

ORISSA HIGH COURT: CUTTACK

F.A.O. NO.439 OF 2006

From the order dated 11.09.2006 passed by learned Commissioner for Workmen's Compensation-cum-Assistant Labour Commissioner, Cuttack in W.C. Case No.232-D/2004.

Baisnab Mohanty & others Appellants

V e r s u s

Ramesh Kumar Mohanty & another Respondent

For Appellants : M/s. Dr. T. Ch. Mohanty , J. Mohanty,
S. Mohanty & P.K. Singh

For Respondent : M/s. B.N. Baisakh & S.K. Mohapatra
(for Respondent No.1)

M/s. S. Roy, R. Pati & M.K. Mallick
(for Respondent No.2)

P R E S E N T :

THE HONOURABLE MR. JUSTICE RAGHUBIR DASH

Date of hearing : 05.05.2014 Date of judgment : 15.05.2014

R. DASH, J. This is an appeal against the order dated 11.09.2006 passed by the learned Commissioner for Workmen's Compensation-cum-Assistant Labour Commissioner, Cuttack in W.C. Case No.232-D/2004 awarding compensation of Rs.2,65,644/- for the death of deceased Subash Chandra Mohanty in a vehicular accident taking place on 05.09.2004 on account of rash and negligent driving on the part of the driver of the offending vehicle bearing Registration No.OAC-6689 in which the deceased was employed as a helper, as

against the claim of Rs.4,45,420/-, along with interest @ 12% per annum. The owner of the vehicle (opposite party No.1 before the learned Commissioner) admitted the employment of the deceased as a helper in the offending truck as well as the accidental death of the workmen arising out of and in course of such employment. The Insurance Company (opposite party No.2 before the learned Commissioner) denied all the averments made in the claim petition and disclaimed their liability to pay any compensation.

2. The appellants are the claimants-applicants before the learned Commissioner. Respondent No.1 is the insured vehicle owner and Respondent No.2 is the insurer of the vehicle.

3. The appeal has been admitted on the following substantial question of law:

Whether the learned Commissioner has committed illegality by not awarding interest on the awarded amount as required under Section 4-A(3) of the Workmen's Compensation Act, 1923 (now amended as Employees Compensation Act, 1923)?

4. Admittedly, learned Commissioner has not awarded interest as contemplated under Section 4-A(3) of the Workmen's Compensation Act (for short, the Act). No reason has been cited as to why interest has not been awarded. Section-4-A(3) of the Act lays down that where any employer is in default in paying compensation due under the Act within one month from the date it fell due, the

Commissioner shall direct that the employer shall pay simple interest on the compensation to the extent it stands as arrear at the rate of 12% per annum or at such higher rate not exceeding the existing maximum of the lending rates of any scheduled bank as may be specified by the Central Government, by notification in the official gazettee. The statute makes it mandatory on the part of the employer to pay simple interest on the amount of arrears which should not be less than 12% per annum. Though Section 4-A makes the 'employer' liable to pay the interest it is observed by the Supreme Court in the decision reported in **AIR 1997 SC 3854 (Ved Prakash Garg -Vr.- Premi Devi and others)** that when an employee suffers from motor accident injury while on duty on the motor vehicle belonging to the insured employer, the claim for compensation payable under the Act along with interest thereon, if any, as imposed by the Commissioner under Section 3 and 4-A(3)(a) of the Act will have to be made good by the Insurance Company jointly with the insured employer. It is not the case of the Insurance Company that the terms of the insurance policy do not cover the liability of the employer to pay interest under Section 4-A(3) of the Act. In **2014 (1) T.A.C. 385 (S.C.) (Saberabibi Yakub Bhai Shaikh and Others -Vrs.- National Insurance Co. Ltd. and Others)**, it is observed that the claimants are entitled to interest @ 12% from the date of the accident. Thus, it is found that making no award of interest vide the impugned order being contrary to

provisions contained in Section 4(A)(3) of the Act is illegal. The claimants-appellants are entitled to interest @ 12% on the awarded amount from the date of the accident.

5. In course of argument it is argued by the learned counsel for the appellants that the learned Commissioner's total non-consideration of the unchallenged testimony on the income of the deceased gives rise to another substantial question of law.

6. On perusal of the impugned order it is found that while dealing with issue Nos.3 and 4, the learned Commissioner has dealt with the oral evidence on record and ultimately taking the then market condition into consideration determined the monthly wages of the deceased helper at Rs.2,400/-. Learned counsel for the appellants citing the judgment in the case of **Laxmi Devi and Others -Vrs.- Mohammad Tabbar and Another, reported in 2008 (2) T.A.C. 394 (S.C.)** has argued that the monthly income of the deceased in that case, who died in April 2004, is taken as Rs.3,000/- and therefore the amount of compensation in respect of the deceased workman of the case in hand should have been worked out taking his wages at Rs.3,000/- per month. On perusal of the said reported decision it cannot be said that the monthly notional income taken in that case in respect of the deceased should be universally applicable to all cases in which the death in a vehicular accident has occurred in or around 2004. So far, the State of Odisha is concerned, it is

submitted, the minimum wages of unskilled worker was Rs.50/- per day in the year 2001 and Rs.70/- in the year 2007, whereas learned Commissioner has calculated the monthly income of the deceased @ Rs.80/- as wages per day. This submission is quite forceful. In my considered view the wages taken by the learned Commissioner need not be interfered with. That apart, the evidence on record in this regard having duly been considered by the learned Commissioner the question raised by the learned counsel for the appellants cannot be said to be a substantial question of law.

7. In the result, the appeal is allowed in part. The impugned order stands modified to the extent that in addition to the compensation of Rs.2,65, 644/- the claimants-applicants shall be entitled to get interest @ 12% per annum on the said awarded amount from the date of the accident and the same be deposited by the Insurance Company with the Commissioner within thirty days from the date of this judgment. Rest of the impugned order stands confirmed.

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R. Dash, J.