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**(1996) 10 BOM CK 0009**  
**In the Bombay High Court**

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|---------------------------------------------------------|------------|
| Executive Engineer, Public Works Department and Another | APPELLANT  |
| Vs                                                      |            |
| Bhimrao                                                 | RESPONDENT |

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**Date of Decision :** 17-10-1996

**Acts Referred:**

Workmens Compensation Act, 1923 — Section 4A(2)

**Citation :** (1998) 1 ACC 250

**Hon'ble Judges :** B.U. Wahane, J

**Bench :** Single Bench

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## Judgement

B.U. Wahane, J.—The appellants in the instant first appeal u/s 30 of the Workmen's Compensation Act, 1923, questioned the findings recorded by the Commissioner, Workmen's Compensation Act, Yaotmal, in Workmen Compensation Case No. 6 of 1990, decided on 11th February, 1992.

2. The facts in brief are that the respondent-Bhimrao Manikrao Unhale at the relevant time i.e. on the date of accident precisely on 1st March, 1990, was working as Driver, driving Road-roller. He was getting fixed salary of Rs. 1,380/- per month as Driver. At the relevant time, the respondent Bhimrao was of about 41 to 42 years of age.

On 1st of March, 1990, while on duty, he came under the Road-roller and his left arm was crushed. Immediately, he was removed to the hospital. His left arm above the elbow was imputed. Dr. Vishnu (P.W. 2) - the Medical Officer, (sic) examined the respondent, deposed that his left hand was crushed and the same (sic) imputed. Exh. 26 is the Medical Certificate issued by the doctor.

3. According to doctor, it was found 80% permanent disablement to (sic) patient. Further in the cross-examination, he stated that the doctors found permanent/partial disablement of 80% and not permanent total disablement of (sic) Further he deposed that the findings were based on the book namely (sic) Definitions of the Physically Handicapped published by Government of In Ministry of Welfare, Shastri Bhawan, New Delhi, published in Gazette of India, Part-I No. 4-2/83-H.W.

III, Page 23, Guidelines for evaluation of permanent physical impairment in amputees. Dr. Vishnu is one of the Members of the Medical Board functioning at Yavatmal. Exh. 32 is the report of the Medical Board.

4. The respondent was referred to the Medical Board, Indira Gandhi Medical College, Nagpur. Dr. Bhole (D. W. 1) is one of the Members of the Medical Board. According to Dr. Bhole, the members of the Board examined the patient on 8th August, 1990 and found that the left arm above the elbow was imputed. According to the Medical Board, they found 45% disability.

5. The respondent-Bhimrao filed the application before the Commissioner under the Workmen's Compensation Act, 1923, u/s 22(2) of the Workmen's Compensation Act, 1923 read with Section 167 of the Motor Vehicles Act, 1988. The learned Commissioner after scrutinizing the evidence led by the parties and considering the legal preposition arrived at the conclusion that the respondent/claimant was a workman under the provisions of Workmen's Compensation Act, 1923. The learned Commissioner held that the claimant is entitled to Rs. 90,685/- as compensation. However, the claimant restricted his claim at Rs. 87,770/-, the compensation claimed was awarded. The learned Commissioner also granted interest at the rate of 6% per annum. Besides this, delay as regards making provisional payment based on the extent of liability which he accepts u/s 4-A(2) of the Workmen's Compensation Act, not being satisfactorily explained, the penalty was imposed on the appellants.

6. In the instant appeal, Smt. Wandile, the learned A.G.P., raised the following grounds:

(i) Though there is no evidence to arrive at the conclusion that the respondent-applicant is a workman under the provisions of Workmen's Compensation Act, the learned Commissioner held as such and thus, committed error apparent.

(ii) The quantum of compensation is not in consonance with the gravity of the injuries sustained by the respondent-Bhimrao.

(iii) The Commissioner under the Workmen's Compensation Act, committed an error imposing penalty to the tune of Rs. 18,137/-.

7. With the assistance of the learned Counsel of the parties, I perused the evidence, findings recorded by the Commissioner under the Workmen's Compensation Act, 1923, and the citations relied upon by the parties.

As regards first ground, it is submitted that the respondent-Bhimrao being a temporary employees, he was not covered under the provisions of Workmen's Compensation Act, 1923. The learned Commissioner considered the submissions on this count in detail in the impugned judgment. According to me, he has rightly arrived at the conclusion that the respondent is a workman and as such he has rightly invoked the provisions of the Workmen's Compensation Act, 1923. Thus, I do not find any merit in the submissions on this count.

8. As regards the quantum of compensation, Smt. Wandile, the learned A.G.P., made a strenuous argument and submitted that the certificate issued by the Medical Board at Yotmal, calculating 80% disability, has no basis. The claimant, according to learned A.G.P., was at the most entitled to the compensation of Rs. 40,808.21 paise as detailed by the appellants in para 7 of their written reply.

