



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF FEBRUARY, 2024

BEFORE

THE HON'BLE MR JUSTICE C.M. POONACHA

MISCELLANEOUS FIRST APPEAL NO. 3856 OF 2016 (WC)

BETWEEN:

1. TATA AIG GENERAL INSURANCE CO LTD,
JT & DEVI JMABHUKESHARI ARCADE,
NO.69, MILLER S ROAD,
BANGALORE-560052.

...APPELLANT

(BY SRI. O MAHESH.,ADVOCATE)

AND:

1. PRAMODA CHANDRA SARKAR,
AGED ABOUT 56 YEAR,
S/O LATE MUNINDRANA CHANDRA SARKAR.
2. ALOMATI SARKAR,
AGE 50 YRS, W/O PROMODH SARKAR,
3. PURNIMA SARKAR,
AGE 26 YRS,
D/O PROMODH CHANDRA SARKAR,
4. BISWAJIT SARKAR
AGE 18 YRS,
S/O PROMODH CHANDRA SARKAR.

ALL ARE RESIDING AT BAUSHMART VILLAGE,
JL.NO.226, BAMANHAAT POST, DINHATA PS.
COOCHBEHAR DISTRICT,
WEST BENGAL-736168.

5. B.L. KASHYAP & SONS LTD.,
(PROJECT SITE-MANTRI ESPNA)
4TH FLOOR, WEST WING,





SOUL SPACE PARADIGM,
NEAR INNOVATIVE MULTIPLEX,
OUTER RING ROAD, MARATHAHALLI,
BANGALORE-56037.

...RESPONDENTS

(BY SRI. ADINARAYAN.,ADVOCATE FOR R1 TO R4;

SRI. A. MADHUSUDHAN RAO., ADVOCATE FOR R5.)

THIS MFA IS FILED U/S 30(1) OF EMPLOYEE'S COMPENSATION ACT AGAINST THE JUDGMENT AND AWARD DATED 03.03.2016 PASSED IN ECA NO.70/2014 ON THE FILE OF THE XXI ADDITIONAL SMALL CAUSE JUDGE, & XIX ACMM, MEMBER, MACT, BANGALORE, AWARDED COMPENSATION OF RS.8,90,480/- WITH INTEREST @ 12% P.A. FROM THE DATE OF INCIDENT TILL REALIZATION AND ETC.,.

THIS APPEAL, COMING ON FOR FURTHER SUBMISSION, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

The above appeal is filed by the insurer challenging the judgment dated 03.03.2016 passed in ECA.No.70/2014 in the file of XXI Additional Small Causes Judge and The Motor Accident Claims Tribunal (SCCH-23), Bengaluru¹.

2. For the sake of convenience, the parties herein are referred as per their rank before the Tribunal.

3. It is the case of the petitioners that on 24.05.2012 one Paresh Sarkar ² was working as a unskilled worker at the project site Manthri Espana, under the Respondent No.1 when

¹ Hereinafter referred as 'Tribunal'

² Hereinafter referred as 'Deceased'



in the course of his employment, he slipped and fell down, as a result of which he sustained grievous injuries and succumbed to the same. Claiming compensation for the death of the deceased, the Petitioners filed a petition under Section 10 of the Employers Compensation Act³ arraying the employer as Respondent No.1 and the insurer as Respondent No.2.

4. The petitioners were the parents, brother and sister of the deceased. The employer and the insurer entered appearance before the Tribunal and filed their statement of objections. The petitioner No.1 was examined as PW.1. Ex.P.1 to Ex.P.9 were marked in evidence. The representative of the employer was examined as RW.1. The representative of insurer was examined as RW.2. and the investigator of the insurer was examined as RW.3. Ex.R.1 to Ex.R.7 were marked in evidence. The Tribunal by its judgment dated 03.03.2016 allowed the claim petition and awarded compensation of a sum of ₹8,90,480/- together with interest at 12% per annum and directed Respondent No.2 - insurer to pay the compensation awarded. Being aggrieved the present appeal is filed by the insurer.

