

HIGH COURT OF MADHYA PRADESH : JABALPUR
SINGLE BENCH : HON'BLE SHRI JUSTICE J.K.MAHESHWARI

MISC. APPEAL NO.4871/2010

National Insurance Company Limited

Vs.

Ramesh Kumar Burman and another

Shri D.N. Shukla, learned counsel for the appellant.

Shri Ashish Agrawal, learned counsel for respondent
No.1.

Shri Rajendra Puranik, learned counsel for respondent
No.2.

MISC. APPEAL NO.493/2011

Ramesh Kumar Barman

Vs.

Mahajan Wood Industries and another

Shri Ashish Agrawal, learned counsel for the appellant.

Shri Rajendra Puranik learned counsel for respondent No.1.

Shri Gulab Sohane, learned counsel for respondent No.2.

O R D E R

(29/8/2011)

Both the appeals are arising out of Award passed by Commissioner, Workmen's Compensation dated 26/10/2010, however, they are being disposed of by the common order.

2. M.A. No.4871/2010 filed by the Insurance Company has been admitted by this Court on 14/12/2010, without framing the substantial questions of law by the said order. But, the substantial questions of law as available in the memo of appeal, this Court is proceeding to decide those questions, which are as under :

“(i) Whether the finding given by the learned

Commissioner, Workmen's Compensation about the permanent partial disablement i.e. 40% is not correct considering the schedule-II of the Workmen's Compensation Act ?

(ii) Whether the interest has been awarded contrary to the Section 4A of the Workmen's Compensation Act and the judgment of the Apex Court in case of **Palraj Vs. Divisional Controller, Part-3, 2010 ACC, page 915** ? “

3. In M.A. No.493/2011 the question of law with respect to grant of interest from the date of accident has been pressed, however, looking to the IInd question of law as framed in M.A. No.4871/2010, the issue of payment of interest may be considered simultaneously.

4. Undisputedly, the injured was working as labourer in the Saw Mill since 2002. On 15/4/2003 at about 12.30 p.m. when the appellant was working on the saw machine, his left thumb was amputated and received severe injury in the index finger of left hand. The claim form was submitted to the Insurance Company through the employer. At the time of incident, he was aged about 45 years and getting salary of Rs.2,880/- per month. Immediately FIR was lodged MLC and other formalities were also performed on the same day which are available on record. It is claimed that on account of disability an amount of Rs.4,87,987/- may be awarded along with interest @ 12% per annum.

5. The defendants have filed their separate written statements. In the written statement of defendant No.2-Insurance Company, it is stated that defendant No.1 has not given any intimation regarding the incident. More so it was the negligence of the applicant, however, the insurance company is not liable to pay any amount of compensation and the interest thereon. The defendant No.1 by filing written statement admitted the incident and injury received to injured. It is also admitted that the applicant was a workman under his employment and getting salary of Rs.2880/- per

month. It is further stated that the claim form was submitted to the insurance company, however, the payment is to be made by the insurance company indemnifying the liability as per policy, therefore, the compensation may be awarded against the insurance company along with interest.

6. The Commissioner, Workmen's Compensation accepted the salary Rs.2880/- considering the certificate produced before him and looking to the fact that the injuries as received to the injured falls under Section 4(c)(i) Part-II of Schedule-I of the Workmen's Compensation Act, 1923 (hereinafter it be called as 'the Act'), however, accepting the disability to the extent of 40% awarded a sum of Rs.1,12,713/- and interest @ 12% per annum if the award is not satisfied within 45 days from the date of order.

