

(2018) 04 SHI CK 0038
In the High Court Of Himachal Pradesh
Case No : FAO(WC) No. 197 of 2013

Oriental Insurance Company Limited	Vs	APPELLANT
Smt. Shanti Devi and others		RESPONDENT

Date of Decision : 16-04-2018

Acts Referred:

Workmen's Compensation Act, 1923 — Section 4A(3), 4A(1), (3), 4, 4A(2), 4(3), 3(1), (5), 4(2), 22, 19
Indian Penal Code, 1860 — Section 279, 337

Citation : (2018) 2 ILR 555 (HP) : (2018) LatestHLJ 620 (HP)

Hon'ble Judges : SANDEEP SHARMA

Bench : Single Bench

Advocate : Ashwani K. Sharma, Jiwan Kumar, G.R. Palsra, Raju Ram Rahi, Vipul Sharda, Sunil Mohan Goel

Final Decision : Dismissed

Judgement

Sandeep Sharma, J.

Being aggrieved and dissatisfied with the amount of compensation awarded by the learned Commissioner, Employees Compensation, Court No.2,

Mandi, H.P., in W.C.A No.10/2011 vide award dated 28.2.2013, appellant-Insurance Company/respondent No. 2(hereinafter, 'appellant-Insurance

Company'), has approached this Court in the instant proceedings, seeking therein modification of the compensation amount.

2.Facts as emerge from record are that the respondents No. 1 and 2 (hereinafter, 'claimants') being legal representatives of deceased Tulsi

Ram, who was an employee of respondent No.3 and had died during the course of employment, filed a claim petition under Section 22 of the

Workmen's Compensation Act (hereinafter, 'Act'), seeking therein compensation to the tune of `10.00 Lakh, alongwith interest at the rate of

9% per annum, from the date of accident till the payment of the compensation amount. Claimants alleged that Tulsi Ram was working as a Driver

with respondent No. 3 namely Shri Rajinder Prashad Nag and he died in a motor vehicle accident of Tempo Mazda, which took place on 19.5.2004.

Claimants also claimed before the learned Commissioner below that the Tempo Mazda bearing registration No. HP-34A -2143 was insured with

appellant-Insurance Company through its Branch at Akhara Bazaar, Kullu from 19.3.2004 to 18.3.2005. On 19.5.2004, deceased while returning to

Kullu after unloading vegetables at Mandi, at around 11.00 pm, when reached near Banala on National Highway-21, Tempo developed sudden

mechanical defect and fell down into Beas river. FIR No. 63 of 2004 dated 20.5.2004 under Sections 279 and 337 IPC came to be registered. It is

also alleged in the claim petition by the claimants that deceased was earning ` 3500/- per month inclusive of T.A./D.A. and claimants were the

dependants of deceased being widow, minor son and mother. It is also stated that deceased was hale and hearty, aged 32 years, at the time of his

death.

3.Respondent No.3 (owner of Tempo) contested aforesaid claim petition by stating that the petition is not in consonance with the provisions of

Workmen's Compensation Act. He further claimed that the monthly wages of deceased were ` 2800/-inclusive of T.A./D.A. and not ` 3500/- as

claimed by the claimants. Most importantly, respondent No. 3 categorically admitted that deceased TulsiRam was engaged by him as a Driver and he

died during the course of his employment.

4.Appellant-Insurance Company refuted the claim of the claimants on the ground that deceased was not having valid and effective driving licence at

the time of accident and as such, claimants are not entitled to any compensation. Appellant-Insurance Company further claimed that since vehicle was

being driven in violation of conditions contained in the insurance policy, claimant are not entitled to any claim. Appellant-Insurance Company also

denied that the vehicle in question was insured with it and age of deceased at the time of accident was 32 years.

5.Learned Commissioner below, on the basis of pleadings adduced on record by respective parties framed following issues:

1.Whether the deceased was workman with respondent No.1/employer with

the meaning of this act? OPP

2. Whether the deceased died during the course of his employment with respondent No. 1? OPP

3. Whether the petitioners are entitled for compensation and from whom and what amount? OPP

4. Whether the vehicle was insured by the owner/respondent No.1? OPR-2

5. Whether the driver of the vehicle was having a valid and effective driving licence or not? OPR-2

6. Relief.??

6. Subsequently, vide award dated 28.2.2013, learned Commissioner below decided all the issues in favour of claimants and against appellant-Insurance

Company, and held claimants entitled to compensation to the tune of ` 4,03,320/- payable by appellant-Insurance Company alongwith interest at the rate of 12% per annum from 19.6.2004 i.e. after one month of accident till deposit of amount. In the aforesaid background, appellant-Insurance

Company has approached this Court in the instant proceedings, seeking modification of award.

7. Instant appeal came to be admitted on 30.7.2013, on the following questions of law:

1. Whether the amount of compensation assessed and ordered to be paid to the claimants is contrary to facts and evidence on record and thereby has resulted into perversity and as such, the impugned award is liable to be modified on this count?

