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**(2019) 07 UK CK 0268**

**In the Uttarakhand High Court**

**Case No : Appeal From Order No. 513 Of 2014**

National Insurance Company Ltd

APPELLANT

Vs

Swari Devi & Others

RESPONDENT

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**Date of Decision : 31-07-2019**

**Acts Referred:**

Workmen Compensation Act, 1923 — Section 3, 3(2), 3(5), 4, 4A(1), 4A(3), 4(1), 4(2), 10, 10(1), 19

**Citation : (2019) 07 UK CK 0268**

**Hon'ble Judges : Manoj K. Tiwari, J**

**Bench : Single Bench**

**Advocate : Lalit Belwal, Pankaj Purohit**

**Final Decision : Dismissed**

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## **Judgement**

Manoj K. Tiwari, J

1. This Appeal from Order has been filed challenging the order dated 10.09.2014 passed by Workmen Compensation Commissioner/Chief Judicial Magistrate, Chamoli in Workmen Compensation Case No. 06 of 2014 "Smt. Swari Devi & others Vs. Shri Anil Kumar Agarwal and others".

2. This Appeal is heard on the following substantial questions of law:

"1. Whether any interest can be awarded to the claimants when no notice as is required under Section 10 of the Workmen Compensation Act, 1923 has been given?

2. Whether the Workmen Compensation Commissioner further failed to exercise jurisdiction by calculating the amount of compensation on the monthly income of Rs.8000/-, when the in the pleading, the case of the claimant was that the income of the deceased is Rs.6,000/- per month?

3. Mr. Nandan Singh was employed as Driver with Mr. Anil Kumar Agarwal (respondent no. 4 herein). On 22.10.2010, while Driving Max Pick-up, bearing

No.UK12 CB 0139 belonging to respondent no. 4, from Kotdwar to Haldwani, the Max Pick-up collided with Tractor No. UP57 E 3279. As a result of the collision, Mr. Nandan Singh sustained grievous injuries and he succumbed to his injuries the same day i.e. 22.10.2010. He was survived by his widow Smt. Swari Devi and two minor children, namely, Yogendra and Km. Mamta. The widow and two minor children of late Nandan Singh filed an application under Employees' Compensation Act before the Commissioner asserting that late Nandan Singh was getting Rs. 6,000/- per month as wages with Rs. 50/- per day as diet money from his employer and was earning a sum of Rs. 2,000/- per month from agriculture. It was stated by the claimants that the age of the deceased workman was 28 years at the time of death and further that he was an employee of respondent no. 4 and he died during the course of employment. The owner of Max Pick-up, Insurer of Max Pick-up and Driver of the Tractor were made party to the said application. The owner filed his Written Statement, in which he admitted the accident and also the fact that deceased was his employee. He further stated that since the vehicle was insured with National Insurance Company Ltd., therefore, liability, if any, is that of the Insurance Company. The Insurance Company denied the averments made in the Claim Petition for want of knowledge and further contended that there is collusion between the claimants and the owner of the vehicle.

4. Learned Commissioner framed as many as five issues, which are as follows:

"1. Whether Nandan Singh died on 22.10.2010 during the course of employment as Driver in Max Pick-up UK12CB0139 belonging to Mr. Anil Kumar Agarwal? If yes, then its effect?

2. Whether on the date of death, age of Nandan Singh was 28 years? If not, then its effect?

3. Whether the owner of the vehicle was paying Rs. 6,000/- per month as salary and Rs. 50/- as diet money to deceased Nandan Singh? If not, then amount of salary?

4. Whether on the date of accident all the documents, including Driving License of the Driver of the vehicle, were valid? If not, then its effect?

5. Whether the claimants are entitled to compensation? If yes, then what amount and from which respondent."

5. Claimants produced documentary evidence to substantiate their claim. Widow of the deceased was examined as witness on behalf of the claimants. The owner of the vehicle also deposed before learned Commissioner. After considering the entire evidence on record, learned Commissioner decided all the issues in favor of the claimants.

