2025:AHC:213551

HIGH COURT OF JUDICATURE AT ALLAHABAD

FIRST APPEAL FROM ORDER No. - 1999 of 2012

New India Assurance Co. Ltd.

.....Appellant(s)

Versus

Shabbir Ahmed And Others

.....Respondent(s)

Counsel for Appellant(s) : Amaresh Sinha
Counsel for Respondent(s) : Lalit Kumar, Mohd. Asim Zulfiquar

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AFR

Court No. - 38

HON'BLE SANDEEP JAIN, J.

1. The instant appeal under Section 30 of the Employee's Compensation Act,1923 has been preferred by the insurer of the Vehicle No.UP-14-U-9433 against the impugned judgment and award dated 23.03.2012 passed by the Employee's Compensation Commissioner, Moradabad in W.C Case No.83 of 2010 (Shabbir Ahmed & another vs. Shehnawaz and others), whereby for the untimely death of Jaane Alam in a road accident that occurred on 16.05.2010, a compensation of Rs.4,25,084/- along with default interest @ 12% per annum from the date of order has been awarded to the claimants(father and mother), which has been ordered to be indemnified by the insurer of Vehicle No.UP-14-U-9433.

2. Learned counsel for the appellant insurance company submitted that the deceased Jaane Alam was allegedly employed as conductor on Vehicle No.UP-14-U-9433 by his elder brother Shehnawaz which was improbable because no documentary proof of such employment was produced before the tribunal. It was further submitted that the owner Shehnawaz of the above Vehicle No.UP-14-U-9433 did not appear in the witness box to face cross examination by the insurance company, as such, merely on the basis of his admission in the written statement, it was not proved that the deceased was employed as a conductor on the above vehicle. It was further submitted that the claimants have filed the claim petition on false grounds to claim fraudulent compensation from the insurance company, which was not legally maintainable but the Commissioner has held otherwise. It was also submitted that the claimants have rightly not been awarded any interest on the compensation

by the Commissioner.

3. In support of his above submission learned counsel for the appellant has placed reliance on the case law of the Apex Court in ***Gottumukkala Appala Narasimha Raju & others Vs. National Insurance Company Ltd. (2007) 13 SCC 446*** and the decision of this Court in ***United Insurance Company Ltd. Vs. Jai Prakash Giri & others, Manu/UP/1379/2019***. For the award of interest on compensation he has relied on ***Mamta Devi & Ors vs The Reliance General Insurance Co. Ltd. & Another 2023 INSC 566***.

4. Per contra, learned counsel for the claimant-respondents submitted that the owner/employer Shehnawaz of Vehicle No.UP-14-U-9433 filed his written statement before the Commissioner in which he admitted that the deceased was employed as conductor on his above vehicle, who was being paid monthly salary of Rs.4,500/-. He further submitted that there is no bar on the part of the employer to employee his relative as a conductor on his vehicle. It was further submitted that the Commissioner has awarded conditional interest on the compensation awarded to the claimants, whereas the claimants were entitled to get interest at the rate of 12% per annum from the date of the accident.

5. Learned counsel has submitted that the Employee's Compensation Act, 1923 is a beneficial Act, in which, strict rules of evidence and pleading are not applicable, as such, even if the owner/employer of the offending vehicle has not appeared in the witness box to face cross examination of the insurance company even then, it is not fatal to the claimants case and the claimants can rely on his admission made in the written statement submitted before the Commissioner.

6. In support of his contention, he placed reliance on the case law ***T.S. Shylaja Vs. Oriental Insurance Company & another (2014) 2 SCC 587***, ***United India Insurance Co. Ltd. Vs. Prakash Shankar Gurav & another 2006 (2) TAC 575 (Kant)*** and ***North East Karnataka Road Transport Corporation Vs. Sujatha (2019) 11 SCC 514***.

7. I have heard the learned counsel for both the sides, perused the impugned judgment and documents submitted with the appeal.

