(2010) 04 MAD CK 0006

In the Madras High Court

Case No : Civil Miscellaneous Appeal No''s. 823, 1162, 1411, 1559, 1664 of 2001, 940 of 2002, 949, 1206, 2416, 2846 of 2003, 131, 673, 2076, 2387, 2500, 2513, 2668, 2704, 2730, 3105, 3197, 3214, 3280 of 2004, 211, 741, 788, 991, 1714, 1719, 2780, 3434 and 3474 of 2

N. Ganesan	APPELLANT
Vs	
Smt. Thilagaoathi and United India Insurance Co. Ltd.	RESPONDENT

Date of Decision : 28-04-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 147
Workmens Compensation Act, 1923 — Section 19, 3, 4A

Citation : (2010) 3 LW 89

Hon'ble Judges : M. Sathyanarayanan, J;D. Murugesan, J

Bench : Division Bench

Advocate : U.M. Ravichandran, for A. Shanmugaraj, for the Appellant; K.S. Narasimhan, for Insurance Companies, C. Ramesh Babu, for R2 in C.M.A. No. 823/01 and 2780/05, S. Arunkumar, for R2 in C.M.A. No. 1206/03, S. Manohar, for R2 in C.M.A. No. 1162/01, S. Ramalingam, for R2 in C.M.A. No. 940/02, R. Sivakumar, for R2 in C.M. As. 1559/01, 131/04, 2704 and 3197/04 and 788/2005, S. Vadivel, for R2 in C.M. As. 2416/03 and 211/05, C. Pranthaman, for R2 in C.M.A. No. 1664/01and T. Padmanabhan, for R2 in C.M.A. 949/03, for the Respondent

Judgement

M. Sathyanarayanan, J.—Heard the submissions of Mr. U.M. Ravichandran, learned Counsel for the Claimants and Mr. K.S. Narasimhan,

Mr. C. Ramesh Babu, Mr. S. Arunkumar, Mr. S. Manohar, Mr. S. Ramalingam, Mr. R. Sivakumar, Mr. S. Vadivel, Mr. C. Paranthaman, and

Mr. T. Padmanabhan for the Insurance Companies.

2. In a case reported in Smt. Velu Ammal, Petchiammal, Nandakumar and Mohana Vs. Sri Krishna Agencies and United India Insurance Co.

Ltd., , a learned Judge of this Court by placing reliance upon the judgment reported in 2007 ACT 845 : 2007 (1) TN MAC 214 : 2007 2 L.W.

700 -National Insurance Co. Ltd, v. Mubasir Ahmed and Anr., has held that the payment of compensation payable under Workmen''s

Compensation Act, 1923 will become due on the date of adjudication of the claim and not on the date of the accident.

3. In a case reported in 2007(5) MLJ 999 - H. Dawood and Anr. v. L. Thangarajan and Ors., the learned Judge by placing reliance upon the

above cited decision of the Hon''ble Supreme Court of India, has held that the Appellants therein are not entitled to get interest from the date of

claim petition and they are entitled to get interest only after 30 days from the date of determination of the compensation amount.

4. In 2007 (5) MLJ 1059 : 2007(2) TN MAC 98- Marimuthammal @ Marimuthu and Anr. v. R.P.P. Construction (P) Ltd., Chennai and Ors.,

the learned Judge of this Court has placed reliance upon the Larger Bench judgment of the Hon''ble Supreme Court of India, reported in 1976 (1)

MLJ 235 (SC) - Pratap Narain Singh v. Srinivas Sabata and the judgment rendered by the three Member Bench of the Hon''ble Supreme Court

of India reported in Kerala State Electricity Board and Another Vs. Valsala K and Another, , held that as per Section 4-A(1) of the Workmen''s

Compensation Act, 1923, the compensation becomes due on the date of the accident and consequently interest is payable from that date.

5. A learned Judge of this Court while hearing the matter in C.M.A. No. 940 of 2002, has noted the above said conflicting decisions, and hence,

directed the Registry to post this batch of cases before a larger Bench of this Court for adjudication as to the starting point of payment of interest

payable by the employer to the claimants. Under the said circumstances, these C.M. As'' are posted before us for answering the above said

reference.

