

**A.F.R.**

**ORISSA HIGH COURT: CUTTACK**

**F.A.O. No.488 of 2009**

From judgment dated 28.04.2009 passed by the Commissioner, Workmen's Compensation-cum-Deputy Labour Commissioner, Cuttack in W.C. Case No.293-D/2003.

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Benudhar Jena,  
Son of Bhramarbar Jena,  
Village: Haripur (Radhanathpur),  
PO : Gadadharprasad,  
PS/Dist : Nayagarh

... Appellant

-Versus-

Smt. Sujata Sahoo,  
W/o. Krishna Ch. Sahoo,  
AT: Main Road, PO: Itamati,  
PS/Dist: Nayagarh and another

... Respondents.

For Appellant : M/s. Dr.T.C.Mohanty,  
J.Mohanty, R.R.Nayak,  
A.A.Khan, R.P.Bhagat  
& C.R. Dhal

For Respondents : M/s. N.C.Misra, & S.K.Behera-3  
(For R-2)

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*P R E S E N T :*

**THE HONOURABLE MR. JUSTICE B.N. MAHAPATRA**

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Date of Judgment: 15.05.2013

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**B.N.Mahapatra, J.** The present appeal has been directed against the judgment dated 28.04.2009 passed by the Commissioner for Workmen's Compensation-cum-Deputy Labour Commissioner, Cuttack (for short, "Commissioner") in W.C. Case No.293-D/2003.

2. Appellant's case before the Commissioner was that on 22.09.2003 at about 5.30 AM while the appellant was discharging his duties as a Helper in a Truck bearing Registration No.OR-02-Q-8597

on N.H.5 near Bandal Dhaba another Truck being driven in a rash and negligent manner came in very high speed and dashed the Truck in which the appellant was working. As a result of such accident, the appellant-workman sustained grievous injuries and was shifted to S.C.B. Medical College and Hospital, Cuttack for treatment. The appellant had fracture of his left leg and left hand and multiple injuries all over his body. Despite the treatment he was not cured and he lost his earning capacity to the extent of hundred percent. Thereafter, the appellant filed W.C. Case No.293-D/2003 before the Commissioner against the respondents for grant of compensation to the tune of Rs.6.00 lakhs on account of injuries sustained by him in the said accident. The learned Commissioner after hearing both parties directed opposite party No.2-National Insurance Company Ltd. to deposit a sum of Rs.2,20,158/- within 30 days of receipt of the order failing which opposite party No.2 shall be liable to pay interest at the rate of 12% per annum with effect from the date of filing of the claim case till the date of deposit in the Court of the Commissioner. Being aggrieved by the impugned judgment of the Commissioner, the present F.A.O. has been filed by the appellant-workman.

3.           Though the appellant challenged the impugned judgment of the Commissioner seeking two reliefs, i.e., (i) for enhancement of compensation and (ii) for payment of interest from the date of accident, Dr.T.C.Mohanty, learned Senior Advocate appearing for the appellant did not want to press the first relief and confined his argument to the second relief only. Dr.Mohanty vehemently argued

that the learned Commissioner erred in not awarding interest at the rate of 12% per annum from the date of accident till the date of its realization as provided in the Workmen's Compensation Act. It was submitted that the Commissioner is not justified in directing payment of interest at the rate of 12% per annum with effect from date of filing of claim case till the date of deposit in case of failure on the part of opposite party No.2 to deposit the amount of compensation of Rs.2,20,158/- within thirty days from the date of pronouncement of the judgment.

4. Dr.Mohanty placing reliance upon the judgments of the Hon'ble Supreme Court in the case of *Pratap Narayan Singh Deo Vs. Shrinivas Sabata and another*, 1976 ACJ 141, *Kerala State Electricity Board and another Vs. Vasala K. and another*, 2000(1) TAC 6 (SC) and *Oriental Insurance Co. Ltd. Vs. Siby George and others*, 2012 (4) TAC 4 (SC) submitted that the appellant is entitled to get interest from the date of accident from which he is entitled to get compensation. Further placing reliance on the judgment of the Hon'ble Supreme Court in the case of *Union of India and others Vs. K.S.Subramanian*, AIR 1976 SC 2433 and *Siddharam Satlingappa Mhetre Vs. State of Maharashtra and others*, 2011 (1) OLR SC 405, Dr. Mohanty submitted that the duty of the High Court is to follow the opinion expressed by larger Bench of the Supreme Court. Concluding his argument, Dr. Mohanty prayed for a direction to opposite party No.2 to pay interest from the date of accident and not from the date of judgment of the Commissioner.

