-section (2) of Section 149 of the Motor Vehicles Act, 1988 (hereinafter referred as the 1988 Act) or not. The High Court in that case dismissed the appeal on the premise that appellant was not entitled to urge any ground therein which was available to it in terms of 1988 Act. The Hon'ble Supreme Court came to the conclusion that impugned judgment cannot be sustained and remitted the matters to the High Court for consideration afresh on merit. Thus, the reliance placed by Mr. Lal on this Judgment may not have any application in the case in hand.

12. Mr Alok Lal, learned counsel further relied in the case of New India Assurance Co. Ltd. Versus Harshabhai Amrutbhai Modhiya and Others, reported in (2006) 5 SCC 192. The point involved in this case was as to whether interest is payable by an insurer while indemnifying the insured the amount of compensation awarded against him under the Workmen's Compensation Act, 1923 or not. In this case in the contract of insurance there were proviso added which reads as under:

Provided that the insurance granted hereunder is not extended to include:

(i) any interest and/or penalty imposed on the insured on account of his/her failure of comply with the requirement laid down under the W.C.Act, 1923 and

(ii) any compensation payable on account of occupational diseases listed in part 'C' of schedule III of the W.C.Act,1923.

Thus, the Hon'ble Supreme Court came to the conclusion that rights and obligations would depend upon the terms of the insurance contract. Considering the contract involved the insurer has specifically excluded any liability for interest or penalty under the Act. This judgment is also on the different line and does not substantiate the argument of Mr.Lal.

13. Mr. Alok Lal, learned counsel placed reliance in the case of *Saberabibi Yakubhai Saikh and Others Versus National Insurance Company Ltd. and Others*, reported in (2014) 2 SCC 298. In this case controversy was on the issue as to from which date interest was payable under the Workmen's Compensation Act from the date of the award or from the date of accident. The Hon'ble Court came to the conclusion that compensation has to be paid from the date of the accident. This Judgment is also not in favour of the appellant.

14. Mr. Alok Lal, learned counsel relied on the order dated 16.1.2019 passed in M.A.No. 01 of 2016 by a coordinate bench of this Court in which learned Single Judge held that interest is not payable by the Insurance Company. This is a case where learned counsel for respondent has accepted the submission of the learned counsel of the Insurance Company. Thus, this order was passed on the concession of the respondent and respondent did not bring in the notice of the court about the provisions of the Act and Judgment referred by Mr. Ashutosh Anand, learned counsel for the respondent no. 6 before this Court. Counsel for the appellant further relied in the case of *Dilkeshwar Sahu Versus Divisional Manager, United India Insurance Company Ltd. and Others*, reported in (2007) 2 JLR 616(HC). This judgment is of no help to the appellant.

15. Mr. Ashutosh Anand, learned counsel appearing for respondent no.6 relied in the cases of *Ved Prakash Garg Vs Premi Devi and Others* reported in (1997) 8 SCC 1, *Jaya Biswal and Others Versus Branch Manager, IFFCO Tokio General Insurance Co. Ltd. and Another* reported in (2016) 11 SCC 201 and *Kamla Chaturvedi Vs national Insurance Company and Others* reported in (2009) 1 SCC 487 and submitted that in the light of ratio decided in these cases Insurance Company is liable to pay Interest.

The Hon'ble Supreme Court in the case of *Ved Prakash Garg Vs Premi Devi and Others* reported in (1997) 8 SCC 1, has held as under:-

"19. As a result of the aforesaid discussion it must be held that the question posed for our consideration must be answered partly in the affirmative and partly in the negative. In other words the insurance company will be liable to meet the claim for compensation along with interest as imposed on the insured employer by the Workmen's Commissioner under the Compensation Act on the conjoint operation of Section 3 and Section 4-A sub section (3)(a) of the Compensation Act. So far as additional amount of compensation by way of penalty imposed on the insured employer by the Workmen's Commissioner under Section 4-A(3)(b) is concerned, however, the insurance company would not remain liable to reimburse the said claim and it would be the liability of the insured employer alone.

20. In view of the aforesaid conclusion of ours the present appeals will have to be partly allowed, The impugned judgments of the High Court will stand confirmed to the extent they exonerate the respondent-insurance companies of the liability to pay the penalty imposed on the insured employers by the