6. In a decision reported in Pratap Narain Singh Deo Vs. Srinivas Sabata and Another, . (four Judges), one of the points urged was that the

Commissioner for Workmen''s Compensation committed a serious error of law in imposing penalty on the Appellants u/s 4-A(3) of Workmen''s

Compensation Act as the compensation had not fallen due until it was settled by the Commissioner u/s 19. The Hon''ble Supreme Court of India,

has answered the said issue as follows:

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 became 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 compensation did not

fall due until after the Commissioner''s order dated May 6, 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.

7. In Ved Prakash Garg Vs. Premi Devi and others, ., the following question came up for consideration:

Where an employee receives a personal injury in a motor accident arising out of and in the course of his employment while working on the motor

vehicle of the employer, whether the insurance company, which has insured the employer-owner of the vehicle against third party accident claims

under Motor Vehicles Act, 1988 (hereinafter referred to as ''the M.V. Act'') and against claims for compensation arising out of proceedings under

the Workmen''s Compensation Act, 1923 (hereinafter referred to as ''the Compensation Act'') in connection with such motor accidents, is liable to

meet the awards of Workmen''s Commissioner imposing penalty and interest against the insured employer u/s 4-A(3) of the Compensation Act.

The Hon''ble Supreme Court of India in the said decision held as follows:

14. On a conjoint operation of the relevant schemes of the aforesaid twin Acts, in our view, there is no escape from the conclusion that the

insurance companies will be liable to make good not only the principal amounts of compensation payable by insured employers but also interest

thereon, if ordered by the Commissioner to be paid by the insured employers. Reason for this conclusion is obvious. As we have noted earlier the

liability to pay compensation under the Workmen''s Compensation Act gets foisted on the employer provided it is shown that the workman

concerned suffered from personal injury, fatal or otherwise, by any motor accident arising out of and in the course of his employment. Such an

accident is also covered by the statutory coverage contemplated by Section 147 of the Motor Vehicles Act read with the identical provisions

under the very contracts of insurance reflected by the policy which would make the insurance company liable to cover all such claims for

compensation for which statutory liability is imposed on the employer u/s 3 read with Section 4-A of the Compensation Act. All these provisions

represent a well-knit scheme for computing the statutory liability of the employers in cases of such accidents to their workmen. As we have seen

earlier while discussing the scheme of Section 4-A of the Compensation Act the legislative intent is clearly discernible that once compensation falls

due and within one month it is not paid by the employer then as per Section 4-A(3)(a) interest at the permissible rate gets added to the said

principal amount of compensation as the claimants would stand deprived of their legally due compensation for a period beyond one month which is

statutorily granted to the employer concerned to make good his liability for the benefit of the claimants whose breadwinner might have either been

seriously injured or might have lost his life. Thus so far as interest is concerned it is almost automatic once default, on the part of the employer in

paying the compensation due, takes place beyond the permissible limit of one month. No element of penalty is involved therein. It is a statutoty

elongation of the liability of the employer to make good the principal amount of compensation within permissible time-limit during which interest

may not run but otherwise liability of paying interest on delayed compensation will ipso facto follow. Even though the Commissioner under these

circumstances can impose a further liability on the employer under circumstances and within limits contemplated by Section 4-A(3)(a) still the

liability to pay interest on the principal amount under the said provision remains a part and parcel of the statutory liability which is legally liable to be discharged by the insured employer. Consequently such imposition of interest on the principal amount would certainly partake the character of the

legal liability of the insured employer to pay the compensation amount with due interest as imposed upon him under the Compensation Act. Thus

the principal amount as well as the interest made payable thereon would remain part and parcel of the legal liability of the insured to be discharged

under the Compensation Act and not dehors it. It, therefore, cannot be said by the insurance company that when it is statutorily and even

contractually liable to reimburse the employer qua his statutory liability to pay compensation to the claimants in case of such motor accidents to his

workmen, the interest on the principal amount which almost automatically gets foisted upon him once the compensation amount is not paid within

one month from the date it fell due, would not be a part of the insured liability of the employer.