7. Shri D.N. Shukla, learned counsel representing Insurance Company in M.A. No.4871/2010, contends that the finding with respect to partial permanent disablement, without the statement of doctor as recorded by the trial Court is improper. It is urged that looking to the injuries received by the injured, the statement of the medical practitioner ought to be recorded, because the injuries received to him falls under the Explanation-II of Section 4(c)(ii) of the Act. It is submitted by him that the percentage of disability may hardly be to the extent of 30% instead of 40% as accepted by the Commissioner, therefore, award of compensation without the statement of medical practitioner is against the law and also on higher side. It is further submitted that the interest as awarded by the Commissioner fastening the liability on the insurance company is improper in view of the decision of the Apex Court in the case of **Pal Raj Vs. Divisional Controller, Part-3, 2010 ACC, page 915.**

8. Shri Gulab Sohane, learned counsel appearing on behalf of Insurance Company in M.A. No.493/2011, contends that the Commissioner committed an error in awarding compensation

accepting 40% disability, in fact, the disability may not be accepted until the statement of the medical practitioner in regard to the percentage of loss of earning capacity comparable to injuries as apparent from Explanation II of Section 4(c) of the Act is recorded, however, the compensation as awarded is on higher side. On the point of award of interest, it is urged that the employer ought to pay, and Insurance Company may not be held liable to pay interest. In view of the forgoing, it is prayed that the appeal filed by claimant seeking enhanced rate of interest from the date of accident may be dismissed.

9. Per contra, in counter to the arguments of learned counsel of the Insurance Company, in both the appeals, Shri Ashish Agrawal, learned counsel for the claimant, contends that left thumb of injured is amputated and also lost his index finger and middle finger of left hand, however, he is unable to perform the work. As per his contention the said injuries are of Schedule I Part II at serial No.6, and the loss of index finger is at serial No.27, thereby total percentage of disablement comes to 54%. It is further submitted that such permanent partial disablement does not fall under Explanation-II of sub Section (ii) of Section-4 (c) of the Act. It is submitted that if Commissioner has awarded compensation accepting the disability to the extent of 40% , it is not on higher side, in fact the compensation as awarded is meager looking to the percentage of disability. On the point of interest, it is said that on the date of accident FIR was lodged, MLC was performed, intimation to the Insurance Company was given by submitting claim form through employer as apparent from the record, however, the interest ought to have been awarded from the date of incident against the Insurance Company who has indemnified the liability of the owner as per policy, and even on having knowledge of the accident failed to pay the amount of compensation fell due. In view of forgoing, it is urged that interest @ 12% per annum from

the date of accident, ought to have been awarded, modify the direction as issued by the Commissioner by the impugned award.

10. After having heard learned counsel for both the parties and also the injured present in the Court and on perusal of the record, it is apparent that there is an amputation of left thumb and due to injuries received to index finger of left hand, it is not in a workable condition. The injuries received to the injured is akin to the certificate of permanent disability which is accepted by the Commissioner by the impugned award, however, there is no reason to disbelieve such certificate. Looking to the injuries of injured, present in Court and the certificate of permanent disability, in the opinion of this Court, such injuries falls at serial No.5 and 27 of Part-II of Schedule-I of the Act. Serial No.5 is the amputation of thumb, to which disability is to the extent of 30%, and serial No.27, if the index finger is wholly affected then the percentage of the disability comes to 14%. Accordingly, total disability received by the injured is 44% comparable to loss of earning capacity. The Commissioner accepted the disability to the extent of 40% and granted compensation for loss of earning to such extent appears to be just and reasonable. In view of the foregoing discussion and looking to the injuries the arguments as advanced by learned counsel of the Insurance Company is not acceptable and is repealed. It is to be observed that the statement of the medical practitioner to record a finding with respect to loss of earning capacity comparable to injuries is necessary only when the injuries of the injured falls under Section 4 (c) (ii), Explanation-II of the Act. In case of permanent partial disablement resulted from the injury under Section 4 (C) (1) of the Act the statement of medical practitioner assessing the loss of earning capacity is not required. In the opinion of this Court, the finding of loss of earning due to 40% disability as recorded by the Commissioner is in accordance to law, the substantial question of law No.1 is hereby

answered accordingly.

11. By the impugned award the Commissioner directed to pay interest @ 7.5% from the date of filing of the application till passing the award. It is further directed that if the said amount is not deposited within 45 days, then interest @ 12% per annum from the date of award shall be payable. The Insurance Company relying upon the judgment of **Pal Raj Vs. Divisional Controller, (2010) 10 SCC 347**, submitted that the award of interest against insurance company from the date of application is contrary to law laid down in the said judgment. On the other hand claimant, in his appeal, contended that issuance of direction to pay interest 7.5% from the date of application and if compensation settled and not paid within 45 days from the date of award is not in accordance to law, in fact the interest must be paid if the compensation has not paid within 30 days from the date of accident and the rate thereof must be 12% per annum as specified under Section 4A (3)(a) of the Act.

