THE ORIENTAL INSURANCE CO. LTD. A

v.

SIBY GEORGE & ORS.

(Civil Appeal No.5669 of 2012)

JULY 31, 2012 B

[AFTAB ALAM AND RANJANA PRAKASH DESAI, JJ.]

WORKMAN'S COMPENSATION ACT, 1923:

ss. 3 and 4-A – Liability to pay compensation and interest on delayed payment – Relevant date – Held: Is the date of accident and not the date of adjudication of the claim nor the date of filing of the claim petition – Compensation becomes payable as soon as the injury is caused. C

The instant appeal was filed by the Insurance Company challenging the order of the Commissioner directing it to pay simple interest @ 12% per annum from the date of accident. Relying upon the decision in *Mubasir Ahmad*[1] and *Mohd. Nasir*[2], it was contended for the appellant that the Commissioner erred in directing for payment of interest from the date of the accident and not from the date of the order. D E

Dismissing the appeal, the Court

HELD: 1.1. As has been held by this Court in *Pratap Narain Singh Deo's case and *Valsala's*** case 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. Compensation becomes payable as soon as** F G

1. *National Insurance Co. Ltd. vs. Mubasir Ahmed and Anr.* 2007 (2) SCR 117.

2. *Oriental Insurance Company Limited vs. Mohd. Nasir and Anr.* 2009 (8) SCR 829.

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A **the injury is caused. It cannot be said 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** *Mubasir Ahmed* **and** *Mohd. Nasir* **insofar as they took a** B **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. [para 8, 9 and 12] [1088-A-B; 1088-E-F]**

Pratap Narain Singh Deo. Vs. Shrinivas Sabata and* C *Anr.*, **1976 (2) SCR 872 = AIR 1976 SC 222; ***Kerala State Electricity Board vs. Valsala K.*, **1999 (2) Suppl. SCR 657 = AIR 1999 SC 3502 – relied on**

United India Insurance Co. Ltd. vs. Alavi, **1998(1) KerLT** D **951(FB) – stood approved**

National Insurance Co. Ltd. vs. Mubasir Ahmed and Anr. **2007 (2) SCR 117 = (2007) 2 SCC 349** *Oriental Insurance Company Limited vs. Mohd. Nasir and Anr.* **2009 (8) SCR 829 = (2009) 6 SCC 280 – stood disapproved.**

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1.2. Sub-s. (3) of s. 4-A of the Workman's Compensation Act, 1923 is in two parts, separately dealing with interest and penalty in clauses (a) and (b) respectively. Clause (a) makes the levy of interest, with F **no option, in case of default in payment of compensation, without going into the question regarding the reasons for the default. Clause (b) provides for imposition of penalty in case, in the opinion of the Commissioner, there was no justification for the delay. On a plain reading of the provisions of sub-s. (3) it becomes clear that payment of** G **interest is a consequence of default in payment without going into the reasons for the delay and it is only in case where the delay is without justification, the employer might also be held liable to penalty after giving him a show cause. Therefore, a finding to the effect that the** H **delay in payment of the amount due was unjustified is**

required to be recorded only in case of imposition of penalty and no such finding is required in case of interest which is to be levied on default *per se*. [Para 7] [1085-A-E]

Case Law Reference:

2007 (2) SCR 117	**stood disapproved**	**para 4**
2009 (8) SCR 829	**stood disapproved**	**para 5**
1976 (2) SCR 872	**relied on**	**Para 8**
1999 (2) Suppl. SCR 657	**relied on**	**para 9**
1998 (1) Ker LT 951 (FB)	**approved**	**para 10**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5669 of 2012.

From the Judgment & Order dated 22.7.2009 of the High Court of Kerala at Ernakulam in MFA No. 172 of 2009.

Vishnu Mehra, Sakshi Gupta (for Pramod Dayal) for the Appellant.

Renjith B. Marar (for Sajith P.) for the Respondents.

The Judgment of the Court was delivered by

AFTAB ALAM, J. 1. Leave granted.

2. The short question that arises for consideration in this appeal is when does the payment of compensation under the Workmen's Compensation Act, 1923 (hereinafter the Act) become due and consequently what is the point in time from which interest would be payable on the amount of compensation as provided under section 4-A (3) of the Act.

3. In this case, the Commissioner for Workmen's Compensation, Ernakulam, by his order dated November 26, 2008 in WCC No.67 of 2006 directed for payment of simple

A interest at the rate of 12% per annum **from the** *date of the accident* on July 12, 2006. The appellant's appeal (MFA No.172 of 2009) against the order of the Commissioner was dismissed by the Kerala High Court by order dated July 22, 2009 as barred by limitation. Against the order of the High B Court the appellant filed the special leave petition (giving rise to this appeal) in which notice was issued "limited to the interest".

4. Mr. Mehra, learned counsel appearing for the appellant, submitted that the learned Commissioner was wrong in C directing for payment of interest from the date of the accident and any interest on the amount of compensation would be payable only from the date of the order of the Commissioner. In support of the submission, he relied upon a decision of this Court in *National Insurance Co. Ltd.* vs. *Mubasir Ahmed and* D *Anr.* (2007) 2 SCC 349, in which it was held that the compensation becomes due on the basis of the adjudication of the claim and hence, no interest can be levied prior to the date of the passing of the order determining the amount of compensation. In paragraph 9 of the decision the Court held E and observed as follows:-

"9.....In the instant case, the accident took place after the amendment and, therefore, the rate of 12% as fixed by the High Court cannot be faulted. But the period as fixed by it F 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 to 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 G 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 H 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."