5. Per contra Mr.N.C.Mishra, learned counsel appearing for respondent No.2 strenuously argued that interest on the amount of compensation would be payable only after expiry of 30 days from the date of order of the Commissioner and not from the date of accident. In support of his contention, Mr.Mishra relied on the decisions of the Hon'ble Supreme Court in the cases of *New India Assurance Co. Ltd. v. Harshadbhai Amrutbhai Modhiya*, AIR 2006 SC 1926; *State of Madhya Pradesh v. Narmada Bachao Andolan and another*, (2011) 7 SCC 639; *Siddharam Satlingappa Mhetre v. State of Maharashtra*, (2011) 1 SCC 694; and *Rattiram v. State of M.P.*, (2012) 4 SCC 516.

6. On the rival contentions of the parties, the only question that falls for consideration by this Court is as to from which date the interest on the amount of compensation would be payable to a workman where the employer is in default in paying the compensation required under the statute?

7. To adjudicate the above issue, it is relevant to extract here the relevant portion of Sections 3 and 4-A of Workmen's Compensation Act, 1923, which reads thus:

**“3. Employer's liability for compensation.—**

(1) 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 this Chapter.”

**“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 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...”

8. Objects and reasons for inserting Section-4A as revealed from Clause-5 is to ensure that the workman is able to get whatever amount the employer is prepared to pay immediately pending decision on the amount of compensation actually due. The said Clause also provides for payment of interest if the compensation is not paid within one month from the due date and for penalty if the Commissioner does not consider the delay to be justified. Thus, it is the duty of the employer to pay compensation under Section 4-A(1) as soon as the personal injury is caused to the workman and where the employer fails to do so he is liable to pay interest and penalty.

9. Under sub-section (3) of Section 4-A where any employer is in default in paying the compensation due under the Workmen's Compensation Act within one month from the date it fell due, the Commissioner shall direct the employer to pay simple interest on the amount of compensation at the rate of 12% per annum or at such higher rate not exceeding the maximum lending rate of the scheduled Bank.

10. Now, the question arises what is the date on which the payment of compensation falls due? Once that date is ascertained, then the employer shall be liable to pay interest at the rate prescribed under the statute, if the employer is in default in paying the compensation due within one month from the due date.

11. At this juncture, it is necessary to refer to some of the decisions of the Hon'ble Supreme Court.

Decision of the Hon'ble Supreme Court in ***Pratap Narayan Singh Deo*** (*supra*) was rendered by a Four Judge Bench, wherein it has been held as under:-

“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 ability 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."

12. Decision of the Hon'ble Supreme Court in the case of **Vasala K.** (*supra*) was rendered by a Three Judge Bench, wherein it has been held as under:

"3. A four-Judge Bench of this Court in *Pratap Narain Singh Deo v. Srinivas Sabata and another*, 1976 (1) S.C.C. 289 speaking through Shinghal, 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.

4. A two-Judge Bench of this Court in *New India Assurance Co. Ltd. v. V.K. Neelakandan and others etc.*, Civil Appeal Nos. 16904-16906 at 1996, decided on 6<sup>th</sup> November, 1996, however, took the view that Workmen's Compensation Act, being a special legislation for the benefit of the workmen,

the benefit as available on the date of adjudication should be extended to the workmen and not the compensation which was payable on the date of the accident. The two-Judge Bench in Neelakandan's case (*supra*), however, did not take notice of the judgment of the Larger Bench in Pratap Narain Singh Deo's case, as it presumably was not brought to the notice of their Lordships. Be, that as it may, in view of the categorical law laid down by the Larger Bench in Pratap Narain Singh Deo's case, the view expressed by the two-Judge Bench in Neelakandan's case is not correct."