Workmen's Commissioner under Section 4-A(3) of the Compensation Act. But the impugned judgments will be set aside to the extent to which they seek to exonerate insurance companies for meeting the claims of interest awarded 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. Accordingly it must be held that the respondent-insurance company will be liable to meet the claim of the appellant- insured in Appeals Nos. 15698-15699 of 1996 to the extent of Rs. 88,548/- in Claim Case No.2 of 1992 with interest thereon at the rate of 6% per annum from the date of accident till the date of payment. But the respondent-insurance company will not be liable to meet the claim of penalty of Rs.44,274/- imposed on the appellant-insured along with the interest of 6% per annum on the said amount of Rs. 44,274/-. To that extent the award of the Commissioner will stand modified. So far as the Claim No.3 of 1992 is concerned the respondent-insurance company will be liable to reimburse the compensation amount of Rs. 88,968/- with interest at the rate of 6% p.a. thereon from the date of the accident till the date of payment. But it will stand exonerated of its liability of reimbursement so far as the penalty amount of Rs.41,984/- and amount of interest at 6% p.a. thereon are concerned. To that extent the award of the Workmen's Commissioner in Claim Case No.3 of 1992 will stand modified. Similarly in Civil Appeal No. 15700 of 1996 the impugned judgment of the High Court will stand partly set aside so far as the claim for interest as imposed on the appellant-insured is concerned and the award of the Workmen's Commissioner insofar as his award of Rs. 81,540/- as compensation along with interest will stand confirmed. But the further part of the award to the extent it directs that in the event of failure to pay the said amount within one month a penalty of 30% p.a. shall be payable by the insurance company, will stand set aside. Consequently the respondent-insurance company in this case will be liable to pay Rs.81,540/- by way of compensation with interest at 6% per annum thereon from the date of the accident till the date of payment to the claimants. The awards of the Commissioner will stand modified accordingly. They will obviously remain untouched so far as they are against the employers. It will be open to the claimants to enforce their claims of penalty amounts with proportionate interest thereon against employers concerned."

The Hon'ble Supreme Court in the case of *Jaya Biswal and Others Versus Branch Manager, IFFCO Tokio General Insurance Co. Ltd. and Another* reported in (2016) 11 SCC 201, has held as under:-

"25 The next contention which needs to be dispelled is that the appellants are not entitled to any compensation because the deceased died as a result of his own negligence. We are unable to agree with the same. Section 3 of the E.C. Act does not create any exception of the kind, which permits the employer to avoid his liability if there was negligence on the part of the workman. The reliance placed on the decisions of this Court on Contributory negligence like the Three Judge Bench decision in *Mastaan* is wholly misplaced as the same have been

passed in relation to the Motor Vehicles Act, 1988, and have no bearing on the facts of the case on hand. The EC Act does not envisage a situation where the compensation payable to an injured or deceased workman can be reduced on account of contributory negligence. It has been held by various High Courts that mere negligence does not disentitle a workman to compensation. Lord Atkin in the case of *Harris v. Associated Portland Cement Manufacturers Ltd.* observed as under:

"Once you have found the work which he is seeking to be within his employment the question of negligence, great or small, is irrelevant and no amount of negligence in doing an employment job can change the workman's action into a non-employment job ... In my opinion if a workman is doing an act which is within the scope of his employment in a way which is negligent in any degree and is injured by a risk incurred only by that way of doing it he is entitled to compensation."

The above reasoning has been subsequently adopted by several High Courts. In the case of *Janaki Ammal v. Divisional Engineer*, the High Court of Madras held as under:

"...13.... Men who are employed to work in factories and elsewhere are human beings, not machines. They are subject to human imperfections. No man can be expected to work without ever allowing his attention to wander, without ever making a mistake, or slip, without at some period in his career being momentarily careless. Imperfections of this and the like nature form the ordinary hazards of employment and bring a case of this kind within the meaning of the Act."

32. Further, an interest @ 12% per annum from the date of accident, that is, 19-07-2011, is also payable to the appellants over the above the awarded amount. In the light of the unnecessary litigation and the hardship of the appellants in spending towards litigation to get the compensation which was rightly due to them under the Act, we deem it fit to award the appellants costs as Rs. 25,000.

33. The appeal is accordingly allowed. The respondent Insurance Company is directed to deposit the amount within six weeks from today with the Employees' Compensation Commissioner. On such deposit, he shall disperse the same to the appellants."

The Hon'ble Supreme Court in the case of *Kamla Chaturvedi Vs National Insurance Company and Others* reported in (2009) 1 SCC 487, has held as under:-

"9. The further question arises as to from which date it would be paid.

10. In *National Insurance co.Ltd. Ltd. v. Mubasir Ahmed & Anr.* [2007(2) SCC 349] it was, inter alia, held as follows:

"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. By amending Act 30 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 to 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.

11. In view of what has been stated in Mubasir Ahmed case the liability for interest would be in terms of what has been stated in paragraph 9 of the judgment.

16. Having heard learned counsel for the appellant, learned counsel for respondent no. 6 and learned counsel for respondent nos. 1 to 5, this Court finds on the conjoint operation of Section 3 and Section 4-A sub section (3)(a) of the Act the insurance company will be liable to meet the claim for compensation along with interest under the Act as the vehicle in question was insured with appellant. It is noticed that appellant and respondent no. 6 did not adduce any oral or documentary evidence in support of their case.

17. In light of above discussions and law laid down in the case of Ved Prakash Garg, Jaya Biswal and Kamla Chaturvedi supra and finding no exclusion clause in the Policy this court is not inclined to interfere with the order dated 26.4.2016 passed by the Presiding Officer, Labour Court, Ranchi. The appeal is accordingly, dismissed.

18. No order as to costs.