(empasis added)

5. Learned counsel also invited our attention to another decision of the Court by which a number of appeals and special leave petitions were disposed of and which is reported as *Oriental Insurance Company Limited* vs. *Mohd. Nasir and Anr.* (2009) 6 SCC 280. In this decision the Court held that "*there cannot be any doubt whatsoever that interest would be from the date of default and not from the date of award of compensation*" (paragraph 47). It then went on to say that the 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 on it, adding that the higher, statutory rate of interest under sub-section (3) of section 4 would be payable in a case that attracted that provision and for which "a finding of fact as envisaged therein has to be arrived at". The Court then referred to paragraph 9 of the decision in *Mubasir Ahmad* (extracted above) but declined to follow it observing that the earlier decision had not considered the aspect of the matter as was being viewed in the case of *Mohd. Nasir.* In *Mohd. Nasir* the Court finally directed for payment of interest at the rate of 7½% per annum from the date of filing the application till the date of the award, further observing that thereafter interest would be payable at the rate as directed in the order passed by the Commissioner. (See paragraphs 47 to 50 of the judgment).

6. The view taken by the Court in *Mohd. Nasir* that the rate of interest provided under sub-section (3) of section 4-A would

A apply only in case the "finding of fact as envisaged therein" is arrived at by the Commissioner, it must respectfully be stated, seems to result from the mixing up of 'interest due to default in payment of compensation' and 'penalty for an unjustified delay in payment of compensation' and is based on a misreading of
B the sub-section (3) of section 4-A.

Sections 4-A (1) and (3) are as under:-

4-A. Compensation to be paid, when due and penalty for default. – (1) compensation under section 4 shall be paid
C as soon as it falls due.

(2) xxx xxx xxx

(3) Where any employer is in default in paying the compensation due under this Act within one month from
D 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
E 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

F (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:

G 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.

H Explanation. - xxx xxx xxx

(3A) xxx xxx xxx

7. It is, thus, to be seen that sub-section (3) of section 4-A is in two parts, separately dealing with interest and penalty in clauses (a) and (b) respectively. Clause (a) makes the levy of interest, with no option, in case of default in payment of compensation, without going into the question regarding the reasons for the default. Clause (b) provides for imposition of penalty in case, in the opinion of the Commissioner, there was no justification for the delay. Before imposing penalty, however, the Commissioner is required to give the employer a reasonable opportunity to show cause. On a plain reading of the provisions of sub-section (3) it becomes clear that payment of interest is a consequence of default in payment without going into the reasons for the delay and it is only in case where the delay is without justification, the employer might also be held liable to penalty after giving him a show cause. Therefore, a finding to the effect that the delay in payment of the amount due was unjustified is required to be recorded only in case of imposition of penalty and no such finding is required in case of interest which is to be levied on default *per se*.

8. Now, coming back to the question when does the payment of compensation fall due and what would be the point for the commencement of interest, it may be noted that neither the decision in *Mubasir Ahmed* nor the one in *Mohd. Nasir* can be said to provide any valid guidelines because both the decisions were rendered in ignorance of earlier larger Bench decisions of this Court by which the issue was concluded. As early as in 1975 a four Judge Bench of this Court in *Pratap Narain Singh Deo.* Vs. *Shrinivas Sabata and Anr.*, AIR 1976 SC 222 directly answered the question. In paragraphs 7 and 8 of the decision it was held and observed as follows:-

"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

A 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*
B *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*
C *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 Commissioner. *There*
D *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*
E *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.
F 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
G 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
H 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." A B

9. The matter once again came up before the Court when by amendments introduced in the Act by Act No. 30 of 1995 the amount of compensation and the rate of interest were increased with effect from 15.9.1995. The question arose whether the increased amount of compensation and the rate of interest would apply also to cases in which the accident took place before 15.9.1995. A three Judge Bench of the Court in *Kerala State Electricity Board* vs. *Valsala K.*, AIR 1999 SC 3502 answered the question in the negative holding, on the authority of *Pratap Narain Singh Deo,* that the payment of compensation fell due on the date of the accident. In paragraphs 1, 2, and 3 of the decision the Court observed as follows: C D

> "1.The neat question involved in these special leave petitions is whether the amendment of Ss.4 and 4A of the Workmen's Compensation Act, 1923, made by Act No.30 of 1995 with effect from 15-9-1995, enhancing the amount of compensation and rate of interest, would be attracted to cases where the claims in respect of death or permanent disablement resulting from an accident caused during the course of employment, took place prior to 15-9-1995? E F
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> 2. Various High Courts in the country, while dealing with the claim for compensation under the Workmen's Compensation Act have uniformly taken the view that the relevant date for determining the rights and liabilities of the parties is the date of the accident. G
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> 3. A four Judge Bench of this Court in *Pratap Narain Singh Deo v. Srinivas Sabata,* (1976) 1 SCC 289: (AIR 1976 H

A SC 222: 1976 Lab IC 222) speaking through Singhal, 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 B determination of the rate of compensation is the date of the accident and not the date of adjudication of the claim.

10. The Court then referred to a Full Bench decision of the Kerala High Court in *United India Insurance Co. Ltd.* vs. *Alavi*, 1998(1) KerLT 951(FB) and approved it in so far as it followed C the decision in *Pratap Narain Singh Deo*.

11. The decisions in *Pratap Narain Singh Deo* was by a four Judge Bench and in Valsala by a three Judge Bench of this Court. Both the decisions were, thus, fully binding on the D 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.*

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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 *Mubasir Ahmed* and *Mohd. Nasir* F insofar as they took a 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.

13. In light of the discussion made above, we find no merit G in the appeal and it is dismissed with costs amounting to Rs.20,000/-. The amount of cost must be paid to the respondents within six weeks from today.

R.P. Appeal dismissed.

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