12. As the issue posed for answer by the insurance company and the demand made by the claimant relates to grant of interest on the amount of legally payable compensation and what would be date on which it fall due. Prior to dealing with the said question, the law laid down by the Apex Court in various judgments is required to be analysed to crystallize the legal position emerges up till now. Long back the question of payment of interest and from which date it shall be payable by the employer has come up for consideration before the Bench consisting of four Judges of the Hon'ble Supreme Court in the case of **Pratap Narain Singh Deo V. Shrinivas Sabata and another, 1976 A.C.J.141**, in the light of Section 3, & 4 A of the Workmen's Compensation Act the Apex Court in para-7 and 8 has held as under :

“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 of compensation was taken away under-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 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 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.”

13. In the case of **Maghar Singh V. Jashwant Singh, 1997 ACJ 517**, three Judges Bench of Hon'ble the Apex Court has considered the issue of payment of interest and directed to pay from the date of accident which was prior to the date of amendment. The relevant paras are as thus :

“5. The accident occurred way back in 1984 and, therefore, we must decide the rate of interest keeping that factor in mind. We think it would be appropriate to grant interest at the rate of 9 per cent per annum.

6. In the result, we allow this appeal, set aside the orders of the courts below and hold that the appellant is entitled to compensation of Rs.24,0000/- with interest at the rate of 9 per cent per annum from the date of the accident, i.e. 26.7.1984 till the date of recovery or actual payment. We direct the respondent to deposit the amount in the Court of Senior Sub Judge, Sangrur, within three months from today, failing which the appellant will be entitled to recover the same in accordance with law. There will be no order as to costs.”

14. In the case of **Ved Prakash Garg V. Premi Devi and others, 1998 ACJ 1**, the question regarding liability of payment of interest and penalty against the insurance company and with effect from which date came for consideration before the two Judges Bench of the Hon'ble the Apex Court and in the said case Considering the scheme of the Workmen's Compensation Act and the Scheme of Motor Vehicle Act, 1988 particularly Section-146 which specifies necessity for insurance against third party risk and Section-147 which specifies requirement of policy and limits of liability of the insurance company held as under :

“**Scheme of the Act:** Before we deal with the

rival contentions and have a look at the divergent view-points expressed by the different High Courts on this question, it will be necessary to keep in view the relevant statutory schemes in the light of which this controversy has to be resolved. The Compensation Act deals with the provisions for payment by certain classes of employers to their workmen of compensation for employment injuries caused by accident. There is no dispute between the parties that the deceased drivers and cleaner in these cases were workmen employed by the appellant-employers. Section 3 of the Compensation Act deals with 'Employer's liability for compensation'. Sub-section (1) thereof lays down that 'if personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of Chapter II'. It is also not in dispute that fatal personal injuries were caused to the workmen by accidents which arose out of and in the course of their employment because of which they were working on the motor vehicles of the appellant-employers when they met their ends on account of motor accidents. Section 4 of the Compensation Act deals with 'Amount of compensation'. It lays down the statutory scheme for computing the compensation payable in cases of the types of accidental injuries suffered by the workmen concerned. The employer, on a conjoint reading of Sections 3(1) and 4(1) of the Compensation Act, would be liable to make good the liability for paying compensation to the insured workmen under circumstances contemplated by these provisions. Then follows Section 4A of the Compensation Act with which we are directly concerned. It is, therefore, necessary to extract it in extenso. The said Section during the relevant time, in 1992, when the accidents were caused read 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) 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 delay, a further sum not exceeding fifty per cent of such amount, shall be recovered from the employer by way of penalty."

The said Section was further amended by Act 30 of 1995 with effect from 15-9-1995 and in the amended form it now reads as under :

"4A. 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) 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."