2. Whether interest for the period from 19.06.2004 till 28.02.2013 could be ordered to be paid to claimants by the appellant/insurer when the compensation amount due and payable to claimants was determined by Ld. Commissioner vide the impugned award dated 28.02.2013 when the claim petition was decided??

8. Mr. Ashwani K. Sharma, learned Senior Advocate duly assisted by Mr. Jiwan Kumar, Advocate, while referring to the findings returned by the learned Commissioner below qua issue No.3 i.e. Whether the petitioners are entitled for compensation and from whom and what amount,?

strenuously argued that the same is not sustainable in the eye of law because learned Commissioner below wrongly considered wages of deceased as

`4,000/-, because as per case set up by respondent No. 3 i.e. owner of the vehicle, monthly wages of deceased were `2800/- including T.A./D.A. and

not `3500/- as claimed in the petition. Learned senior counsel further contended that the claimants were only entitled to compensation to the tune of

`2,82,324/- and not `4,03,320/-, as such, award needs to be modified suitably. Learned senior counsel further contended that it stands proved on record

that at the time of accident, minimum wages of driver were fixed at `88/-per day and as such, learned Commissioner below in the absence of any

cogent and convincing evidence on record, ought to have applied government rates of minimum wages for the purpose of assessing compensation

payable to the claimants. Lastly, Mr. Ashwani K. Sharma, learned Senior Advocate further contended that since compensation amount due and

payable to the claimants was determined by the learned Commissioner below vide impugned award dated 28.2.2013 i.e. when claim petition was

decided, no interest for the period from 19.6.2004 till 28.6.2013 as awarded, could be ordered to be paid to the claimants by the appellant-Insurance

Company, as such, impugned award deserves to be rectified accordingly, in accordance with law.

9.Mr. G.R. Palsra and Mr. Raju Ram Rahi, learned counsel representing respondents No.1 and 2, respectively, while refuting aforesaid contention of

the learned counsel representing the appellant-Insurance Company contended that there is no illegality or infirmity in the impugned award passed by

the learned Commissioner below, as such, same deserves to be upheld. He further contended that bare perusal of cross-examination conducted upon

the owner of offending vehicle i.e. respondent No.3, Rajinder Prashad clearly suggests that wages of deceased were between `4000-4500/- per month

at the time of his accident. He further contended that it has specifically come in the cross-examination of respondent No.3 that apart from monthly

wages, he used to give daily wages at the rate of `88/- to the deceased employee, as such, learned Commissioner below rightly took monthly wages of

the workman at the rate of `4,000/-. Lastly, Mr. G.R. Palsra contended that there is no illegality or infirmity in the impugned award in as much as

awarding of interest on amount of compensation is concerned. He contended that the claimants have been awarded interest at the rate of 12% per

annum with effect from 19.6.2004 i.e. one month after date of accident till the deposit of amount in the court below, as such, there is no scope of

interference as far as awarding of interest is concerned, which is strictly in terms of settled provisions of law.

10.I have heard the learned counsel for the parties and gone through the record carefully.

11.Before ascertaining the correctness of the aforesaid submissions having been made by the learned counsel representing the parties vis-à-vis

impugned award passed by learned Commissioner below, it may be noticed that no specific challenge has been laid to the impugned award by the

appellant-Insurance Company qua the finding returned by learned Commissioner below on the issues No. 1,2,4,5 and 6, as such, same has attained

finality so far appellant-Insurance Company is concerned. Only question, which is required to be considered by this court in the instant proceedings is

that whether the learned Commissioner below rightly arrived at a conclusion that deceased was getting salary of `4,000/- per month at the time of

accident or not?

12.Admittedly, in the instant case, claimants by way of statement of claim before learned Commissioner below claimed that the monthly wages of the

deceased was `3500/- inclusive of T.A./D.A. Respondent No.3, owner of vehicle, while admitting deceased to be his employee, stated by way of

written statement that he was paying monthly wages of `2800/- to the deceased but if cross-examination conducted on this witness is perused and

examined in its entirety, it clearly suggests that wages of deceased at the time of accident were between `4000-4500/-. Respondent No.3 in his cross-

examination categorically stated that at the time of death, deceased was drawing wages to the tune of `4000/- per month. It has also come in the cross

-examination of this witness that apart from monthly wages of `2800/-, he was also paying daily allowance of `100/- to the deceased as such, there

appears to be no illegality or infirmity in the conclusion drawn by learned Commissioner below, while ascertaining monthly wages of deceased.

13.Since claimant had specifically led on record evidence suggestive of the fact that that deceased Tulsi Ram was drawing salary of `4000/- per

month at the time of accident/death, there was no occasion for the learned Commissioner below to calculate/assess compensation on the basis of

minimum wages provided/prescribed by the Government at the relevant time.

14.Having carefully perused the evidence available on record, this Court is not

inclined to accept the contention of the learned senior counsel that learned Commissioner below erred in calculating monthly wages of deceased workman as ` 4,000/-, rather this Court finds from the record that learned Commissioner below rightly came to the conclusion that at the time of death, deceased was drawing salary of ` 4,000/- and as such, there is no illegality or infirmity in the impugned award.