6. Regarding issue no. 1, finding was recorded that death of Nandan Singh occurred during the course of employment. Regarding issue no. 2, a finding was recorded that age of the deceased at the time of accident was 28 years, which

was based on the entry made in the Family Register, copy whereof was produced by the claimants before the Commissioner. On issue no. 3, a finding was recorded that, in view of S.O.R. dated 31.05.2010 issued by the Central Government, monthly wages for the purpose of Section 4 (1) of Employees Compensation Act have been revised to Rs. 8,000/- per month, therefore, salary of the deceased is determined as Rs. 8,000/- per month. Regarding issue no. 4, a definite finding was recorded that the vehicle was being driven with all valid documents and the deceased was also having a valid Driving License. Regarding issue no. 5 i.e. quantum of compensation, learned Commissioner applied the multiplier of 211.79 as per fourth Schedule of the Act and determined the compensation amount as Rs. 8,47,160/-. A sum of Rs. 5,000/- was awarded towards funeral expenses. Thus, the total amount, which was payable to the claimants, was determined as Rs. 8,52,160/- alongwith @ 12% simple interest per annum from the date of accident. The amount of compensation was to be apportioned equally between widow (50%) and two minor children (50%). Thus, feeling aggrieved by the order passed by learned Commissioner, the Insurance Company has approached this Court by filing this Appeal.

7. Heard learned counsel for the parties and perused the record.

8. Hon'ble Supreme Court in the case of Oriental Insurance Company Limited Vs. Siby George and others, reported in (2012) 12 SCC 540, has held that employer's liability to pay compensation arises on the date injury is caused to workman by accident which has arisen out of and in course of employment. It is further held that interest thereon becomes due when there is default in timely payment of compensation and reasons for default are immaterial. Paragraph nos. 8 to 14 of the said judgment are extracted below:

"8. It is, thus, to be seen that sub-section (3) of section 4 -A is in two parts, separately dealing with interest and penalty in clauses (a) and (b) respectively. Clause (a) makes the levy of interest, with no option, in case of default in payment of compensation, without going into the question regarding the reasons for the default. Clause (b) provides for imposition of penalty in case, in the opinion of the Commissioner, there was no justification for the delay. Before imposing penalty, however, the Commissioner is required to give the employer a reasonable opportunity to show cause. On a plain reading of the provisions of sub-section (3) it becomes clear that payment of interest is a consequence of default in payment without going into the reasons for the delay and it is only in case where the delay is without justification, the employer might also be held liable to penalty after giving him a show cause. Therefore, a finding to the effect that the delay in payment of the amount due was unjustified is required to be recorded only in case of imposition of penalty and no such finding is required in case of interest which is to be levied on default per se.

9. Now, coming back to the question when does the payment of compensation fall due and what would be the point for the commencement of interest, it may be noted that neither the decision in Mubasir Ahmed nor the one in Mohd. Nasir

can be said to provide any valid guidelines because both the decisions were rendered in ignorance of earlier larger Bench decisions of this Court by which the issue was concluded. As early as in 1975 a four-Judge Bench of this Court in *Pratap Narain Singh Deo. v. Shrinivas Sabata* directly answered the question. In paragraphs 7 and 8 of the decision it was held and observed as follows:-

"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 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 under Section 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 under Section 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, under Section 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 making 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."

10. The matter once again came up before the Court when by amendments introduced in the Act by Act No. 30 of 1995 the amount of compensation and the rate of interest were increased with effect from 15.9.1995. The question arose

whether the increased amount of compensation and the rate of interest would apply also to cases in which the accident took place before 15.9.1995. A three Judge Bench of the Court in Kerala State Electricity Board vs. Valsala K., AIR 1999 SC 3502 answered the question in the negative holding, on the authority of Pratap Narain Singh Deo, that the payment of compensation fell due on the date of the accident. In paragraphs 1, 2, and 3 of the decision the Court observed as follows:

"1.The neat question involved in these special leave petitions is whether the amendment of Ss.4 and 4A of the Workmen's Compensation Act, 1923, made by Act No.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.

2. Various High Courts in the country, while dealing with the claim for compensation under the Workmen's Compensation Act have uniformly taken the view that the relevant date for determining the rights and liabilities of the parties is the date of the accident.