A mere look at the aforesaid provision shows that Section 4A deals with the time for payment of compensation as required to be computed under Section 4. Sub-section (1) thereof mandates that compensation shall be paid as soon as it falls due. Sub-section (2) thereof contemplates a situation wherein the employer though accepting his liability to pay compensation to his injured workman disputes the extent of the claim of compensation and in such a case sub-section (2) enjoins him to make provisional payment based on the extent of accepted liability by depositing it with the Commissioner or to pay it directly to the workman. It is obvious that such an obligation of the employer would not arise under Section 4A sub-section (2) if he totally disputes his liability to pay on grounds like the injured person being not his employee or that the accident was caused to him at a time when he was not in the course of employment or that the accident caused to him did not arise out of his employment. If such disputes are raised by the employer then his obligation to make provisional payment under sub-section (2) of Section 4A would not arise and his liability would depend upon the final adjudication by the Workmen's Commissioner at the end of the trial. In that light when sub-section (3) of Section 4A is seen it becomes obvious that once the compensation due under the Act becomes ascertained either provisionally under sub-section (2) or finally on adjudication by the Commissioner and if the employer does not pay the same within one month from the date it thus falls due, the Commissioner can direct under sub-clause (a) of Section 4A(3) interest at the rate provided therein and also penalty as contemplated by sub-clause (b) thereof as per the amended Section 4A (3) of the Compensation Act but even under the unamended Section 4A (3)

which applied at the relevant time a clear distinction is made by the Legislature between the imposition of penalty by way of a further sum not exceeding fifty per cent of compensation amount and the imposition of interest on the amount of compensation found payable when it is not paid within the requisite time as and when it fell due. Thus even in the scheme of unamended Section 4A (3) or as per the amended Section 4A (3) read with clauses (a) and (b) thereof, it becomes clear that additional amount of compensation can be levied against the defaulting employer by way of penalty if it is shown that there is no justification for the delay on his part in making good the compensation amount to the claimant. Interest payable on the principal amount, if not paid when it fell due, is not considered by the Legislature to be a penalty. This is further highlighted by the proviso to Section 4A (3) as substituted by Act 30 of 1995 which clearly indicates that a penalty amount under clause (b) cannot be imposed against the employer without giving him reasonable opportunity to show cause. No such show cause notice is contemplated while imposing interest on default of payment of the principal amount on the part of the employer as per Section 4A (3) (a). Absence of this provision is obviously based on the legislative intent that interest on principal amount is not by way of penalty. Therefore, the employer need not be heard in this connection. A simpliciter default in payment of compensation within the time of one month from the date it fell due would automatically attract the provision for simple interest under Section 4A (3) as per the rate prescribed therein and for such imposition of interest no question of justification for the delay is countenanced by the Legislature. But while imposing penalty justification for delay would be a good defence for the employer for meeting such claim for penalty. The same aspect is further highlighted by Section 4A (3) (a) of the Compensation Act as existing on the Statute book at present which shows that the interest payable under sub-section (3A) is to be paid to the workman or his dependant while the penalty imposed is to be credited to the State Government. It is in the light of the aforesaid statutory scheme of Section 4A that the question

posed for our consideration has to be resolved.

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“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 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 M.V. 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 under section 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 statutory 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 de hors 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. No question of justification by the insured employer for the delay in such circumstances would arise for consideration. It is of course true that one month's period as contemplated under Section 4-A (3) may start running for the purpose of attracting interest under sub-clause (a) thereof in case where provisional payment has to be made by the insured employer as per section 4-A(2) of the Compensation Act from the date such provisional payment becomes due. But when the employer does not accept his liability as a whole under circumstances enumerated by us earlier then section 4-A(2) would not get attracted and one month's period would start running from the date on which due compensation payable by the