On the facts of the said case, the Hon''ble Supreme Court of India directed the Insurance company to pay compensation with interest at the rate of

6% per annum from the date of the accident till the date of payment to the claimants.

8. It is to be pointed out at this juncture that the larger Bench judgment of the Hon''ble Supreme Court of India reported in 1976 (1) SCC, page

289 (cited supra) has not been brought to the knowledge of the Hon''ble Supreme Court of India while rendering the decision reported in 1998

ACJ page 1 (two Judges Bench).

9. In Kerala State Electricity Board and Another Vs. Valsala K and Another, , the following question arose for consideration:

whether the amendment of Sections 4 and 4-A of the Workmen''s Compensation Act, 1923, made by Act 30 of 1995 with effect from 15-9-

1995, enhancing the amount of compensation and rate of interest, would be attracted to cases where the claims in respect of death or permanent

disablement resulting from an accident caused during the course of employment, took place prior to 15-9-1995

A four-Judge Bench of this Court in Pratap Narain Singh Deo v. Srinivas Sabata 1976 ACJ 141 speaking through Shinghal, J. has held that an

employer becomes liable to pay compensation as soon as the personal injury is caused to the workman by the accident which arose out of and in the course of employment Thus, the relevant date for determination of the rate of compensation is the date of the accident and not the date of

adjudication of the claim.

Our attention has also been drawn to a judgment of the Full Bench of the Kerala High Court in United India Insurance Co. Ltd. Vs. Alavi, wherein

the Full Bench precisely considered the same question and examined both the above-noted judgments. It took the view that the injured workman

becomes entitled to get compensation the moment he suffers personal injuries of the types contemplated by the provisions of the Workmen''s

Compensation Act and it is the amount of compensation payable on the date of the accident and not the amount of compensation payable on

account of the amendment made in 1995, which is relevant. The decision of the Full Bench of the Kerala High Court, to the extent it is in accord

with the judgment of the larger Bench of this Court in Pratap Narain Singh Deo Vs. Srinivas Sabata and Another, , lays down the correct law and

we approve it.

The Hon''ble Supreme Court of India in the said decision held that the relevant date for determining the rights and liabilities of the parties under

Workmen''s Compensation Act is the date of accident.

10. A Division Bench of this Court in the judgment reported in 2002 (4) CTC 469 : 2003 1 L.W. 113 The Oriental Insurance Co. Ltd., v. Kaliya

Pillai (DB), has considered the question as to whether the claimants are entitled to interest for the compensation and if so, from what date?

While rendering the said decision, the Division Bench has taken note of Pratap Narain Singh Deo''s case and Ved Prakash Garg''s case (cited

supra) and held that the interest would accrue 30 days after the date of accident and not from the date of quantification. It was also made clear in

the said decision that the liability to pay interest would run from the date on which, the right to receive compensation in favour of the workman

namely the date of the accident and not on the date of issuance of orders by the Commissioner for Workmen''s Compensation.

11. However, in the decision reported in National Insurance Co. Ltd. Vs. Mubasir Ahmed and Another, - the Hon''ble Supreme Court of India

has considered the scope of Section 4-A(1) of Workmen''s Compensation Act, 1923 especially the word ""falls due"" and held as follows:

Interest is payable u/s 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 u/s 4-A was dealt with by this Court in Maghar Singh Vs. 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 u/s 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 u/s 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.

12. The said view taken in National Insurance Co. Ltd. Vs. Mubasir Ahmed and Another, was once again reiterated in the decision rendered by

the Hon''ble Supreme Court of India reported in 2009(1) TAC 1 : 2009 1 L.W. 1005 - Kamala Chaturvedi v. National Insurance Co. and Ors.,

wherein reliance was placed in the decision reported in National Insurance Co. Ltd. Vs. Mubasir Ahmed and Another, and held that interest would

be payable from the date of adjudication.