8. The Apex Court in the case of ***T.S. Shylaja***(supra), where the owner of the offending vehicle happened to be brother of the deceased, who was

employed as a driver on a monthly salary of Rs.6,000/- has upheld the finding of the Commissioner that the deceased was indeed employed to drive the vehicle of his brother. In this case, the vehicle owner appeared as a witness and clearly stated that the deceased was his younger brother, but was working as a paid driver under him and has admitted that he was paying salary to him. The Apex Court has upheld the finding of the Commissioner and held that there is no law that relatives cannot be in an employer- employee relationship.

9. Similarly, the Karnataka High Court, in ***Prakash Shankar Gurav*** (supra), a father who was the owner of the vehicle, had employed his son as a cleaner on the vehicle, on the date of the accident. This employee-employer relationship was upheld by the High Court of Karnataka and the contention of the insurance company, that it was a sham relationship which was not proved and it was improbable, was repelled . It was held by the High Court that a father engaging his son as an employee in a vehicle owned by the father is not prohibited in law nor it can be said that such a situation is not normally possible. Just as in any other avocation, it is possible for a father to engage his son as employee.

10. This Court in the case of ***Jai Prakash Giri*** (supra) where the injured claimant claimed that he was employed as Khalasi/cleaner on the truck of his father, has repelled the contention of the claimant on the ground that the owner of truck, who was the father of the claimant, did not appear before the Commissioner despite the service of notice and the Commissioner proceeded *exparte* against him. This Court held that there was no evidence regarding employment of the claimant as an employee on his father's truck.

11. In the case of ***Gottumukkala Appala Narasimha Raju*** (supra), the owner of the offending tractor was the wife of the deceased and the claimants raised a plea that the wife had employed her husband to drive the tractor, which on the facts of the case was disbelieved by the Apex Court because it was disputed, but in this decision also, the Apex Court has held that technically, it may be possible that the husband is employed under the wife. In this case, the Apex Court has not held that it is impossible that the husband can never be employed as an employee under his wife. It was also held by the Apex Court that in the absence of any specific contract, it was wholly absurd to suggest that the husband would

be a workman of his wife, who were living separately because of certain disputes. Since the husband and wife was living separately in view of certain dispute, the question of husband being a workman under his wife was disbelieved.

12. Similarly, The Himachal Pradesh High Court in the case of ***Rishi Raj vs Ram Krishan & Ors. 2025 SCC OnLine HP 3172***, held as under:-

23. In Gottumukkala's case also, it has been categorically observed by the Supreme Court that technically there is possibility that husband and wife can have relation of employer and employee. It is apt to notice that relation of husband and wife is more closer than the relation of brother, as both of them being partners of life, in normal circumstances, cannot be expected to work as employee and employer, however, despite that it has been observed by the Supreme Court that such relationship is possible.

24. In present case, relationship between respondent No. 1 and deceased Amar Singh was that they were brothers. Employment of a brother as an employee under another brother is not an abnormal, unnatural or unexpected situation. As observed by the Supreme Court in Gottumukkala's case that claim of such relationship amongst the close family members is required to be established on record and the Court has to assess the veracity of such claim by taking into consideration overall situation.

25. Engaging an unemployed brother with Truck as a Attendant, Conductor, Manager, Caretaker or Cleaner, by his real brother, is not unnatural phenomena, rather it is natural for a brother to provide employment to his another brother in this Era of unemployment and every person is fighting with crises of getting employment. A stray suggestion of the Insurance Company that claimant was travelling in the Truck for excursion tour for Delhi, which has been denied, cannot be considered sufficient material to rebut the claim of the claimant that he was engaged by owner, i.e. his brother for facilitating/supervising/helping plying of Truck. In the given facts and circumstances, there is nothing on record to discard plea of the claimant that he was employed with Truck by owner of the Truck (his brother).

13. In the instant case, the owner of vehicle Shehnawaz who was opposite

party No.1 before the Commissioner has filed his written statement, in which he has unequivocally admitted that on his vehicle No.UP-14-U-9433, he had employed Jaane Alam(deceased) as conductor and was paying salary of Rs.4,500/- per month. It is also evident that the owner Shehnawaz in his examination-in-chief before the Commissioner has admitted that he is the registered owner of Vehicle No.UP-14-U-9433, on which driver Dildar and conductor Jaane Alam were employed on 16.05.2010, which met with an accident in which conductor Jaane Alam died and regarding the accident his driver has lodged FIR at police station Gajraula. He also deposed that Jaane Alam was paid salary of Rs.4,500/- per month. The owner has also appeared in cross-examination but despite opportunity being provided to the insurance company he was not cross examined by the insurance company as such, on this basis, his oral testimony cannot be discarded.