Mr. Malvi, the learned Counsel for the respondent placed reliance on the case of Pratap Narain Singh Deo Vs. Srinivas Sabata and Another, . This case was cited even before the Commissioner under the Workmen's Compensation Act, 1923, which the learned Commissioner referred in para 13 while deciding Issue No. 5. The facts are more or less similar to the case in hand. In the case before their Lordships of the Apex Court, the left arm above the elbow of the claimant was imputed and thereby the Carpenter had become unfit to work as Carpenter. Because of the total disablement, the work of Carpenter could not be done by one hand only.

In the case in hand, the claimant was working as Driver on the Road-roller. Undisputedly, the left arm was crushed under the Road-roller. The left arm above the elbow joint was imputed. It is clear that because of the permanent disablement, the claimant-Bhimrao cannot work as Driver. The Commissioner relied on the judgment cited supra and considering the guidelines, rightly computed the compensation and granted the claim of Rs. 87,770/-.

9. As regards the imposition of penalty, Smt. Wandile, the learned A.G.P. submitted that the learned Commissioner ought not to have imposed penalty when the interest had already been granted at the rate of 6% per annum. According to her, the penalty is imposed if the action as regards the delay of payment is deliberate or mala fide. She further submitted that the appellants were not aware about the percentage of the injury till summons was received by the appellants from the Commissioner under the Workmen's Compensation Act, 1923. With the assistance of the learned Counsel, I perused the record. From the record it is clear that on 24.9.1990, the appellant received summons from the Commissioner under the Workmen's Compensation Act, 1923. The appellants made appearance on 28.9.1990 and thereafter filed reply on 20.3.1991. Besides this, according to Mrs. Wandile, the learned A.G.P., as soon as Bhimrao was given fitness certificate, he has been provided with alternative service without any change in the salary and other benefits which he was getting prior to the date of incident. Admittedly, there is a delay in depositing the provisional compensation to be paid. u/s 4-A(2) and (3) of the W.C Act, Section 4-A(3) reads as under:

4-A(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 percent, 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 percent of such amount by way of penalty,

The perusal of this provision makes it clear that the compensation under this Act be paid within a month from the date it fell due. If there is no compliance of this provision, the penalty be imposed if there is no justification for the delay.

The penalty is imposed if, from the record, the negligence or deliberations are shown in not making the payment. Considering the facts and circumstances of the case and the submissions made on behalf of the appellants, difficult to construe the delay as deliberate one in depositing the provisional compensation. From the record it is clear that a separate application was moved by the respondent/claimant for no fault liability. On this application, the Court passed order and the compensation of Rs. 12,000/- was directed to be paid to the claimant vide order dated 11.12.1990. The appellants deposited the amount within a period of one month. Similarly, immediately after the judgment and order passed by the Commissioner under the Workmen's Compensation Act, on 11.2.1992, the entire amount of compensation came to be deposited on 23.3.1992. Besides this from the submissions made in the reply, it is very clear that immediately after the receipt of the report of the Medical Board in the month of September, 1990, the appellants have submitted that the matter for grant of compensation was referred to the requisite authority, but the amount not being received, could not be paid. It indicates that if there is any delay, that delay is in the transit sending the papers from one table to another. Such delay cannot be considered as a deliberate or intentional. Without considering these aspects, the learned Commissioner under Workmen's Compensation Act, held that no sufficient cause or justification shown. Thus, the findings being contrary to the evidence, the order on this count is quashed and set aside.

10. The respondent-Bhimrao filed cross-objection claiming the enhanced compensation, interest at the rate of 12% per annum in view of the amended provisions of Section 4-A(3) of the Act. By Amending Act of 1995 which came in effect on 15.9.1995, the rate of interest has been increased to Rs. 12% per annum from Rs. 6% per annum. Mr. Malvi, the learned Counsel for the respondent submitted that the provisions of the Workmen's Compensation Act are beneficial and welfare legislation. There being no finality to the claim of the respondent Bhimrao, he is entitled to get interest at the rate of 12% per annum. The learned Counsel further submitted that though it has not been specifically expressed in the amended provisions that the claimants are entitled to get interest at the rate of 12% per annum retrospectively, the provisions being beneficial and enacted for the welfare of the workmen or his dependent, the respondent-workman is entitled to get the benefit . of the amended provisions. A reliance has been placed on the case of Jagdish v. Arun Perfumery Works and Ors. 1991 TAC296 (M.P.). No doubt, the Madhya Pradesh High Court enhanced

the interest from 6% to 12%, but there is no discussion at all to consider as basis for the enhancement of interest. Therefore, this ruling is of no assistance.

11. The learned Counsel further relied on the case of Dhannalal Vs. D.P. Vijayvargiya and Others, , wherein it is observed:

When Sub-section (3) of Section 166 has been omitted, then the Tribunal has to entertain a claim petition without taking note of the date on which such accident had taken place. The claim petitions cannot be thrown out on the ground that such claim petitions were barred by time when Sub-section (3) of Section 166 was in force. The Parliament from time to time has introduced amendments in the old Act as well as in the new Act in order to protect the interest of the victims of the accidents and their heirs if the victims die. The deletion of Sub-section (3) from Section 166 should be given full effect so that the object of deletion of said section by the Parliament is not defeated. If a victim of the accident or heirs of the deceased victim can prefer claim for compensation although not being preferred earlier because of the expiry of the period of limitation prescribed, how the victim or the heirs of the deceased shall be in a worse position if the question of condonation of delay of filing the claim petition is pending either before the Tribunal, High Court or the Supreme Court.