13. The ratio laid down in National Insurance Co. Ltd., v. Mubasir Ahmed (cited supra) has been followed by single Bench of this Court reported

in Smt. Velu Ammal, Petchiammal, Nandakumar and Mohana Vs. Sri Krishna Agencies and United India Insurance Co. Ltd., and (2007)5 MLJ

999 -H. Dawood v. L. Thangara-jan.

14. However, a learned Judge of this Court in a decision reported in (2007) 5 MLJ 1059 : 2007 (2) TN MAC page 98 -Marimuthammal @

Marimuthu and Anr. v. R.P.P. Construction (P) Ltd., Chennai and Ors., after taking into consideration Pratap Narain Singh Deo''s case and

Kerala State Electricity Board''s case, has held that ""since Workmen''s Compensation Act is a social security legislation, various provisions of the

Act ought to receive a liberal interpretation and hence interest is payable at the rate of 12% from 11.2.1999 i.e. 30 days from the date of accident

in which workman sustained injuries, resulting in death"".

15. The same judge in the decision reported in 2008 (1) TN MAC page 38 -A. Chairmen v. A. Thirumeni and Anr., by following the earlier

judgment reported in 2007(5) MLJ 1059 (cited supra), has held that ""the interest would accrue 30 days after the date of the accident"".

16. The ratio laid down by a larger Bench of the Hon''ble Supreme Court of India in Pratap Narain Singh Deo''s case has been followed in the

following judgments:

i. 2009 (1) TAC page 310 (HP.) (S.B) - Oriental Insurance Co. Ltd., v. Miss. Sushma and Ors.

ii. 2009 (1) TN MAC page 189 (Delhi) (S.B) - National Insurance Co. Ltd., v. Indra Devi and Ors..

iii. 2009 (1) TAC page 340 (Cal. (D.B) - Manju Devi v. New India Assurance Co. Ltd, and Ors.

iv. 2009(2) TAC page 27 (J&K) (SB) - State Forest Corporation v. Mohd. Sultan.

v. 2009(4) TAC page 519 (Cal.) (D.B) - Durgesh Mishra v. New India Assurance Co. Ltd.

17. It is trite law that in the case of beneficial enactments, Court should follow policy of benevolent and liberal construction. In interpreting the

provisions of beneficial pieces of legislation, the beneficent rule of construction has to be adopted by the Court. In a case of ambiguity in the

language of a beneficial Labour legislation, Courts have to resolve the quandary in favour of conferment of, rather than denial of, a benefit on the

Labour by the legislature but without rewriting and/or doing violence to the provisions of the enactment. If the words used in the Section are

capable of two constructions one of which is shown patently to assist the achievement of the object of the Act, courts would be justified in preferring that construction to the other which may not be able to further the object of the Act. Keeping the above said principles in mind as laid

down by the catena of decisions tendered by the Hon''ble Supreme Court of India, Courts have to interpret the word ""falls due"" occurring in

Section 4-A of the Workmen''s Compensation Act.

18. It is relevant to refer Section 4-A of the Workmen''s Compensation Act, 1923, which reads as follows:

4-A. Compensation to be paid when due and penalty for default.--(1) Compensation u/s 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 workman,

as the case may be, without prejudice to the right of the workman 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

may direct that, in addition to the amount of the arrears, simple interest at the rate of six per cent per annum on the amount due together with, if in

the opinion of the Commissioner there is no justification for the delay, a further sum not exceeding fifty per cent of such amount, shall be recovered

from the employer by way of penalty.

19. The above said Section was further amended with effect from 15.9.1995 by amendment Act 30 of 1995 and the amended provision reads as

follows:

4-A. Compensation to be paid when due and penalty for default.--(1) Compensation u/s 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 workman,

as the case may be, without prejudice to the right of the workman 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.

20. The Hon''ble Supreme Court of India in the decision reported in (1976) 1 SCC page 829 - Pratap Narain Singh Deo''s case (cited supra)

(four Judges Bench), has specifically formulated an issue and held that

The employer therefore became 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 the employment. It is therefore futile to contend that the compensation did not fall due

until after the Commissioner''s order dated 6.5.1969 u/s 19.