15. Another question, which arises for determination by this Court is that what would be the date of application of interest on the awarded amount.

Hon'ble Apex Court in *Oriental Insurance Co. Ltd. v. Siby George & Ors*, 2012 AIR (SCW) 438, while taking into account law laid down in *National*

Insurance Co. Ltd. v. Mubasir Ahmed and Anr, (2007) 2 SCC 349 categorically held that both the decisions were rendered in ignorance of the earlier

larger Bench decisions of the Supreme court on the issue at hand. Hon'ble Apex Court held that in *Pratap Narain Singh Deo v. Shrinivas Sabata and*

Anr, AIR 1976 SC 222, issue has been directly answered. Hon'ble Apex Court in *Oriental Insurance Co. Ltd. vs. Siby George & ors* (supra) has held

as under:

â??2. The short question that arises for consideration in this appeal is when does the payment of compensation under the Workmenâ??s

Compensation Act, 1923 (hereinafter the Act) become due and consequently what is the point in time from which interest would be payable on the

amount of compensation as provided under section 4-A (3) of the Act.

3. In this case, the Commissioner for Workmenâ??s Compensation, Ernakulam, by his order dated November 26, 2008 in WCC No.67 of 2006

directed for payment of simple interest at the rate of 12% per annum from the date of the accident on July 12, 2006. The appellantâ??s appeal (MFA

No.172 of 2009) against the order of the Commissioner was dismissed by the Kerala High Court by order dated July 22, 2009 as barred by limitation.

Against the order of the High Court the appellant filed the special leave petition (giving rise to this appeal) in which notice was issued â??limited to

the interestâ??.

4. Mr. Mehra, learned counsel appearing for the appellant, submitted that the learned Commissioner was wrong in directing for payment of interest

from the date of the accident and any interest on the amount of compensation would be payable only from the date of the order of the Commissioner.

In support of the submission, he relied upon a decision of this Court in *National Insurance Co. Ltd. vs. Mubasir Ahmed and Anr.* (2007) 2 SCC 349, in

which it was held that the compensation becomes due on the basis of the adjudication of the claim and hence, no interest can be levied prior to the

date of the passing of the order determining the amount of compensation. In paragraph 9 of the decision the Court held and observed as follows:-

“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 under Section 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 Section 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.”

(emphasis added)

5. Learned counsel also invited our attention to another decision of the Court by which a number of appeals and special leave petitions were disposed

of and which is reported as *Oriental Insurance Company Limited vs. Mohd. Nasir and Anr.* (2009) 6 SCC 280. In this decision the Court held that

“there cannot be any doubt whatsoever that interest would be from the date of default and not from the date of award of compensation”

(paragraph 47). It then went on to say that the Act does not prohibit grant of interest at a reasonable rate from the date of filing of the claim petition

till an order is passed on it, adding that the higher, statutory rate of interest under sub-section (3) of section 4 would be payable in a case that attracted

that provision and for which a finding of fact as envisaged therein has to be arrived at. The Court then referred to paragraph 9 of the decision in

Mubasir Ahmad (extracted above) but declined to follow it observing that the earlier decision had not considered the aspect of the matter as was

being viewed in the case of Mohd. Nasir. In Mohd. Nasir the Court finally directed for payment of interest at the rate of 7½% per annum from the

date of filing the application till the date of the award, further observing that thereafter interest would be payable at the rate as directed in the order

passed by the Commissioner. (See paragraphs 47 to 50 of the judgment).

6. The view taken by the Court in Mohd. Nasir that the rate of interest provided under sub-section (3) of section 4-A would apply only in case the

finding of fact as envisaged therein is arrived at by the Commissioner, it must respectfully be stated, seems to result from the mixing up of

interest due to default in payment of compensation and penalty for an unjustified delay in payment of compensation and is based on a

misreading of the sub-section (3) of section 4-A. Sections 4-A (1) and (3) are as under:- 4-A. Compensation to be paid, when due and penalty for

default. (1) compensation under section 4 shall be paid as soon as it falls due. (2)xxx xxx xxx (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. Explanation. - xxx xxx

xxx (3A) xxx xxx xxx

7. 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.

8. 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. Vs. Shrinivas Sabata and Anr., AIR 1976 SC 222 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 May 6, 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.â??

9. 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 real 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*, (1976) 1 SCC 289: (AIR 1976 SC 222: 1976 Lab IC 222) 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.

10. The Court then referred to a Full Bench decision of the Kerala High Court in *United India Insurance Co. Ltd. vs. Alavi*, 1998(1) KerLT 951(FB)

and approved it in so far as it followed the decision in *Pratap Narain Singh Deo*.

11. 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*.

12. 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.

16. In view of above, interest in the instant case would fall due from the date of

accident and as such, appellant shall be liable to pay the interest from the date of accident. Substantial questions of law are answered accordingly.

17. Consequently, in view of detailed discussion made herein above, appeal is dismissed. Pending applications, if any, are also disposed of. Interim directions, if any, are also vacated.