3. A four Judge Bench of this Court in Pratap Narain Singh Deo v. Srinivas Sabata, speaking through Singhal, J. has held that an employer becomes liable to pay compensation as soon as the personal injury is caused to the workmen 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."

11. The Court then referred to a Full Bench decision of the Kerala High Court in United India Insurance Co. Ltd. vs. Alavi, and approved it in so far as it followed the decision in Pratap Narain Singh Deo.

12. The decisions in Pratap Narain Singh Deo was by a four-Judge Bench and in Valsala by a three-Judge Bench of this Court. Both the decisions were, thus, fully binding on the Court in Mubasir Ahmed and Mohd. Nasir, each of which was heard by two Judges. But the earlier decisions in Pratap Narain Singh Deo and Valsala were not brought to the notice of the Court in the two later decisions in Mubasir Ahmed and Mohd. Nasir.

13. In light of the decisions in Pratap Narain Singh Deo and Valsala, it is not open to contend that the payment of compensation would fall due only after the Commissioner's order or with reference to the date on which the claim application is made. The decisions in Mubasir Ahmed and Mohd. Nasir insofar as they took a contrary view to the earlier decisions in Pratap Narain Singh Deo and Valsala do not express the correct view and do not make binding precedents.

14. In light of the discussion made above, we find no merit in the appeal and it is dismissed with costs amounting to Rs.20,000/-. The amount of cost must be paid to the respondents within six weeks from today."

9. Mr. Lalit Belwal, learned counsel for the appellant submits that since the claimants had not given any notice to the employer as contemplated under Section 10 (1) of Employees' Compensation Act, therefore, learned Commissioner erred in granting interest to the claimants from the date of accident.

10. This argument though looks attractive in the first blush; but, on the closer scrutiny, it is bereft of merit. Section 10 of Employees' Compensation Act is reproduced below:

"10. Notice and claim.- (1) 1 [No claim for compensation shall be entertained by a Commissioner unless notice of the accident has been given in the manner hereinafter provided as soon as practicable after the happening thereof and unless the claim is preferred before him within [two years] of the occurrence of the accident or in case of death within [two years] from the date of death:]

Provided that where the accident is the contracting of a disease in respect of which the provisions of sub-section (2) of section 3 are applicable, the accident shall be deemed to have occurred on the first of the days during which the employee was continuously absent from work in consequence of the disablement caused by the disease:

[Provided further that in case of partial disablement due to the contracting of any such disease and which does not force the workman to absent himself from work, the period of two years shall be counted from the day the employee gives notice of the disablement to his employer:

Provided further that if a employee who, having been employed in an employment for a continuous period, specified under sub-section (2) of section 3 in respect of that employment, ceases to be so employed and develops symptoms of an occupational disease peculiar to that employment within two years of the cessation of employment, the accident shall be deemed to have occurred on the day on which the symptoms were first detected:]

[Provided further that the want of or any defect or irregularity in a notice shall not be a bar to the [entertainment of a claim]- (a) if the claim is [preferred] in respect of the death of a workman resulting from an accident which occurred on the premises of the employer, or at any place where the employee at the time of the accident was working under the control of the employer or of any person employed by him, and the employee died on such premises or at such place, or on any premises belonging to the employer, or died without having left the vicinity of the premises or place where the accident occurred, or (b) if the employer [or any one of several employers or any person responsible to the employer for the management of any branch of the trade or business in which the injured employee was employed] had knowledge of the accident from any other source at or about the time when it occurred:]

Provided further that the Commissioner may [entertain] and decide any claim to

compensation in any case notwithstanding that the notice has not been given, or the claim has not been preferred in due time as provided in this sub-section, if he is satisfied that the failure so to give the notice or prefer the claim, as the case may be, was due to sufficient cause.

(2) Every such notice shall give the name and address of the person injured and shall state in ordinary language the cause of the injury and the date on which the accident happened, and shall be served on the employer or upon [any one of] several employers, or upon any person responsible to the employer for the management of any branch of the trade or business in which the injured employee was employed.

[(3) The State Government may require that any prescribed class of employers shall maintain at their remises at which employees are employed a notice book, in the prescribed form, which shall be readily accessible at all reasonable times to any injured employee employed on the premises and to any person acting bona fide on his behalf.

