**(2013) 12 KAR CK 0134**

**In the Karnataka High Court**

**Case No :** MFA No. 30897 of 2010 (MV) A/w MFA CROB 1059 of 2010 (MV)

The Divisional Manager Oriental Insurance Co. Ltd. APPELLANT

Vs

Sanjeev Kumar and Savitri <BR> Sanjeeva Kumar Vs The Divisional Manager, Oriental Insurance Co. Ltd. and Savitri RESPONDENT

**Date of Decision :** 02-12-2013

**Acts Referred:**
Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27
Employees Compensation Act, 1923 — Section 4(c)(ii), 4A(3)

**Citation :** (2013) 12 KAR CK 0134

**Hon'ble Judges :** K.N. Keshavanarayana, J

**Bench :** Single Bench

**Advocate :** Veeresh B. Patil in MFA No. 30897/2010 and Sri. Basavaraj R. Math in MFA CROB 1059/2010, for the Appellant; Basavaraj R. Math for R-1, R2 in MFA No. 30897/2010 and Sri. Veeresh B. Patil, Advocate for R-1 in MFA CROB 1059/2010, for the Respondent

# Judgement

K.N. Keshavanarayana, J.—Though this Appeal and Cross Objection are listed today for hearing on Interlocutory Applications, by consent of the learned counsel appearing on ''both sides, the matters are heard for final disposal. In the appeal, the insurer namely, the Oriental Insurance Company has questioned the legality and correctness of the order passed by the Commissioner for Employees Compensation, Gulbarga, in case No. KAG/KNP/CR.28/2009 dated 10.03.2010. The ground urged in support of this appeal by the insurer is that the Commissioner has committed error in assessing the loss of earning capacity at 25% on account of the injuries suffered by the respondent/claimant and on that basis quantifying the compensation payable at Rs. 127,074/-. Yet another ground urged is that the claimant, who was driving the vehicle-in-question did not possess driving licence.

2. The claimant has filed cross-objection contending that the Commissioner has committed error in awarding interest only from the date of the expiry of one month from the date of the award. According to the claimant, interest is payable

 

from the date of expiry of one month after the accident, in the light of the decision of the Apex Court in The Oriental Insurance Company Ltd. Vs. Siby George and Others, .

3. I have heard the learned counsels appearing on both sides. Perused the order under appeal.

4. With regard to issue of driving licence, as could be seen from the order under appeal, a xerox copy of the driving licence was produced before the Commissioner, which indicated that the claimant was authorized to drive transport vehicle. Before this court, the claimant along with application filed under Order XLI Rule 27 of CPC, has produced the Certificate of Endorsement issued by the Regional Transport Office, Bidar, which shows that the claimant secured driving licence initially to drive Light Motor Vehicle with effect from 20.12.2000 and later, with effect from 06.02.2003 he was authorized to drive Heavy Transport Vehicle. The accident-in-question occurred on 16.03.2007. From the above, it is clear that the claimant possessed a valid licence to drive Heavy Transport Vehicle. The vehicle-in-question is lorry bearing Registration No. AP.09/ Y-4851, which is a. Heavy Transport Vehicle. Therefore, there is no substance in the contention of the appellant-Insurer that the claimant did not possess valid driving licence to drive that class of vehicle involved in the accident. In this view of the matter, the said contention is rejected.

5. The claimant contended that, in the accident he suffered fracture of both bone of the right leg and in spite of best treatment, by undergoing surgery in GBR Hospital, Hyderabad, he has suffered permanent disability, which has resulted in difficulty in movement of right leg and pursuing his vocation as driver. To substantiate this, the claimant examined one Dr. Kishor Mengaji, an Orthopedic Surgeon, who after examining the claimant, has assessed the disability suffered by the claimant and issued disability certificate. According to Dr. Kishor Mengaji, the claimant is experiencing pain in the right leg and there is restriction in the movement of the right ankle flexion to the extent of last 35 decree and inversion, eversion by last 30 degrees and he is also finding difficulty in squatting. The Doctor has assessed the permanent physical impairment in relation to right lower limb at 25% and also whole body disability, which represents the loss of earning capacity also at 25%. It is the contention of the appellant-Insurer that the Commissioner could not have accepted this evidence and proceeded to hold that the claimant has suffered 25% of loss of earning capacity. Admittedly, the injury suffered by the claimant is not the one specified in Schedule-I. Such cases are governed by Section 4(c)(ii) of the Employees Compensation Act (for short, ''the Act''). As per this provision, in the case of an injury not specified in Schedule-I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified Medical Practitioner) permanently caused by the injury. The Commissioner in the case on hand, in the light of the evidence of the Doctor, has held that the claimant has suffered loss of earning capacity to an extent of 25%.

 

6. Having regard to the facts and circumstances of the case and the evidence on record, I am of the considered opinion that the Commissioner has not committed any error in holding that the claimant has suffered loss of earning capacity to an extent of 25%. The finding recorded by the Commissioner in this regard, is in consonance with the evidence of the Medical Practitioner and in consonance of the provisions of Section 4(c)(ii) of the Act, therefore, there is no perversity in the said finding. In that view of the matter, the appeal filed by the Insurer is devoid of merit.

7. With regard to the grievance made-out by the claimant in his cross-objection is concerned, the matter is now completely covered by the decision of the Apex Court in Siby George''s case referred to supra. In this decision, the question considered by the Apex Court was, when does the compensation under the Workmen''s Compensation Act, 1923, (presently titled as Employees Compensation Act), becomes due and consequently what is the point of time from which interest would be payable on the amount of compensation as directed in Section 4A(3) of the Act. After referring to the Four Judge Bench in Pratap Narain Singh Deo Vs. Srinivas Sabata and Another, , wherein it has been 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, it was held that 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. Further, it is further held therein that the contrary view expressed in National Insurance Co. Ltd. Vs. Mubasir Ahmed and Another, and Oriental Insurance Co. Ltd. Vs. Mohd. Nasir and Another, , do not express the correct view and as such do not make binding precedents. It is further held in this decision that, in the light of the decision in Pratap Narain Singh Deo''s case supra, it is not open to contend that the payment of compensation would fall due only after the Commissioner''s order or with reference to date on which the claim application is made. Thus, from the above decision, it is clear that the compensation in case of employment injuries would be payable after one month from the date it fell due as per Section 4(A)(3) of the Act and failure to pay compensation within the aforesaid time, entitles payment of interest thereon from the expiry of one month after the accident. Therefore, the Commissioner in the case on hand is not justified in awarding interest from the expiry of one month from the date of the award. Therefore, to this extent, the order passed by the Commissioner requires to be modified. In the light of the above discussion, the appeal filed by the Insurer in MFA No. 30897/2010 is hereby dismissed. The Cross-Objection filed by the Respondent-Claimant is allowed. The order of the Commissioner with regard to payment of interest from the expiry of one month from the award, is modified and interest is ordered to be paid from the date of expiry of one month after the date of accident.

The amount in deposit before this court is ordered to be disbursed to the Respondent Claimant.

 