employer is adjudicated upon by the Commissioner and in either case the Commissioner would be justified in directing payment of interest in such contingencies not only from the date of the award but also from the date of accident concerned. Such an order passed by the Commissioner would remain perfectly justified on the scheme of section 4-A (3) (a) of the Compensation Act. But similar consequence will not follow in a case where additional amount is added to the principal amount of compensation by way of penalty to be levied on the employer under circumstances contemplated by section 4-A(3)(b) of the Compensation Act after issuing show-cause notice to the employer concerned who will have reasonable opportunity to show cause why on account of some justification on his part for the delay in payment of the compensation amount he is not liable for this penalty. However, if ultimately, the Commissioner after giving reasonable opportunity to the employer to show cause takes the view that there is no justification for such delay on the part of the insured employer and because of his unjustified delay and due to his own personal fault he is held responsible for the delay, then the penalty would get imposed on him. That would add a further sum up to 50 per cent on the principal amount by way of penalty to be made good by the defaulting employer. So far as this penalty amount is concerned it cannot be said that it automatically flows from the main liability incurred by the insured employer under the Compensation Act. To that extent such penalty amount as imposed upon the insured employer would get out of the sweep of the term 'liability incurred' by the insured employer as contemplated by the proviso to section 147(1)(b) of the M.V. Act as well as by the terms of the insurance policy found in provisos (b) and (c) to sub-section (1) of section II thereof. On the aforesaid interpretation of these two statutory schemes, therefore, the conclusion becomes inevitable that when an employee suffers from a motor accident injury while on duty on the motor vehicle belonging to the insured employer, the claim for compensation payable under the Compensation Act along with interest thereon, if any, as imposed by the Commissioner, under Sections 3 and 4-A(3)(a) of the Compensation Act

will have to be made good by the insurance company jointly with the insured employer. But so far as the amount of penalty imposed on the insured employer under contingencies contemplated by section 4-A(3)(b) is concerned as that is on account of personal fault of the insured not backed up by any justifiable cause, the insurance company cannot be made liable to reimburse that part of the penalty amount imposed on the employer. The latter because of his own fault and negligence will have to bear the entire burden of the said penalty amount with proportionate interest thereon if imposed by the Workmen's Commissioner.”

In para-19 of the said judgment concluded as under :

“19. As a result of the aforesaid discussion it must be held that the question posed for our consideration must be answered partly in the affirmative and partly in the negative. In other words the insurance company will be liable to meet the claim for compensation along with interest as imposed on the insured employer by the Workmen's Commissioner under the Compensation Act on the conjoint operation of Section 3 and Section 4-A sub-section (3) (a) of the Compensation Act. So far as additional amount of compensation by way of penalty imposed on the insured employer by the Workmen's Commissioner under section 4-A(3) (b) is concerned, however, the insurance company would not remain liable to reimburse the said claim and it would be the liability of the insured employer alone.”

15. Thereafter in the case of **National Insurance Co. Ltd. V. Mubasir Ahmed and another, 2007 ACJ 845**, the said issue was considered by the Bench comprising with two Judges wherein para-9 the Apex Court held as under :

“9. Interest is payable under section 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 under Section 4-A was dealt with by this Court in **Maghar Singh V. Jashwant Singh, 1997 ACJ 517 (SC)**. 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 at the rate of 12 per cent. In the instant case, the accident took place after the amendment and, therefore, the rate of 12 per cent 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 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.”

Similar view is taken by the two Judges Bench of the Apex Court in the case of **Kamla Chaturvedi V. National Insurance Co Ltd. and others, 2009 ACJ 115**, and the date of payment of the interest has been directed as per the judgment of the Apex Court in the case of **Mubasir Ahmed and another(supra)**.

16. Thereafter in the case of **Pal Raj (supra)**, the Apex Court in para 19 and 20 has held as under :

“19. It will be evident that compensation assessed under Section 4 is to be paid as soon as it falls due and in case of default in payment of the compensation due under the Act within one month from the date when it falls due, the

Commissioner would be entitled to direct payment of simple interest on the amount of the arrears @ 12% per annum or at such higher rates which do not exceed the maximum lending rates of any scheduled bank as may be specified by the Central Government. Both the Commissioner, Workmen's Compensation, as also the High Court, therefore, rightly held that interest under the 1923 Act cannot be claimed from the date of filing of the application, but only after a default is committed in respect of the payment of compensation within 30 days from the date on which the payment becomes due.