14. The claimants also filed FIR in documentary evidence before the Commissioner regarding the accident registered on 18.05.2010 at 16:45 hours being Case Crime No. 1313 of 2010 under Section 279,304-A,427 IPC at P.S. Gajraula, District JP Nagar which discloses that the first informant's(Dildar's), who was the driver on vehicle UP-14U-9433, brother Jaane Alam who was a conductor on the vehicle, died in a road accident on 16.05.2010, which was caused by truck No.MP-17C-0537.

15. The impugned judgment records that the insurance company was again given opportunity to cross-examine the owner, but the owner failed to appear before the Commissioner. The non appearance of the owner cannot render his testimony inadmissible, since the proceedings under the Employee's Compensation Act,1923 are summary proceedings in which strict rules of pleading and evidence are not applicable.

16. In view of the above evidence on record, it was proved that the deceased Jaane Alam was employed as conductor on vehicle No.UP-14-U-9433 on the date of the accident, who was paid a monthly salary of Rs.4,500/-, as such, the contention contrary to it, of the learned counsel for the appellant, is rejected. The Commissioner has not erred in concluding that there was relationship of employer-employee between the owner of the vehicle and the deceased.

17. In view of the above analysis, no substantial question of law arises in

this appeal. This appeal is, accordingly, **dismissed.**

Order on Cross-Objection 21 of 2022 in FAFO No.1999 of 2012

1. Learned counsel for the claimant/cross-objector submitted that the Commissioner awarded the interest to the claimants @12% per annum on the awarded sum but it was awarded from the expiry of 30 days from the date of order and that too, if the appellant failed to deposit the awarded sum within 30 days, which is erroneous. Learned counsel submitted that as per the decision of the Apex Court in the case of ***North East Karnataka Road Transport Corporation*** (supra) the claimants are entitled to interest on the compensation awarded, @12% per annum from the date of accident, till its actual payment.

2. Learned counsel for the appellant insurance company submitted that the interest on the compensation is to be paid as per the law laid down by the Apex Court in the case of ***Mamta Devi*** (supra).

3. I have heard the learned counsel of both the sides and perused the case laws referred by them.

4. The Apex Court in the case of ***North East Karnataka Road Transport Corporation*** (supra) while analysing from which date interest is to be granted on the compensation awarded under Employee's Compensation Act,1923 held as under:-

19. The question relates to grant of interest on the awarded amount and further, from which date, it is to be awarded to the respondent claimant.

20. The grant of interest on the awarded sum is governed by Section 4-A of the Act. The question as to when does the payment of compensation under the Act "becomes due" and consequently what is the point of time from which interest on such amount is payable as provided under Section 4-A(3) of the Act remains no more res integra and is settled by the two decisions of this Court.

21. As early as in 1975, a four-Judge Bench of this Court in Pratap Narain Singh Deo v. Srinivas Sabata [Pratap Narain Singh Deo v. Srinivas Sabata, (1976) 1 SCC 289 : 1976 SCC (L&S) 52 : AIR 1976 SC 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 workman in the accident which arose out of and in the course of

employment. It was accordingly held that it is the date of the accident and not the date of adjudication of the claim, which is material.

22. Another question analogous to the main question arose before the three-Judge Bench of this Court in Kerala SEB v. Valsala K. [Kerala SEB v. Valsala K., (1999) 8 SCC 254 : 2000 SCC (L&S) 50 : AIR 1999 SC 3502] as to whether increased amount of compensation and enhanced rate of interest brought on statute by amending Act 30 of 1995 with effect from 15-9-1995 would also apply to cases in which the accident took place before 15-9-1995. Their Lordships, placing reliance on the law laid down in Pratap Narain case [Pratap Narain Singh Deo v. Srinivas Sabata, (1976) 1 SCC 289 : 1976 SCC (L&S) 52 : AIR 1976 SC 222] held that since the relevant date for determination of the rate of compensation is the date of accident and not the date of adjudication of the claim by the Commissioner and hence if the accident has taken place prior to 15-9-1995, the rate applicable on the date of accident would govern the subject.

