

THE HIGH COURT OF TRIPURA
AGARTALA

MFA(W/C) NO. 01/2012

Smti. Minu Chakraborty, W/o. Late Pradip Chakraborty, resident of Churaibari, Dharmanagar, P.S. Churaibari, District-North Tripura.

... Appellant.

-Versus-

1. Sri Abhijit Debnath, S/o. Sri Chitta Ranjan Debnath, resident of Jagatpur, Opposite Gali of "Sabhya Sangha Club", P.O- Abhoynagar, P.S- East Agartala, District-West Tripura. (Owner of the vehicle No. TR-01-D-1769, Truck).
2. The Branch Manager, The New India Assurance Company Ltd., Mantri Bari Road, Agartala, P.S- West Agartala, District-West Tripura. (Insurer of the vehicle No. TR-01-D-1769, Truck).

... Respondents.

BEFORE
THE HON'BLE THE CHIEF JUSTICE MR. T. VAIPHEI

Counsel for the appellant --- Mr. D. Saha, Advocate.

Counsel for the respondents --- Mr. P. Chakraborty, Advocate.

Date of hearing --- **12-09-2016**

Date of Judgment & Order --- **14-10-2016**

JUDGMENT & ORDER

Dissatisfied with the judgment dated 26-11-2011 passed by the learned Commissioner, Workmen's Compensation, West Tripura, Agartala in T.S. (W.C.) No. 16 of 2009, the appellant is preferring this appeal for modifying the award therein amounting to ₹3,94,120/- with interest @ 9% per annum from the date of the accident, i.e. 18-8-2005.

2. The appellant is the wife of the late Pradip Chakraborty, who was employed by the respondent No. 1, the owner of the truck bearing registration No. TR-01-D-1769, as his driver. On 17-8-2005, the said vehicle driven by the deceased was proceeding towards Nagaon side from Gauhati when a team of Enforcement officials, Kamrup seized the vehicle

on the ground of non-availability of some documents. They insisted the attendance of the respondent No. 1. The deceased, therefore, kept the vehicle at Khetri Police Out-Post under the supervision of a handyman and proceeded back to Beltola, Guwahati to meet the agent of the respondent no. 1 but could not meet him. He, however, died of heart attack on 17-8-2005, according to the respondent, brought on by depression due to the seizure of the vehicle driven by him. Contending that the deceased died of heart attack due to tension and shock in the course of and during the period of his employment under the respondent No. 1, the appellant filed the claim petition before the Commissioner/Workmen's Compensation demanding payment of compensation.

3. The respondent No. 1, on summons, put in his appearance before the Commissioner by filing his written statement by admitting the case of the appellant. The New India Assurance Company Ltd. (respondent 2) contested the claim petition and denied the allegations of the appellant in his written statement and sought for dismissal of the claim petition against it. The learned Commissioner, after hearing the parties, passed the impugned award partly allowing the claim petition, and awarded a sum of ₹3,94,120/- together with interest @ 6% per annum with effect from 18-8-2005, failing which the awarded amount would carry interest at the rate of 9% per annum from the date of the accident.

4. Aggrieved by this, this appeal is now preferred by the appellant. After hearing Mr. D. Saha, the learned counsel for the appellant, and Mr. P. Chakraborty, the learned counsel for the respondent No. 2, at some length, the only question which deserves to be considered is whether the interest @ 6% per annum awarded by the learned Commissioner falls foul of Section 4-A of the Workmen's Compensation Act, 1923 (as it then was known)? According to the learned counsel for the appellant, the interest should be awarded at the rate of 12% per annum from the date of accident

as stipulated by Section 4-A(3)(a) of the Act and not @ 6% per annum as awarded by the learned Commissioner. The learned counsel maintains that the benefit extended under Section 4-A(3)(a) of the Act is mandatory and must be complied with. He, therefore, strenuously urges this Court to allow the appeal and modify the impugned award accordingly. Mr. P. Chakraborty, the learned counsel for the insurer, however, supports the impugned award, submits that there is no infringement of the provisions of the Act and, as such, no interference is called for by this Court in the impugned award.

5. To appreciate the controversy, I may reproduce hereunder the provisions of Section 4-A of the Act:

“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

(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 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).

(3-A) The interest and the penalty payable under sub-section (3) shall be paid to the workman or his dependant, as the case may be.”

6. The provision of Section 5-A(3)(a) of the Act came up for interpretation before a four-Judge Bench of the Apex Court in ***Pratap Narain Singh Deo v. Srinivas Sabata, (1976) 1 SCC 289***, which has by now become the leading authority on this provision. In that case, the respondent carpenter, a workman in the employment of the appellant fell down during the course of employment on July 6, 1968 and suffered injuries resulting in amputation of his left arm from the elbow causing total disablement. In response to the notice of the workman, the appellant stated that he was a casual contractor and the injury was caused by his own negligence. Personal approach by the workman also did not help. No provisional payment was also made. The matter reached the Commissioner who levied penalty to the extent of 50% and interest at 6% per annum. He ordered payment of ₹15,092/-. The appellant filed a writ petition, but failed. Allowing the special leave filed by the appellant, the Apex Court held:

“6. It has next been argued that the Commissioner committed a serious error of law in imposing a penalty on the appellant under Section 4½?A(3) of the Act as the compensation had not fallen due until it was “settled” by the Commissioner under Section 19 by his impugned order dated May 6, 1969. There is however no force in this argument.

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 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.”

7. The decision in ***Pratap Narain Singh Deo*** (*supra*) was followed recently by the Apex Court in ***Saberabibi Yakubbbhai Shaik v. National Insurance Co. Ltd., (2014) 2 SCC 298***. In the light of the interpretation of this provision by the Apex Court in the afore-cited decisions, there is no longer any room for controversy on the liability of the respondent No. 1 to pay interest at the rate of 12% per annum from the date of the accident, which resulted in the death of the deceased.

8. For the reasons stated in the foregoing, this appeal partly succeeds. The respondent-insurer is directed to pay interest calculated at the rate of 12% per annum on the awarded amount of ₹3,94,120/- with effect from the date of the accident, i.e. 18-8-2005 to the appellant and deposit the same to this Registry within 45 days from the date of receipt of this judgment for payment to the appellant. Needless to say, any payment already made or deposited by the insurer shall be adjusted accordingly. As and when the amount payable in terms of this judgment is deposited, the same shall be paid to the appellant without further reference to this Court. The impugned award dated 26-11-2011 stands modified to the extent indicated above. No costs.

CHIEF JUSTICE