20. We are satisfied that the impugned order of the High Court was only an attempt to correct the erroneous interpretation of Part II of Schedule I of the Workmen's Compensation Act, 1923 by the Commissioner, Workmen's Compensation. The loss of earning capacity has to be computed keeping in mind the alternate employment given to the appellant on the same salary as he was enjoying while performing the duty of a bus driver. The same cannot be ignored in computing the amount of compensation which the appellant was entitled to.”

17. In the judgment of **Oriental Insurance Co. Ltd. Vs. Mohd. Nasir and another, 2009 ACJ 2742**, the question regarding payment of interest and liability against the insurance company and such interest is payable by which date has been dealt with in para-23 with the following observations :

“23. The said provision, as it appears from a plain reading, is penal in nature. It, however, does not take into consideration the chargeability of interest on various other grounds including the amount which the claimant would have earned if the amount of compensation would have been determined as on the date of filing of the claim petition. Workmen's Compensation 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. Only when sub-section (3) of section 4-A would be attracted, a higher rate of interest would be payable wherefor a finding of fact as

envisaged therein has to be arrived at. Only because in a given case, penalty may not be held to be leviable, by itself may not be a ground not to award reasonable interest.

Reliance has been placed on the case of **National Insurance Co. Ltd. V. Mubasir Ahmed, 2007 ACJ 845 (SC)**, wherein it was held :

(9). "9. Interest is payable under section 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 under Section 4-A was dealt with by this Court in **Maghar Singh V. Jashwant Singh, 1997 ACJ 517 (SC)**. 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 at the rate of 12 per cent. In the instant case, the accident took place after the amendment and, therefore, the rate of 12 per cent 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 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.”

As therein this aspect of the matter has not been considered, we are of the opinion that interest will also be payable at the rate of 7½ per cent per annum from the date of filing of the application till the date of award. The rate of interest thereafter shall be payable in terms of the order passed by the Commissioner.”

18. On consideration of the said judgments it is apparent that in the judgment of **Mubasir Ahmed and another(supra)**, **Kamla Chaturvedi (supra)**, **Pal Raj (supra)**, **Mohd. Nasir (supra)**, the Larger Bench judgment of the Hon'ble Apex Court in the case of **Pratap Narain Singh Deo (supra)**, were neither brought to the notice nor considered. In the case of **Maghar Singh V. Jashwant Singh, 1997 ACJ 517**, the Supreme Court has awarded the interest at the rate of 9% from the date of accident till realization. In the case of **Kamla Chaturvedi (supra)**, the judgment of the Apex Court in the case of **Ved Prakash Garg (supra)** has been taken note of in the context of liability of interest against insurance company distinguishing the judgment of **P.J. Narayan V. Union of India, 2004 ACJ 452 (SC)**, and held that insurance company is liable to pay the interest in addition to the principal amount of the compensation but while dealing with the issue from which date it be payable, it is directed that it would be paid, as per the judgment of **Mubasir Ahmed and another(supra)**. In the case of **Pal Raj (supra)** none of the aforesaid judgments were placed for consideration. While in the cases of **Mohd. Nasir (supra)**, **Mubasir Ahmed and another (supra)** and **Maghar Singh(supra)** has been considered and said that the scheme of the Act does not prohibit grant of interest at reasonable rate from the date of filing of the claim application till order is passed and also from the date of