23. After these two decisions, this Court in two cases (both by the two-Judge Bench) viz. National Insurance Co. Ltd. v. Mubasir Ahmed [National Insurance Co. Ltd. v. Mubasir Ahmed, (2007) 2 SCC 349 : (2007) 1 SCC (L&S) 643] and Oriental Insurance Co. Ltd. v. Mohd. Nasir [Oriental Insurance Co. Ltd. v. Mohd. Nasir, (2009) 6 SCC 280 : (2009) 2 SCC (Civ) 877 : (2009) 2 SCC (Cri) 987] without noticing the law laid down in Pratap Narain [Pratap Narain Singh Deo v. Srinivas Sabata, (1976) 1 SCC 289 : 1976 SCC (L&S) 52 : AIR 1976 SC 222] and Valsala [Kerala SEB v. Valsala K., (1999) 8 SCC 254 : 2000 SCC (L&S) 50 : AIR 1999 SC 3502] cases took a contrary view and held that 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.

24. This conflict of view in the decisions on the question was noticed by this Court (two-Judge Bench) in Oriental Insurance Co. Ltd. v. Siby George [Oriental Insurance Co. Ltd. v. Siby George, (2012) 12 SCC 540 : (2013) 2 SCC (Civ) 392 : (2012) 4 SCC (Cri) 136 : (2013) 3 SCC (L&S) 478] . Aftab Alam, J. speaking for the Bench referred to the aforementioned decisions and explaining the ratio of each decision held that since the two later decisions rendered in Mubasir [National Insurance Co. Ltd. v. Mubasir Ahmed, (2007) 2 SCC 349 : (2007) 1 SCC

(L&S) 643] and Mohd. Nasir [Oriental Insurance Co. Ltd. v. Mohd. Nasir, (2009) 6 SCC 280 : (2009) 2 SCC (Civ) 877 : (2009) 2 SCC (Cri) 987] which took contrary view without noticing the earlier two decisions of this Court rendered in Pratap Narain [Pratap Narain Singh Deo v. Srinivas Sabata, (1976) 1 SCC 289 : 1976 SCC (L&S) 52 : AIR 1976 SC 222] and Valsala [Kerala SEB v. Valsala K., (1999) 8 SCC 254 : 2000 SCC (L&S) 50 : AIR 1999 SC 3502] cases by the larger Benches (combination of four and three Judges respectively) and hence later decisions rendered in Mubasir [National Insurance Co. Ltd. v. Mubasir Ahmed, (2007) 2 SCC 349 : (2007) 1 SCC (L&S) 643] and Mohd. Nasir [Oriental Insurance Co. Ltd. v. Mohd. Nasir, (2009) 6 SCC 280 : (2009) 2 SCC (Civ) 877 : (2009) 2 SCC (Cri) 987] cases cannot be held to have laid down the correct principles of law on the question and nor can, therefore, be treated as binding precedent on the question.

25. In other words, the law laid down in Pratap Narain [Pratap Narain Singh Deo v. Srinivas Sabata, (1976) 1 SCC 289 : 1976 SCC (L&S) 52 : AIR 1976 SC 222] and Valsala [Kerala SEB v. Valsala K., (1999) 8 SCC 254 : 2000 SCC (L&S) 50 : AIR 1999 SC 3502] cases was held to hold the field throughout as laying down the correct principle of law on the subject. The two-Judge Bench in Oriental Insurance Co. Ltd. v. Siby George [Oriental Insurance Co. Ltd. v. Siby George, (2012) 12 SCC 540 : (2013) 2 SCC (Civ) 392 : (2012) 4 SCC (Cri) 136 : (2013) 3 SCC (L&S) 478] accordingly followed the principle of law laid down in Pratap Narain [Pratap Narain Singh Deo v. Srinivas Sabata, (1976) 1 SCC 289 : 1976 SCC (L&S) 52 : AIR 1976 SC 222] and Valsala [Kerala SEB v. Valsala K., (1999) 8 SCC 254 : 2000 SCC (L&S) 50 : AIR 1999 SC 3502] cases and decided the case instead of following the law laid down in Mubasir [National Insurance Co. Ltd. v. Mubasir Ahmed, (2007) 2 SCC 349 : (2007) 1 SCC (L&S) 643] and Mohd. Nasir [Oriental Insurance Co. Ltd. v. Mohd. Nasir, (2009) 6 SCC 280 : (2009) 2 SCC (Civ) 877 : (2009) 2 SCC (Cri) 987] cases which was held per incuriam.