A reliance has also been placed on the case of Mithilesh Kumari and Anr. v. Prem Behari Khare AIR 1939 SC 1247 while interpreting the statute as regard the provisions of Benami transaction, it is observed:

Every law that takes away or impairs rights vested agreeably to existing laws is retrospective, and is generally unjust and may be oppressive. But laws made justly and for the benefit of individuals and the community as a whole, as in this case, may relate to a time antecedent to their commencement. The presumption against retrospectivity may in such cases be rebutted by necessary implications from the language employed in the statute. It cannot be said to be an invariable rule that a statute could not be retrospective unless so expressed in the very terms of the section which had to be construed. The question is whether on a proper construction the Legislature may be said to have so expressed its intention.

Their Lordships while construing the provisions of West Bengal Premises Tenancy Act of 1986, in the case of Lakshmi Narayan Guin and Others Vs. Niranjana Modak, , observed in para 9 as under:

That a change in the law during the pendency of an appeal has to be taken into account and will govern the rights of the parties was laid down by this Court in Ram Sarup Vs. Munshi and Others, , which was followed by this Court in Mula and Others Vs. Godhu and Others, . We may point out that in Smt. Dayawati and Another Vs. Inderjit and Others, , this Court observed:

If the new law speaks in language, which, expressly or by clear intendment, takes in even pending matters, the Court of trial as well as the Court of Appeal

must have regard to an intention so expressed, and the Court of Appeal may give effect to such a law even after the judgment of the Court of first instance." Reference may also be made to the decision of this Court in *Amarjit Kaur Vs. Pritam Singh and Others*, , where effect was given to a change in the law during the pendency of an appeal, relying on the proposition formulated as long ago as *Kristnama Chariar v. Mangammal* ILR(1902) 26 Mad. 91 , by Bhashyam Iyengar, J., that the hearing of an appeal was under the processual law of this country, in the nature of the hearing of the suit. In *Amarjit Kaur* (supra) this Court referred also to AIR 1941 5 (Federal Court) , in which the Federal Court had laid down that once a decree passed by a Court had been appealed against the matter became subjudice again and thereafter the Appellate Court acquired seisin of the whole case, except that for certain purposes, for example, execution, the decree was regarded as final and the Court below retained jurisdiction.

Mrs. Wandile, the learned A.G.P. on the contrary, tried to show that the amended provisions cannot be construed retrospectively, except the procedural matters. The Workmen's Compensation Act, 1923 specified the interest at the rate of 6% p.a. u/s 4-A(3). By the Amending Act, it has been enhanced to 12% per annum. Even by the Amending Act, it has not been specifically expressed that the claimants under the Workmen's Compensation Act, are entitled to get interest at the rate of 12% per annum retrospectively, during the pendency of the appeal. A reliance has been placed on the case of *Mahadeo Prasad Singh and Another Vs. Ram Lochan and Others*, , wherein in para 21, it has been observed:

As a general rule, a statute, which takes away or impairs substantive rights acquired under the existing law is construed to have a prospective operation unless the language of that statute expressly or by inevitable intendment compels a contrary construction. But this presumption as to prospective operation of a statute does not apply to an enactment affecting procedure or practice such as the Code of Civil Procedure. The reason is that no person has a vested right in any course of procedure. "The general principle indeed seems to be that alterations in the procedure are always retrospective, unless there be some good reason against it.

12. Giving conscious thought to the rival submissions of the learned Counsel, undoubtedly, the Workmen's Compensation Act, 1923, is a beneficial and welfare legislation. The Act itself is enacted to consider the welfare of the workmen or their dependents. The amendment to Section 4-A(3) of the Act enhancing the interest to 12% per annum indicates that whatever was specified before the Amending Act, was not adequate considering the value of rupee and skyrocketing prices of the goods. Undisputedly, there is no finality to the claim made by the respondent-Bhimrao. The appeal is the continuation of the proceedings. Therefore, according to me, the amended provision as regard the enhancement of the interest from 6% p.a. to 12% p.a. being in the interest of the workman is applicable. Thus, Mr. Malvi has rightly submitted that the respondent-claimant Bhimrao is entitled to be paid interest at the rate of 12% p.a. from the date the

amount of compensation became due.

13. In the result, the appeal is partly allowed. The findings as regard the imposition of penalty are quashed and set aside.

The cross-objection is partly allowed. The appellants are directed to pay the interest to the respondent-Bhimrao at the rate of 12% per annum on the amount due from the date it became due till its realisation. Mrs. Wandile, A.G.P. informs that an amount of Rs. 1,07,780/- was deposited in the Trial Court. Out of this amount, the respondent-Bhimrao has withdrawn Rs. 57,780/-. The balance of Rs. 50,000/- is in the fixed deposit in the nationalised Bank. The appellants are directed to make fresh calculations in terms of the order above at the earliest. No order as to costs.