award till its realization. In the aforesaid facts, the law laid down by the four Judges Bench of the Apex Court in the case of **Pratap Narain Singh Deo (supra)** has not been considered in the subsequent judgments. While in the three Judges Bench judgment of **Maghar Singh (supra)**, **Mohd. Nasir (supra)**, **Mubasir Ahmed and another (supra)**, it is held that the scheme of the Act does not prohibit to grant of interest at reasonable rate from the date of filing of claim application till the realization. However, this Court is bound to follow the earlier judgment of four Judges Bench of Hon'ble the Apex Court. In the said case it is held that the employer is liable to pay compensation until the right to pay was taken away under sub-section (5) of Section 3 of the Act because of the institution of civil suit. It has further been held that the employer became liable to pay the compensation as soon as the personal injury has caused to the workman in the accident took place during the course of employment. In the said context, the contention that interest shall fall due after adjudication under Section 19 of the Act by Commissioner has been repealed. The question of liability or the quantum of amount or duration, default of agreement, is required to be settled by the Commissioner, however, as and when the injury occurred the liability to pay compensation under Section 3 is not suspended in view of the provisions of Section 19 of the Act. It has further been observed that it is the duty of employer to pay compensation after computing the amount under Section 4 to the extent of acceptance of liability. In default, interest and penalty may be directed from the date of accident. In the judgment of **Maghar Singh (supra)**, the accident was prior to the date of amendment, and looking to the long pendency of the claim, interest @ 9% from the date of accident till realization has been paid. In the judgment of **Ved Prakash Garg (supra)**, the Apex Court in reference to the provisions of Section 4A (3)(a) has held that where a provisional payment is made as per Section 4-A (2) of the Act, it may be the

date of such provisional payment of compensation becomes due but when the employer do not accept his liability as a whole, then the period would start running from the date on which, it fall due, on adjudicated by the Commissioner, but in either case the Commissioner shall be justified directing the payment of compensation and interest not only from the date of award but also from the date of accident. It has further been held that the liability of payment of the penalty shall be only against the employer and not against insurer, after issuing a notice and furnishing an opportunity of hearing if there is no justification for delayed payment of compensation. In view of the said legal position the relevant provisions of section 4A of the Act of making payment of the interest on the amount of compensation is required to be considered which is reproduced as thus :

“4A. 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) 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.

Explanation.- For the purpose of this sub-section, “scheduled bank” means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934).”

19. In interpreting the said provision of interest, the reference of Sections 3, 4 and 19 of the Act is necessary. Section 3 indicates that if any personal injury or death caused to the workman in an accident arising out of and during the course of employment, payment of compensation is the liability of the employer as per the provisions of Chapter-II of the Act. In case of injury not resulting in death or permanent disablement, the probable defences may be set-forth that the workman at the time was under the influence of drink or drugs or willfully disobeyed the order, rules of the safety framed by employer and willful removal or disregard of any safety guard or other device which is required to be observed has not been followed. Section 4 specifies the various mode for computing the amount of compensation. Thus, from the facts of the case, if it is clear that the injury occurred to the injured arising out of and during the course of his employment resulting into permanent partial disablement, the payment of compensation is a liability of the employer and applying the mode of calculation as specified under Section 4 it be paid. As per Section 19 of the Act on making a reference to the Commissioner the issue regarding liability of any person to pay compensation including a person injured is a workman or not, amount to pay compensation, duration of

compensation, nature and extent of disablement, be settled by the Commissioner in default of any agreement. Thus, by conjoint reading of Section 3 and 19 it is clear that if any personal injury is caused or of death of a workman in the accident as the case may be, in the course of employment it is the liability of the employer to pay the compensation as per the provisions of the Chapter-II of the Act and such liability shall not remain under suspension. The adjudication by the Commissioner shall be of the amount and duration of compensation, or a person injured is a workman and suffered injury in the accident arising out of and in the course of his employment the compensation be paid as soon as it falls due. Section 4A deals with the payment of compensation when it becomes due and penalty for default. Sub-section (1) of Section 4A makes it clear that amount of compensation as calculated as per section 4 of Act falls due be paid. Thus, sub-section (1) of Section 4A of the Act ensure the payment of compensation computed as per Section-4 and shall be paid as soon as it falls due. Sub-section (2) of Section 4A deals with contingency where the employer is not accepting the liability for payment of compensation to the extent claimed, then to the extent of the liability accepted by employer shall be paid by way of provisional payment either to the workman or by depositing it with the Commissioner. The said act shall not disqualify the claimant to claim higher amount, or his right to further claim, shall not be prejudiced. Sub -section (3) of Section 4A makes it clear when the compensation fall due not paid within one month, the Commissioner shall direct to pay simple interest on the amount of arrears at the rate of 12% per annum or at higher rate not exceeding the maximum of the lending rates of any scheduled bank. In view of the forgoing, it is apparent that specifying the probable legal defence to employer, Section 3(1)(a) (i) to (iii) has been inserted in the Act. On making a reference under Section 19 the Commissioner ought to have decide the issue of liability, nature