26. Now coming to the facts of this case, we find that the Commissioner awarded the interest to the respondents @ 12% p.a. on the awarded sum but it was awarded from the expiry of 45 days from the date of order and that too, if the appellant failed to deposit the awarded sum within 45 days.

27. In other words, if the appellant had deposited the awarded sum within

45 days from the date of the order then the respondent was not entitled to claim any interest on the awarded sum, but if the appellant had failed to deposit the awarded amount within 45 days, then the respondent was entitled to claim interest @ 12% p.a. from the date of the order.

28. In our opinion, the aforementioned direction of the Commissioner in awarding the interest on the awarded sum is contrary to law laid down by this Court in Pratap Narain case [Pratap Narain Singh Deo v. Srinivas Sabata, (1976) 1 SCC 289 : 1976 SCC (L&S) 52 : AIR 1976 SC 222] and hence not legally sustainable.

29. In the light of the foregoing discussion, even though the respondent did not challenge this direction by filing any appeal in the High Court nor challenged it by filing any appeal in this Court too, yet the question being a pure question of law, this Court with a view to do substantial justice to the respondent considers it just and proper to modify the order of the Commissioner in the respondent's favour so as to make the same in conformity with the law laid down by this Court in the abovereferred two decisions (supra).

30. Accordingly and in view of the foregoing discussion, the order of the Commissioner dated 23-4-2002 is modified in favour of the respondent to the extent that the awarded sum of Rs 3,79,120 shall carry interest @ 12% p.a. from the date of accident i.e. 6-4-1999.

5. It is apparent that the Apex Court in the case of ***Mamta Devi***(supra) without noticing the previous binding precedents of the larger Benches of the Apex Court in the case of ***Pratap Narain Singh Deo vs Srinivas Sabat a and Another (1976) 1 SCC 289 (By 4 Judges)*** , ***Kerala SEB & Another vs Valsala K. and Another (1999) 8 SCC 254 (By 3 Judges)*** and Coordinate Bench Decisions in ***Oriental Insurance Company Ltd. Vs Siby George (2012) 12 SCC 540*** and ***North East Karnataka Road Transport Corporation*** (supra) has held that the claimants would be entitled to interest @12% per annum from one month after the date of accident, till date of payment, which cannot be treated as a binding precedent, rather it is a judgment rendered *per incuriam.*

6. It is apparent that in view of the above binding precedents of the Apex Court, in the instant case the claimants are entitled to interest @12% per annum from the date of the accident i.e. 16.05.2010, on the awarded

compensation of Rs.4,25,084/- till the date of its actual payment. It is also apparent from the certificate of deposit issued by the Commissioner, which was filed by the appellant at the time of filing of the instant appeal, that the appellant has deposited the compensation of Rs,4,25,084/- through cheque on 31.03.2012, which has been ordered to be invested in a fixed deposit by this Court on 17.05.2012.

7. It is held that the claimants are also entitled to interest @12% per annum on the awarded compensation from the date of accident i.e 16.05.2010 till its actual payment.

8. **Accordingly, the cross-objection of the claimant is allowed.**

9. The judgment and award of the Commissioner dated 23.03.2012, is modified to the above extent.

10. Interim order, if any, stands vacated.

11. If any amount has been deposited in pursuance of the order of this Court, in a fixed deposit, then it shall be released in favour of the claimants, alongwith accrued interest, forthwith.

12. The appellant insurance company is directed to deposit the interest, as awarded to the claimants by this Court, before the concerned Commissioner within a period of one month, which shall be paid to the claimants, without any delay.

(Sandeep Jain,J.)

November 27, 2025
Himanshu

Digitally signed by :-
HIMANSHU YADAV
High Court of Judicature at Allahabad