

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

CIMA No. 211/2012
CMA no. 289/2013

Date of order: 13.05.2013

New India Assurance Co. Ltd. V Sunkesha Devi and ors.

Coram:

Hon'ble Mr. Justice Bansi Lal Bhat, J.

i)	Whether to be reported in Press/Journal/Media	Yes/No
ii)	Whether to be reported in Digest /Journal	Yes/No

Appearing counsel:

For the petitioner (s) : Mr. D. S. Chouhan, Advocate
For the respondent(s) Mr. Vishnu Gupta, Advocate

1. This appeal is directed against the award dated 31st January, 2012 passed by the Commissioner, under Employee's Compensation Act, 1923 (Assistant Labour Commissioner Jammu- for brevity 'Commissioner') in case titled Smt. Sunkesha Devi and ors v Kirtan Singh and anr., in terms whereof an amount of Rs.432580/- was awarded as compensation in favour of the claimants-

respondents for brevity 'claimants'). The Commissioner also awarded interest of Rs. 93004/-. The award was directed to be satisfied by respondent no. 2-Insurer as the offending vehicle was insured with it and the policy was effective at the time of accident. The impugned award has been assailed to the extent of directing of payment of interest by the appellant-insurer.

2. Heard rival sides and perused the record.

3. It is not in dispute that the deceased Naresh Kumar was working as Driver with Tata Vehicle No. JK02F/2787 owned by respondent no. 1 who was an 'employee' as defined under the Employee's Compensation Act, 1923. It is also not disputed that the deceased met with an accident arising out of and during the course of his employment with respondent no. 1. Finding by the Commissioner that the deceased was aged 28 years at the time of accident, and assessment of salary at Rs. 8000/- per month for purposes of computation of compensation has not been questioned. It is also not in dispute that the offending vehicle was being

plied within the conditions and terms of insurance policy. Since findings of fact on the relevant issue have not been assailed, the award of compensation to the tune of Rs.432580/- does not form the subject of controversy. The points for consideration raised in this appeal are:-

- (i) Whether the insurance company is liable to indemnify the insured for the interest awarded against him under Section (3) of Section 4-A of the Workmen's Compensation, Act, 1923?
- (ii) Whether learned Commissioner, Workmen's Compensation Act, Jammu was justified in directing payment of interest from the date of accident, when the interest is payable on completion of one month from the date on which it fell due and it fell due on the date of adjudication?

Point no. 1:

4. In so far as liability of insurer to indemnity the employer- respondent no. 5 for the delay in payment of compensation is concerned, be it seen that the award of interest for delay in payment is mandate of law and has statutory backing. Section 4-A of the

Employee's Compensation Act, 1923, provides 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 rights of the workman to make any further claim.

(3) Where any employer is in default in payment 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 purposes of this subsection, “scheduled bank” means a bank for the time being including in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934)”

5. The provision can be invoked against an employer if there is default in paying the compensation due under the Act, within one month from the date it fell due. The interest and penalty shall be recoverable from the employer.

6. A plain reading of the provisions makes it clear that interest has to be paid as a necessary consequence of default in payment of compensation without going into the reasons for the delay. However, if the delay is without justification, the employer can be saddled with liability to pay penalty after giving him a show

cause notice. Where a penalty is imposed, recording of reasons for delay in payment is a *sine quo non*. No reasons need to be recorded for levying of interest for default in payment of compensation. It is absurd to hold that the insurer saddled with liability to indemnify the employer would not be bound to satisfy the award to the extent of interest levied for delayed payment. The liability incurred by the employer/insured on account of amount awarded as compensation is liable to be indemnified by the insurer. The extent of liability is to be determined with reference to the terms of contract governing relations *inter se* the insurer and the insured. In the absence of a stipulation in the contract of insurance excluding liability of insurer for interest incurred by the insured on account of delayed payment or failure to satisfy the award within the statutory period, the liability of insurer to satisfy the award would include liability for compensation together with interest levied for delayed payment. This interpretation is in tune

with the policy of labour welfare. Any view to the contrary would amount to denial of benefits to workmen and their dependants available under the statute. Admittedly, penalty can be imposed only on the employer and the insurer cannot be saddled with liability to pay the same.

Point no. 2

7. It is well settled that an employer becomes liable to pay compensation to the employee the moment he receives injures in an accident arising out of and during the course of his employment. It would, therefore, be futile to contend that the compensation becomes due one month after the determination of such compensation by the Commissioner.

8. On consideration of various pronouncements, this Court held in **Divisional Manager v Mohd Sultan and Anr.**, reported in 2009 (supp.) JKJ 179 (HC) that a workman is entitled to interest from the date of receipt of injuries and not one month after the date of the award. Same view has been taken by this Court in CIMA no. 400/2010 titled **Faqir**

Chand and anr. V Suraj Parkash and ors, decided on 19.09.2012.

9. The Hon'ble Apex Court taking note of divergent views on the subject, in **Oriental Insurance Co. Ltd. v Siby George and ors**, 2012 ACJ 2126 reiterated the law rendered by Four Judge Bench decision in **Pratrap Narain Singh Deo v Shrinivas Sabata**, 1976 ACJ 141 (SC) and held that 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. **An employer become liable to pay compensation as soon as the personal injury is caused to the workman by the accident which arose out of and in the course of employment. The relevant date for determination of compensation is the date of accident and not the date of adjudication of the claim.**

10. That being the legal position, the impugned award is modified in so far as same relates to payment of interest. It is held that the claimants shall be entitled to simple interest on compensation

awarded at the rate of 7.5% from the date of accident.

11. Ordered accordingly.

12. With this modification the appeal is disposed of.

(Bansi Lal Bhat)
Judge

Jammu
13.05.2013
Bir