13. The Hon'ble Supreme Court in the case of ***Siby George*** (*supra*), held as under:-

"11. The decisions in Pratap Narain Singh Deo was by a four Judge Bench and in Valsala by a three Judges 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 Mubsir Ahmed and Mohd. Nasir insofar as they took contrary view to the earlier decisions in Pratap Narain Singh Deo and Valsala do not express the correct view and do not make binding precedents."

14. In view of the law laid down by the Hon'ble Supreme Court in the above cases, the employer is liable to pay compensation as soon as the personal injury was caused to the workman i.e. the date of accident. The payment of compensation would neither fall due after Commissioner's order or with reference to the date on which claim application is made. Therefore, provisions of sub-section (3) of Section 4A of the W.C. Act, 1923 can be attracted where a default occurs in

paying the compensation within one month from the date it fell due. The date when such compensation fell due to be paid is the date on which accident took place. Hence, the interest on the amount of compensation would be payable only after expiry of one month from the date of accident, if the amount of compensation is not paid to the workman within one month from the date of accident.

15. Undisputed facts of the present case are that the appellant sustained injuries in a vehicular accident on 22.09.2003. The said personal injury was caused to the appellant-workman by accident arising out of and in course of employment. In the impugned order, the Commissioner awarded the amount of compensation at Rs.2,20,158/- and directed opposite party No.2-National Insurance Company Limited to pay the amount of compensation within a period of 30 days of receipt of the impugned order failing which the opposite party no.2 shall have to pay interest at the rate of 12% per annum with effect from the date of filing of the case till the date of depositing the amount before the Commissioner. The order of the Commissioner to pay interest on the amount of compensation with effect from the date of filing of the case till the date of deposit is not sustainable in law. Opposite party No.2-Insurance Company is liable to pay interest on the amount of compensation after expiry of one month from the date of accident.

16. Facts of the cases in *Harshadbhai Amrutbhai Modhiya (supra)*; *Narmada Bachao Andolan and connected cases (supra)*; and *Siddharam Satlingappa Mhetre (supra)* relied upon by Mr. Mishra are

different from the facts of the present case. Issues involved in those cases are not similar to the issues involved in the present case for which they are of no help to the respondents.

Mr.Mishra, further relying on the judgment of the Hon'ble Supreme Court in the case of *Rattiram (supra)* submitted that pronouncement of law by a Bench is binding on co-equal Bench. The judgment given in ignorance of judgment of earlier Bench of co-equal strength attracts concept of per incuriam. There is no quarrel over the legal proposition settled by the Hon'ble Supreme Court in the above case but that case is of no help to opposite party No.2 in view of the decision of the Hon'ble Supreme Court in the case of *Pratap Narain Singh Deo (supra)* which supports the case of the appellant. It is a decision rendered by a Four Judge Bench of the Hon'ble Supreme Court. In the case of *K.S.Subramanian (supra)*, the Hon'ble Supreme Court held that the proper course for a High Court is to direct, find out and follow the opinions expressed by the larger Bench of the Hon'ble Supreme Court in preference to those expressed by the smaller Benches of the Court. That is the practice followed by the Supreme Court itself. The practice has now crystallized into the rule of law declared by the Hon'ble Supreme Court in view of the judgments in *Pratap Narain Singh Deo's case (supra)* and *Vasala K. and another (supra)*.

17. In view of the above, the judgment of the Commissioner dated 28.04.2009 passed in W.C. Case No.293-D/2003 is set aside so far as payment of interest is concerned. Respondent No.2-Insurance

Company is directed to pay simple interest on the amount of compensation at the rate of 12% per annum after expiry of one month from the date of accident till the date of deposit of the amount of compensation within a period of eight weeks from today.

18. In the result, the appeal is allowed as indicated above.

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***B.N.Mahapatra, J***

*Orissa High Court, Cuttack*  
*Dated 15<sup>th</sup> May, 2013/ss*