³ Hereinafter referred as 'Act'



5. Learned counsel for the insurer vehemently contended that Respondent No.1 - owner did not follow the safety measures. Hence, the insurer ought not to be fastened with the liability to pay the compensation awarded. Further it was contended that the petitioners have categorically averred in the claim petition that the deceased was paid to be ₹175/- per day and the employer having stated that the deceased was being paid the said amount, the liability of the insurer ought to be restricted to pay compensation commensurate with the wages that was been paid to the deceased. Learned counsel for the insurer further submits that the Tribunal has awarded compensation at 12% per annum from the date of petition and that the interest is required to be awarded at 12% after thirty days of the date of the award. Hence, he seeks for allowing of the above appeal and setting aside the judgment passed by the Tribunal.

6. *Per contra*, learned counsel for the claimant submits that the finding of the Tribunal both on liability and quantum is just and proper and seeks for dismissal of the appeal filed by the insurer.



7. The submissions of both the learned counsels have been considered and the material on record including the records of the Tribunal have been perused. The questions that arise for consideration are:

"i) Whether the insurer has proved that no safety measures were adopted by the employer so as to exonerate the insurer from payment of the compensation?

ii) Whether the Tribunal was justified in assessing the income of the deceased at ₹8,000/- per month?

iii) Whether the interest at 12% is liable to be paid from the date of the petition?"

Req. Question No.(i):-

8. To the claim made by the petitioners, the Respondent No.1 - employer as well as Respondent No.2- insurer have filed their separate statement of objections. The insurer in its statement of objection has stated that the liability of the insurer is as per the terms and conditions of the policy of insurance. That the insured was required to take all reasonable precaution and comply with all the statutory obligations. That the employer - insured having violated terms and conditions of the policy, the insurer is not liable to pay the compensation.



9. The representative of the employer examined himself as RW.1. In the cross-examination of RW.1 he has denied the suggestion that the safety measures have not been taken.

10. RW.2 who is representative of the insurer has deposed in his testimony that the employer has not taken safety measures to avoid the accident and the same is forthcoming from the FIR. In the cross-examination, RW.2 has stated that he has not visited the spot of the accident and he has stated regarding safety measures only based on the police records and survey records. He further submits that he has not produced any photographs.

11. The investigator has been examined as RW.3 and he has stated in his testimony that as per the information gathered from the co-workers and police documents, he has stated that Respondent No.1 has not taken any safety measures like providing nets, safety hooks and helmet to the workers. In the cross-examination of RW.3 has stated that he has visited the project site about three times. However, he has admitted that he has not recorded the statement of co-workers who were working with the deceased and there was no



impediment to record the statement of the co-workers. He further admits that he cannot name the co-workers who he has enquired about the accident. He further states that he had taken photographs of the project site during his visits. That he has recorded the statement of the official of the employer during his visit to the project site. But he admits that he has not produced those statements before the Court.

12. Ex.R.2 is the investigation report wherein it is stated that enquiry were made with the workers at the time of the visit. However, no statements have been produced. Further it is mentioned in the survey report that there were inadequate safety measures at the site. It is further noticed in the report that the deceased was not under the influence of the alcohol. It is also observed that safety measures like providing nets to prevent direct fall to the ground, safety hooks and helmets to the workers were not taken and it was the grievance of the co-workers also. That if safety measures have been provided, the fall could have been prevented and the workers would have escaped with injuries. In the opinion and finding it is stated that the claim of death for the deceased is well substantiated.



13. The policy of insurance is produced as Ex.R.1, wherein condition No.3 states that insured shall take reasonable precautions to prevent accidents and disease and shall comply with all the statutory obligations.

14. It is forthcoming from the aforementioned that the insurer has taken a specific defence that the safety measures were not adopted. The condition in the policy of insurance requires the insured to comply with all the statutory obligations. The insurer has not stated as to what are the statutory stipulations that the insured was required to comply. Further the investigator of the insurer, although having admitted to have taken photographs of the place of the accident, has not produced the same. Further, although the investigator has stated that he has spoken to the co-workers, he has not produced any statements of the co-workers which were recorded by him. The investigator has also not produced any notes made by him during the visit to the project site of the employer.