21. In Wed Prakash Garg''s case reported in 1998 ACJ 1(two Judges Bench) the attention of the Hon''ble Supreme Court of India was not drawn

to the Pratap Narain Singh Deo''s case. However, the Hon''ble Supreme Court of India on the facts of the said case, held that ""the Respondent

insurance company will be liable to pay the compensation with interest at 6% per annum thereon from the date of the accident till the date of

payment to the claimants"".

22. In a subsequent decision reported in 2000 ACJ page 5 (three Judges Bench) (cited supra), the Hon''ble Supreme Court of India, has taken

into consideration Pratap Narain Singh Deo''s case and also the judgment of the Full Bench of the Kerala High Court reported in 1998 ACJ 1048

- United India Insurance Co. Ltd., v. Alavi and approved the view taken by the Kerala High Court and held that the amount of compensation under Workmen''s Compensation Act is payable on the date of accident and not the amount of compensation payable

on account of the amendment made in 1995, which is relevant"".

23. It is pertinent to point out at this juncture that the attention of the Hon''ble Supreme Court of India was not drawn to Pratap Narain Singh

Deo''s case and Kerala Electricity Board''s case (cited supra) while rendering its verdict in the decisions reported in 2007 ACJ page 845 and

2009 (1) TAC page 1 (SC) (cited supra). In the above said two decisions it has been held that ""unless adjudication is done, the question of

compensation becoming due does not arise and therefore, it cannot be the date of accident and it has to be taken to be the date of adjudication of

the claim"".

24. It is a settled position of law and as held by the Hon''ble Supreme Court of India in decisions reported in Union of India v. K.S. Subramanian-

1911 (1) LLJ page 5 (SC) and State of Uttar Pradesh v. Ram Chandra-1977 (1) LLJ page 200, that ""the proper course for a High Court is to try

to find out and follow the opinions expressed by Larger Benches of the Supreme Court in preference to those expressed by smaller Benches of the

Court"".

25. By applying the above ratio, we are of the considered opinion that the attention of the Hon''ble Supreme Court of India was not drawn to the

Larger Bench decisions reported in 1976 (1) SCC page 289 and 2000 ACJ page 5 (SC) (cited supra) while deciding the cases reported in 2000

ACJ 845 and 2009(1) TAC page 1 (SC) (cited supra).

26. The learned Judge of this Court in the decision reported in (2007)5 MLJ 1059 (cited supra) and 2008 (1) TN MAC page 38 (cited supra)

after taking into consideration the above cited Larger Bench decision of the Hon''ble Supreme Court of India, has correctly held that ""the interest

on compensation is payable 30 days after the date of the accident in which workman sustained injuries resulting in death"".

27. In the result, the reference is answered as follows:

i. The word ""falls due"" occurring u/s 4-A of the Workmen''s Compensation Act, 1923 in the light of the ratio laid down in the Larger Bench

decision of the Hon''ble Supreme Court of India reported in Pratap Narain Singh Deo Vs. Srinivas Sabata and Another, . and Kerala State

Electricity Board and Another Vs. Valsala K and Another, means that interest for compensation amount would accrue 30 days after the date of

the accident and not from the date of quantification/ orders passed by the Commissioner for Workmen''s Compensation.

ii. The decisions rendered by the Single Bench of this Court in the decisions reported in (2007)5 MLJ 1059 : 2007 (2) TN MAC 98 -

Marimuthammal @ Marimuthu and Anr. v. R.P.P. Construction (P) Ltd, Chennai and Ors. 2008 (1) TN MAC 38 -A. Chairmen v.A. Thirumeni

and Anr., had laid down the correct proposition in consonance with the ratio laid down by the Larger Bench of the Hon''ble Supreme Court of

India in the above cited decisions.

iii. The Registry is directed to list these appeals for final disposal before the concerned Portfolio Judge.