and extent of disability, person injured is a workman or not and the amount of compensation, by adjudicating the plea so raised. However, legislative intent is clear that by furnishing due opportunity of hearing the said issues must be decided prior to settling the amount of compensation. In view forgoing to my mind the word compensation fall due as specified in Section 4-A only indicates the date of accident caused, and from the said date the employer's liability to pay compensation must be discharged within the period of 30 days.. The date of settling of compensation under Section-19 having no relevance for the word falls due. My view fortifies from the judgment of the four Judges Bench of the Apex Court in the case of **Pratap Narain Singh Deo (supra)**, three Judges Bench of **Maghar Singh (supra)** and **Ved Prakash Garg (supra)**. The liability to pay interest on the amount of compensation is a legible claim payable to the injured. If the said liability has not been discharged partially or fully the Commissioner is required to settle the amount of compensation with the direction to pay interest as per Section 4-A(3)(a) on the amount of 'arrear'. Thus, the intention of the legislature is apparent that if a compensation falls due and not paid it be termed as arrears and the Commissioner is mandatorily required to direct the payment interest at the rate so specified under sub Section (3) (a) of Section 4-A of the Act. Therefore, the amount 'fell due' is the date when the incident took place i.e the date of accident, and the interest is leviable on the amount of compensation not paid and become 'arrear'.

20. In the present case, it is not in dispute that on the date of incident FIR was lodged, MLC was performed, by submitting a claim form intimation to the insurance company was furnished through employer. Admittedly the liability of the employer has been indemnified by the insurance company. The Insurance Company has neither paid amount of compensation as claimed nor paid the

amount so accepted by them within one month. Once the liability of the employer has been indemnified by the insurance company, the payment which is required to be made on behalf of the employer is to be paid by the insurance company. In default of payment of compensation which is fallen due, the Insurance Company is liable to pay interest. After adjudication the Commissioner, Workmen's Compensation found the incident, is correct. The injuries received to the injured falls at serial No.5 and 27 of Part -II of Schedule -I of the Act. The said percentage of disability relates to loss of earning capacity, however, the compensation fallen due ought to have been paid within one month from the date of accident. After submitting claim form, employer was under bona fide belief that the amount be paid by the Insurance Company indemnifying his liability. In absence of payment of compensation, the interest, as specified under Section 4A (3)(a) of the Act, shall be payable by Insurance Company.

21. Thus, in view of the earlier judgment of four Judges' Bench of Hon'ble Apex Court, in the case of **Pratap Narain Singh Deo (supra)**, three Judges Bench of **Maghar Singh (supra)**, I am not inclined to follow the subsequent two Judges' judgment in the case of **Pal Raj (supra)**. Consequently, the insurance company is liable to pay the interest along with principal amount after one month from the date of accident @ 12% per annum till its realization. Substantial question No.(ii) as framed in the case is answered accordingly.

22. Consequently, M.A. No.4871/2010 filed by the Insurance Company is hereby dismissed. M.A. No.493/2011 filed by the claimant is hereby allowed in part, modifying the direction of the Commissioner, Workmen's Compensation to pay interest. It is directed that the interest on the amount of compensation shall be payable after one month from the date of accident @ 12% per annum till its realization. In the facts and circumstances of the

case, claimant shall also be entitled of cost which is quantified Rs.2,000/- in each of the case.

23. The Registrar General of this Court is directed to circulate this order to the Labour Courts of the State of Madhya Pradesh discharging the function of the Commissioner for Workmen's Compensation for guidance in the matter of award of interest because by passing inconsistent orders awarding interest, claimants are approaching this Court by filing appeals seeking interest from the date of accident. Thus, to maintain consistency on the said issue, circulation appears to be desirable.

(J.K. Maheshwari)
JUDGE

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