15. The insurer having taken a specific defence regarding non-adherence of safety measures by the insured, has miserably failed in proving that the safety measures as



required under the relevant statutory provisions have not been taken by the insured. In view of the same, the question No.(i) framed for consideration is answered in the **negative**.

Req. Question No.(ii):-

16. It is the vehement contention of the learned counsel for the insurer that the claimants themselves having averred that the wages of the deceased was ₹175/- per day and the employer also have been stated that he was paying sum of ₹175/- per day, the same ought to be have been calculated for a period of 26 days in a month and accordingly, the income of the deceased ought to have been as $(175 \times 26) = ₹4,550/-$ by the Commissioner. Alternatively, the salary details for the month of March, April and May having been produced as Ex.P.9 which discloses the deceased had received a sum of ₹3,850/-, ₹3,675/- and ₹3,500/- respectively, the same ought to have been considered.

17. The Tribunal has noticed that the deceased was being paid sum of ₹175/- per day. However, the Tribunal has further noticed that the Central Gazette notification dated 31.05.2010 issued under Section 4 of the Act stipulates the



monthly wages as ₹8,000/- has adopted the same for the purpose of calculation of the compensation.

18. Learned counsel for the claimant justifies the finding of the Tribunal of taking monthly wages as ₹8,000/- per month by relying on the judgment of the case of **UNITED INDIA INSURANCE CO.LTD., V/S SRI NAGENDRA AND ANOTHER⁴**, wherein, a Co-ordinate Bench of this Court has held as follows:

"19. In view of the sub-section (1B) of Section 4 of the Act the Central Government has time and again by Official Gazette notification increased the monthly wages and as per the Gazette notification dated 31.05.2010 vide S.O. 1258(E) the monthly wages has been increased to Rs.8,000/-. When this being the clear intent of the Legislature to increase the monthly wages time and again based on the increase in the cost of living and expenditure, it is to be seen as to what is the purpose of this Legislation by the Legislature. It cannot be lost sight of that the Act is a beneficial Legislation and the statement of objects and reasons clearly suggest that the amendment is brought into force with a clear intention by the Legislature to enhance the minimum rate of compensation from time to time so also the monthly wages and thereby fixing the specific monthly wages by way of amendment from time to time due to increase in the cost of living and increase in standard of living and price rise. As stated above, pursuant to the notification dated 31.05.2010 the Central Government once again enhanced the monthly wages from Rs.8,000/- to Rs.15,000/-. This itself is very clear and apparent at the intent of Legislature to bring about the amendment time and again based on the increase of standard of living and increase of the price of commodities and growth of society

⁴ ILR 2022 KAR 3802



leading to increase in the expenditure to be incurred by common man.

20. It cannot be dispute that the Act itself is a beneficial Law. Hence, there has to be a liberal interpretation and construction of the same with an intent to bring into effect the specific Legislative intent in bringing about such amendments time and again. There is no ambiguity in Section 4 (1) of the Act as well as Section 4(1B) of the Act. So also, with regard to the amendment made in the Gazette notification dated 31.05.2010. When this being the situation the Courts will have to strictly go by the provisions of Law and keep in mind the Legislative intent behind enacting such a Law.

21. It is trite law that whenever beneficial Legislation is made it is with an intention to see that the aggrieved party is benefited by such Legislation, more so in the specific case of death or injury having been caused or occurred in the course and during the employment. This is also some what similar to the beneficial Legislation in the motor accident cases.

22. In view of the above discussions and keeping in mind the intent of the Legislature, I am of the opinion that the amount of monthly wages increased form time to time by way of amendment through Gazette notification by the Central Government, clearly prescribes the said amount to be a minimum wages amount. In a case where there is proof of wages / salary produced it is incumbent upon the Court to take the minimum wages for consideration for computing compensation despite the pleading by the petitioner of an amount being lesser than the minimum wages prescribed by the Act.

