

(1992) 10 AP CK 0020
In the Andhra Pradesh High Court
Case No : A.A. No. 558 of 1991

National Insurance Co. Ltd.	Vs	APPELLANT
Mohd. Mujataba Khan and Another		RESPONDENT

Date of Decision : 14-10-1992

Acts Referred:

Workmens Compensation Act, 1923 — Section 2(1), 4A, 4A(3)

Citation : (1993) ACJ 542 : (1992) 3 ALT 655 : (1993) 1 APLJ 47 : (1994) 1 LLJ 259

Hon'ble Judges : N.D. Patnaik, J

Bench : Single Bench

Advocate : T. Ramulu, for the Appellant; K.L.N. Rao, for the Respondent

Final Decision : Allowed

Judgement

N.D. Patnaik, J.—This appeal filed against the order of the Commissioner for Workmen's Compensation, Ranga Reddy district in Workmen's Compensation Case No. 36 of 1990.

2. The first respondent herein who was working as a driver under the second respondent met with an accident on March 3, 1989 while he was driving a van bearing No. AHT 5733, on account of which, his right leg was operated twice. The percentage of disability was estimated at 6 per cent. The learned Commissioner awarded compensation of Rs. 64,584 on the basis that the workman was getting Rs. 1,000 per month and also granted interest of Rs. 6,780.

3. In this appeal, filed by the Insurance Company, two contentions have been taken. One is that the pay of the workman was only Rs. 900 per month and the learned Commissioner was wrong in including the Batta payable to the workman at Rs. 20 per day.

4. The definition of wages in Section 2(m) of the Workmen's Compensation Act reads:

""Wages" includes any privilege or benefit which is capable of being estimated in money, other than a travelling allowance or the value of any travelling concession or a contribution paid by the employer of a workman towards any pension or provident fund or a sum paid to a workman to cover any special expenses entailed on him by the nature of his employment."

He, therefore, contended that Batta paid to the driver does not form a part of the wages of the workman.

5. The High Court of Orissa in Gopal Singh v. Nitamani Pradhan 1988 ACJ 244 has also held that the amount paid to a workman towards Batta or food allowance indicate that the amount is paid to cover any special expenses incurred by him due to the nature of his employment and hence it is not included in the wages. In view of the definition of wages referred to above and the decision of the Orissa High Court, I agree with the contention of the learned counsel for the appellant that the Batta paid to the workman cannot be included in wages. Therefore, calculating the wages at Rs. 900 per month, an amount of Rs. 6,459 has to be deducted out of the compensation arrived, it comes to Rs. 58,125 rounded off to Rs. 60,000.

6. The second contention is that the Insurance Company is not liable to pay the interest. Section 4A(1) of the Workmen's Compensation Act provides that the compensation shall be paid as soon as it falls due, that is the employer is bound to pay the compensation as soon as the accident occurs. Sub-section (3) provides that where any employer is in default in paying the compensation due under the Workmen's compensation 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 6 per cent per annum on the amount due. The contention of the learned counsel for the appellant is that the Insurance Company is bound to reimburse the employer as far as the statutory liability is concerned, by the liability of the Insurance Company does not exceed more than the statutory liability and if the employer does not pay the compensation, the Insurance Company cannot be saddled with the liability to pay the interest.

7. In support of his contention, he has referred the judgment of my learned brother Sri Justice Jagannath Raju in Civil Miscellaneous Appeal No. 338 of 1982, dated 6th September, 1989, wherein the learned Judge held that the Insurance Company has undertaken to indemnify the employer only to the extent of the statutory liability that was incurred as per law. But if the employer does not deposit the compensation as on the date of the accident and he was ordered to pay the interest, the Insurance Company, therefore, is not liable to pay the interest.

8. Therefore, the order of the learned Commissioner is modified by directing the payment of compensation of Rs. 60,000 to the workman. The employer is liable to pay interest at the rate of 6 per cent per annum thereon from the date of accident till the date of deposit of the amount. But the Insurance Company is not

liable to pay the interest

9. The Civil Miscellaneous Appeal is allowed to that extent. No costs.