

(2012) 02 RAJ CK 0070

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 637 of 2000

M/s Zamidara Transport Cooperative Society

APPELLANT

Vs

Rajendra Singh @ Raja and Another

RESPONDENT

Date of Decision : 14-02-2012

Acts Referred:

Motor Vehicles Act, 1939 — Section 4A
Motor Vehicles Act, 1988 — Section 19, 3, 3(1), 3(5), 4

Citation : (2012) 4 LLJ 205

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Dr.Justice Vineet Kothari

1. Heard learned counsels.

2. The present appeal is filed by the appellant employer being aggrieved by the award dated 31/12/1999 passed by the Workmen Compensation Commissioner, Sriganganagar while deciding claim case no. 16/1998 (Rajendra Singh @ Raja vs. M/s Zamidara Transport Cooperative Society & National Insurance Company, Sriganganagar).

3. In an accident which took place between bus no. RJ13-P-0686 and truck near village Kutubpura, the driver-claimant Rajendra Singh received certain injuries for which he filed the present claim petition before the learned Workmen Compensation Commissioner having withdrawn his claim under the Motor Vehicle Act, 1988 from the learned Tribunal, Bhatinda with liberty to file the present claim petition and the learned Workmen Compensation Commissioner by the impugned award determined the compensation of Rs.2,49,576/-and interest to the tune of Rs.97,751/- for the injuries in the form of fracture of both the legs suffered by the claimant driver. The Workmen Compensation Commissioner held the respondents - M/s Zamidara Transport Cooperative Society and the National

Insurance Company liable jointly and severally to pay the aforesaid amount of compensation. The for the payment of interest to the tune of Rs. 97,751/- the learned Workmen Compensation Commissioner held the respondent no.1- M/s Zamidara Transport Cooperative Society -employer liable to pay such interest in view of provisions of Section 4-A of the Act of 1923. The employer has filed the present appeal merely aggrieved of the order of learned Workmen Compensation Commissioner exonerating the respondent no.2 - National Insurance Company from payment of interest on such compensation.

4. Learned counsel for the appellant - employer, Mr. B.L.Maheshwari, Sr. Advocate submitted that the controversy involved in this matter is no longer res integra in view of judgment of this Court in the case of National Insurance Co. Ltd. vs. Smt. Udi Bai & Ors. - SBCMA No. 1308/2011 decided on 11/7/2011 following the Supreme Court decision in the case of Pratap Narain Singh Deo Vs. Srinivas Sabata and Another, and Padma Srinivasan Vs. Premier Insurance Company Limited, in which it has been as under:-

9. As far as the question of interest is concerned, this Court finds that later two decisions relied upon by the learned counsel for the appellant-Insurance Company did not refer or take into account the binding precedents in the form of Constitution Bench judgment in the case of Pratap Narain Singh Deo and later 3 Judges Bench judgment in the case of Padma Srinivasan (supra).

10.The basic premise taken by 2 Judges Bench in the aforesaid two later decisions in the cases of Mubasir Ahmed and Kamla Chaturvedi (supra) is, with great respect, ignored the statutory language and binding precedents as aforesaid. The relevant paras in the later decision, in the case of Kamla Chaturvedi is quoted below for ready reference:

8. In National Insurance Co. Ltd. Vs. Mubasir Ahmed and Another, it was, inter-alia, held as follows:-

Interest is payable under Sec. 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 Sec. 4-A was dealt with by this Court in Maghar Singh Vs. Jashwant Singh, By amending Act 30 of 1995, Sec. 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, (Sic!) it has to be taken to be the date of adjudication of the claim. This appears to be so because Sec. 4-A (1) prescribed the compensation under Sec. 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 Sec. 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-sec. (2) of Sec. 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.

9. In view of what has been stated in Mubasir Ahmed's case (supra) the liability for interest would be in terms of what has been stated in paragraph 9 of the judgment.