23. In the present case on hand, though the petitioner has pleaded and lead evidence to the effect that he was earning Rs.6,000/- per month, I deem it appropriate that in the facts and circumstances of the present case an amount of Rs.8,000/- per month requires to be taken as income for computation of compensation. Accordingly, Rs.8,000/- is taken as monthly income of the petitioner as against Rs.6,000/- adopted by the trial Court."

(emphasis supplied)



19. The learned counsel for the insurer attempting to distinguish the said judgment contends that in the said case the compensation was awarded in respect of a driver of the insured vehicle in respect of which the policy of insurance was issued. Hence, in the said case, the policy insurance was a motor policy whereas in the present case the policy has been specifically issued under the provisions of the Act. Hence, the liability of the insurer under the present policy being contractual one, the actual wages of the deceased was required to be taken into consideration.

20. It is relevant to note that in the judgment of this Court in the case of **UNITED INDIA INSURANCE CO.LTD⁴** this Court has noticed a similar contention wherein the claimant has averred that he was earning ₹6,000/- per month i.e., ₹4800 as wages and ₹1200/- towards bata. Hence, the specific plea of the insurer that the income ought to be taken at the amount averred by the claimant. However, this Court noticing Section 4 of the Act and upon a detail discussion of the relevant aspect of the matter has recorded a finding that the legislation being a beneficial one, interpretation commensurate with the object of the Act ought to be resorted to. Hence, has held that the



assessment of income ought to be as per the notification issued by the Central Government.

21. In the present case although its contention of the insurer that its liability is limited to the actual wages paid and the premium that is received by the insurer in respect of the deceased being limited to the actual wages paid as represented by the employer, it is relevant to note that such a calculation stipulating the exact wages that the insured claims to have paid as set forth in the proposal form furnished while issuing the policy of insurance has not been averred by the insurer. It further failed in demonstrating that the policy has been issued restricting or limiting the coverage to the extent of the representation made by the insurer regarding the wages paid and the premium has been received, having regard to the same. Hence, it cannot be held that liability of the insurer is limited to the actual amount of wages paid to the deceased.

22. This Court having taken a considered view notwithstanding the plea made by the claimants with regard to the actual wages paid, having regard to the notification issued under the provisions of the Act and having regard to the legislation being a beneficial one, the contention of the insurer



to limit its liability to the actual wages paid and direct the balance liability if any, to be fastened on the owner, cannot be accepted. Hence, the findings of the Tribunal relying upon notification dated 31.05.2010 for the purpose of assessment of income of ₹8,000/- is just and proper. Accordingly, question No.(ii) framed for consideration is answered in the **affirmative**.

Reg. Question No.(iii):-

23. It is the contention of the insurer that the liability to pay interest would arise only within one month of adjudication of the claim by the Tribunal and the order of the Tribunal awarding interest from the date of petition is erroneous. The said contention is required to be accepted having regard to the judgment of the Hon'ble Supreme Court in the case of ***National Insurance Company Ltd., V/s. Mubasir Ahmed and others***⁵. Hence, question No.(iii) framed for consideration is answered in the **Negative**.

24. In view of the aforementioned, following order is passed:

⁵ 2007 ACJ 845



ORDER

- i) The appeal is allowed in part;
- ii) The judgment and award dated 03.03.2016 passed in the Court of XXI Additional Small Causes Judge and The Motor Accident Claims Tribunal (SCCH-23), Bengaluru, is modified to the extent stated herein. In all other respects, the judgment and award of the Tribunal remains unaltered;
- iii) The compensation awarded by the Tribunal shall be paid by the insurer who is the Appellant in the above appeal and Respondent No.2 before the Tribunal with interest at 12% per annum after 30 days from the date of award of the Tribunal till payment;
- iv) The amount deposited together with accrued interest be disbursed in terms of the award of the Tribunal. The balance amount, if any, to be paid within eight weeks from the date of receipt of a copy of this order;
- vi) The Registry to draw the modified award accordingly;
- vii) No costs.