(4) A notice under this section may be served by delivering it at, or sending it by registered post addressed to, the residence or any office or place of business of the person on whom it is to be served, or, where a notice book is maintained, by entry in the notice book.]

11. Clause (a) of Fourth proviso to Section 10 (1) of Employees' Compensation Act ordains that the want of or any defect or irregularity in a notice shall not be a bar to the entertainment of a claim, if the claim is in respect of the death of an employee resulting from an accident which occurred on the premises of the employer, or on any premises where the employee at the time of the accident was working under the control of the employer.

12. Admittedly, the deceased was serving as Driver and, at the time of accident, he was driving the vehicle from Kotdwara (Pauri) to Haldwani (Nainital) as per instructions of the employer. Thus, at the time of accident, he was working under the control of the employer, therefore, even if no notice was given regarding the accident to the employer as per Section 10(1) of the Act, lack of notice cannot be a bar to entertainment of a claim.

13. Although, sub-section (1) of Section 10 of Employees' Compensation Act provides that no claim for compensation shall be entertained by the Commissioner, unless notice of the accident has been given to the employer, however, fifth proviso relaxes that condition and provides that Commissioner may entertain and decide any claim for compensation in any case notwithstanding that notice has not been given. Moreover, plea regarding lack of notice could have been taken by the employer in his Written Statement; but, was not taken, therefore, such a plea cannot be raised for the first time in Appeal.

14. Learned counsel for the appellant then submits that liability of interest, if any, must go to the employer and the Insurance Company cannot be saddled

with said liability, as the Insurance Company was never informed about the accident, therefore, Insurance Company cannot be held liable for interest.

15. The insurer had entered into a contract of insurance with the owner of the vehicle. In a contract of insurance, rights and obligations are strictly governed by the policy of insurance. Under the contract of insurance, the insurer undertakes to indemnify the loss suffered by the insurer on account of risks covered by the policy. The contract of insurance/insurance policy has not been produced by the appellant nor any clause in the insurance policy has been referred to, which may absolve the insurer of the liability to pay interest. In such view of the matter, I do not find any substance in the contention made on behalf of the appellant.

16. He then submits that, as per Ration Card, age of the deceased was 36 years in the year 2010, therefore, learned Commissioner erred in ascertaining his age as 28 years. The Commissioner has relied upon the relevant extract of Family Register, in which date of birth of deceased is recorded as 25.11.1981. Family Register is maintained under the provisions of U.P. Panchayat Raj (Maintenance of Family Registers) Rules, 1970. Thus, the Family Register maintained by Gram Panchayat has statutory flavor and the date of birth, registered in the Family Register, shall be deemed to be correct. The entry regarding date of birth made in the Ration Card cannot override the date of birth recorded in the Family Register. Moreover, from perusal of the record, it is apparent that Ration Card was not produced by any of the parties.

17. Learned counsel for the appellant then submits that the claimants in their Claim Petition had asserted that the salary of the deceased was Rs. 6,000/- per month, therefore, the learned Commissioner erred in determining his salary as Rs. 8,000/- per month.

18. Mr. Pankaj Purohit, learned counsel appearing for the claimants submits that claimants had stated in their Claim Petition that the deceased was earning Rs. 6,000/- per month as wages alongwith Rs. 50/- per day as diet money, thus, the total amount, which he was receiving from his employer, was Rs. 7,500/- per month. Learned counsel for the claimants has taken me to the Claim Petition, where it has been pleaded that, apart from income from salary, the deceased was also earning Rs. 2,000/- per month from agriculture. Thus, according to him, total income of the deceased was Rs. 9,500/- per month. Learned counsel for the claimants, thereafter, refers to the finding given by learned Commissioner on issue no. 3, where learned Commissioner has relied upon one S.O.R. issued by Central Government on 31.05.2010, whereby the monthly wages was revised to Rs. 8,000/- per month for purpose of Section 4 (1) of the Act. There is no challenge to the applicability of the S.O.R. in the appeal.

19. Thus, both the questions are answered against the appellant. Learned Commissioner has given cogent reasons for awarding the compensation to the claimants.

20. Accordingly, the Appeal fails and is dismissed. There will be no order as to



costs.