11. On the other hand, the 5 Judges Bench of Hon"ble the Supreme Court in the case of Pratap Naraian Singh Deo (supra) has held as under:

7. Section 3 of the Act deals with the employer's liability for compensation. Sub-section (1) of that section provides that the employer shall be liable to pay compensation if "personal injury is caused to a workman by accident arising out of and in the course of his employment". It was not the case of the employer that the right to compensation was taken away under sub-section (5) of Section 3 because of the institution of a suit in a civil court for damages, in respect of the injury against the employer or any other person. The employer therefore become liable to pay the compensation as soon as the aforesaid personal injury was caused to the workman by the accident which admittedly arose out of and in the course of employment. It is therefore futile to contend that the compensation did not fall due until after the Commissioner's order dated May 5, 1969 u/s 19. What the section provides is that if any question arises in any proceeding under the Act as to the liability of any person to pay compensation or as to the amount or duration of the compensation it shall in default of agreement, be settled by the Commissioner. There is therefore nothing to justify the argument that the employer's liability to pay compensation u/s 3, in respect of the injury, was suspended until after the settlement contemplated by Section 19. The appellant was thus liable to pay compensation as soon as the aforesaid personal injury was caused to the appellant, and there is no justification for the argument to the contrary.

8. It was the duty of the appellant, u/s 4-A (1) of the Act, to pay the compensation at the rate provided by Section 4 as soon as the personal injury was caused to the respondent. He failed to do so. What is worse, he did not even make a provisional payment under sub-section (2) of Section 4 for, as has been stated, he went to the extent of taking the false pleas that the respondent was a casual contractor and that the accident occurred solely because of his negligence. Then there is the further fact that he paid no heed to the respondent's personal approach for obtaining the compensation. It will be recalled that the respondent was driven to the necessity of marking an application to the Commissioner for settling the claim, and even there the appellant raised a frivolous objection as to the jurisdiction of the Commissioner

and prevailed on the respondent to file a memorandum of agreement settling the claim for a sum which was so grossly inadequate that it was rejected by the Commissioner. In these facts and circumstances, we have no doubt that the Commissioner was fully justified in making an order for the payment of interest and the penalty.

12. The another three Judges Bench of Apex Court in the case of Padma Srinivasan (supra) while dealing with the compensation case under Motor Vehicle Act, has held that the law which applies for determining the quantum of damages is the one which is in force on the date on which the breach of contract is committed, that being the date on which the cause of action arises, and not the law which was in force on the date on which the contract was made. Upholding the Full Bench view of Karnataka High Court in the case of S. Sanjiva Shetty Vs. Anantha and Others, , the Apex Court held that material date for ascertaining the accident of liability of insurer the date of accrual of cause of action for a claim arising out of an accident, which in general would be the date of accident and, therefore, insurer's liability arising out of accident, which happens after March, 2, 1979 has to be determined on the basis of amended provision of Section 95(2) (a) of the Act even though the policy of insurance may have been issued prior to the date of amendment i.e. prior to March 2, 1979.

13. Thus obviously, it is the date of accident which is the relevant date giving rise to cause of action on which date the compensation falls due and date of adjudication is a fortuitous circumstance depending upon litigatory process and same cannot deprive the claim of the interest, which is the part of the compensation, which falls due on the date of accident itself. The later decision in the cases of Mubasir Ahmed and Kamla Chaturvedi (supra) rendered by the Two Judges Bench of Apex Court obviously ignored the relevant part of statutory provision and the binding precedents including one by the Constitution Bench and, therefore, have to be held per-incurium to that extent, and they cannot lend any assistance to the arguments of the learned counsel for the appellant-Insurance Company. Learned Workmen's Compensation Commissioner was justified in directing the payment of compensation from the date of accident itself.

5. Learned counsel for the appellant submitted that the Insurance Company is, therefore, liable to pay interest and since no penalty has been imposed u/s 4-A (3) of the Act, the question of penalty does not arise in the present case.

6. Learned counsel for the Insurance Company, Mr. Anil Bachhawat, however, supported the impugned award.

7 Having heard the learned counsels, this Court is of the opinion that there is considerable force in the submission of learned counsel for the appellant-employer. In view of the decision of this Supreme Court and of this Court the liability of the Insurance Company to pay interest on the amount of compensation is undeniable and consequently, to this extent the award passed by the learned Workmen Compensation Commissioner deserves to be modified.

8. Accordingly, this appeal is partly allowed and the impugned award of the learned Workmen Compensation Commissioner dated 31/12/1999 is modified to the extent it exonerates the National Insurance Company from the liability of payment of interest on the amount of compensation and it is held that the Insurance Company would also be liable to pay interest besides the amount of compensation, which is stated to have been paid. The amount of interest against which there was stay in favour of the appellant-employer granted by this Court shall now be paid to the workman within a period of three months from today. No order as to costs.