**Sd/-
JUDGE**

**CMPJ:**

01.03.2024

MFA NO.3856/2016ORDER ON FOR BEING SPOKEN TO

This Court vide judgment dated 23.2.2024 has while considering the contention of the insurer that interest is required to be paid 30 days after the date of the judgment and award of the Tribunal has relied on the judgment of the Hon'ble Supreme Court in the case of **Mubasir Ahmed⁵** and partly allowed the appeal of the insurer. However, subsequently it is noticed that the said judgment of the Hon'ble Supreme Court in **Mubasir Ahmed⁵** has been held as not expressing correct view and not making binding precedence. With regard to the contention of the insurer regarding the dates from which interest is to be paid, it is relevant to notice the following judgments:

i) In the case of **Pratap Narain Singh Deo Vs. Srinivas Sabata⁶**, a four Judge Bench of the Hon'ble Supreme Court held that the interest is liable to be paid from the date of the accident.

⁶ 1976 ACJ 141



ii) In the case of ***Kerala State Electricity Board Vs. Valsala K.***⁷, a three Bench of the Hon'ble Supreme Court has followed the judgment in the case of ***Prathap Narain Singh Deo***¹.

iii) In the case of ***Mubasir Ahmed***⁵, a two Judge Bench of the Hon'ble Supreme Court held that interest is liable to be paid one month after the date of judgment of the Commissioner.

iv) In the case of ***Oriental Co. Ltd., Vs. Mohd. Nasir***⁸, a two Judge Bench of the Hon'ble Supreme Court has followed the view taken in the case of ***Mubasir Ahmed***⁵.

v) In the case of Oriental ***Insurance company Ltd., V/s. Siby George and Others***⁹, a two Judge Bench of the Hon'ble Supreme Court, noticing that the judgment in the case of ***Mubasir Ahmed***⁵ and ***Moh. Nasir***⁸ it is rendered without noticing the larger Bench in the case of ***Pratap Narain Singh Deo***⁶ and ***Valsala K***⁷ held that the cases of ***Mubasir Ahmed***⁵ and ***Moh. Nasir***⁸ insofar as they took a contrary view to the

⁷ 2000 ACJ 5 (SC)

⁸ 2009 ACJ 2742 (SC)

⁹ 2012 ACJ 2126



earlier decision in ***Pratap Narain Singh Deo***⁶ and ***Valsala K***⁷ do not express the correct view and do not make binding precedents.

vi) A two Judge Bench of the Hon'ble Supreme Court in the case of ***Saberbibi Yakubhai Shaikh and Others Vs. National Insurance Co. Ltd., and Others***¹⁰ noticing the aforementioned judgments has followed the view taken in ***Pratap Narain Singh Deo***⁵, ***Valsala K***⁷, ***Siby George and Others***⁹ and held that interest is liable to be paid from the date of the accident.

vii) The Hon'ble Supreme Court in the case of ***P. Meenaraj Vs. P.Adigurusamy and another***¹¹ and in the case of ***Ajay Kumar Das and another Vs. Divisional Manager, National Insurance Co. Ltd., and another***¹² has followed the view taken that the interest is liable to be paid from the date of the accident.

2. Having regard to the settled proposition of law as noticed above, the contention of the insurer raised in the above appeal in respect of which question No.(iii) has been framed for

¹⁰ 2014 ACJ 467

¹¹ 2022 ACJ 1001

¹² 2022 ACJ 1004



consideration is answered in the affirmative and the appeal of the insurer is liable to be dismissed.

3. In view of the aforementioned, the operative portion of the order dated 23.2.2024 passed in the above appeal is modified as under:

ORDER

- i) The above appeal is dismissed;
- ii) The judgment and award dated 03.03.2016 passed in the Court of XXI Additional Small Causes Judge and The Motor Accident Claims Tribunal (SCCH-23), Bengaluru, is affirmed;
- iii) The amount deposited by the appellant – insurer be transmitted to the Tribunal for disbursement in terms of the award of the Tribunal;
- iv) The appellant – insurer shall deposit the balance amount together with accrued interest within eight weeks from the date of receipt of a copy of this judgment;
- v) Registry to draw the decree accordingly;

**Sd/-
JUDGE**

BS