

NATIONAL INSURANCE CO. LTD.

v.

MUBASIR AHMED AND ANR.

FEBRUARY 1, 2007

[DR. ARIJIT PASAYAT AND S.H. KAPADIA, JJ.]

Workmen's Compensation Act, 1923:

s. 4(1)(c), Explanations I and II—Injuries sustained by employees in course of employment—Assessment of loss of earning capacity—Held, injuries being not specified in Schedule I, case covered by s.4(1)(c)—Loss of earning capacity is not a substitute for percentage of physical disablement—On facts, the doctor who examined the claimants also noted about functional disablement and took note of relevant factors relating to loss of earning capacity on the basis whereof award was made—High Court without indicating any reason or basis erred in holding the loss of earning capacity as 100%—Award of Commissioner restored.

ss.4-A and 4-A(3)—Rate of interest and period from which interest would be payable on awarded amount—Held, since the accident took place after the 1995 amendment to the Act, the rate 12% as fixed by High Court cannot be faulted—The date from which interest becomes payable would be the date of completion of one month from adjudication of the claim and not from the date of accident—Crucial expression is “falls due”—Unless there is an adjudication, question of amount falling due does not arise.

Words and Phrases:

Expression “false due” occurring in s.4-A(1) of Workmen's Compensation Act, 1923—Connotation of.

Respondents no. 1 in the appeals, who were working with respondent no. 2 as labour/cleaner/driver of its vehicle were injured in an accident of the said vehicle. They were awarded compensation by the Commissioner for workmen's compensation and Assistant Commissioner of Labour on the basis of the assessment of loss of earning capacity made by the doctor who examined the claimants and noted the functional disablement. However, the High Court

A held the loss of earning capacity as 100% and accordingly enhanced the compensation. It also directed interest @ 12% from the date of accident till actual payment. Aggrieved, the Insurance Company filed the appeals.

Allowing the appeals in part, the Court

B HELD: 1. These cases related to injuries which were not specified in Schedule I and as such cases are covered by Section 4(1)(c)(ii) of the Workmen's Compensation Act, 1923. In terms of Explanation II the qualified medical practitioner has to assess loss of earning capacity having due regard to percentage of loss of earning capacity in relation to the different injuries. Loss of earning capacity is, therefore, not a substitute for percentage of the physical disablement. It is one of the factors taken into account. In the instant case, the doctor who examined the claimant also noted about the functional disablement. The doctor had taken note of the relevant factors relating to loss of earning capacity. Without indicating any reason or basis the High Court held that there was 100% loss of earning capacity. Since no basis was indicated in support of the conclusion, same cannot be maintained. Therefore, that part of the High Court's order is set aside and the order of the Commissioner is restored, in view of the facts situation. [Para Nos. 7-8] [122-F-H; 123-A-B]

E 2. Interest is payable under Section 4A(3) of the Act, if there is default in paying the compensation due under the Act within one month from the date it fell due. By Amending Act, 14 of 1995, Section 4A of the Act was amended, *inter alia*, fixing the minimum rate of interest to be simple interest @ 12%. 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. [Para 9] [123-C-D]

F *Maghar Singh v. Jashwant Singh*, [1998] 9 SCC 134, referred to.

G 3. As regards the date from which the interest would be paid, the starting point is on completion of one month from the date on which compensation 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. Section 4A(1) of the Act prescribes that compensation under Section 4 shall be paid as soon as it falls due. 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. [Para 9] [123-D-G]

H CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5623 of 2006.

From the Final Judgment and Order dated 13.7.2004 of the High Court of Judicature, Andhra Pradesh at Hyderabad in C.M.A. No. 3413/2003. A

WITH

C.A. Nos. 5624 and 5625 of 2006. B

P.K. Seth and Sudhir Kumar Gupta for the Appellant.

K. Maruthi Rao, Radha and Anjani Aiyagari for the Respondents.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Challenge in these appeals is to the judgment rendered in each case by learned Single Judge of the Andhra Pradesh High Court. Respondent no.1 in each case was working as employee of respondent no.2. Each of them filed a claim petition under Section 22 of the Workmen's Compensation Act, 1923 (in short the 'Act') claiming compensation for alleged personal injuries sustained in course of employment. In each case the claimant claimed to be either a labour or cleaner or driver of the vehicle which was involved in the accident. While respondent no.1 in Civil Appeal No.5625 of 2006 claimed to be driver of the vehicle No.APJ-1907, the respondent no.1 in Civil Appeal No.5623 of 2006 claimed to be the cleaner of the vehicle. Respondent no.1 in Civil Appeal No. 5624 claimed to be employed in a different vehicle. The claim petitions were adjudicated by the Commissioner for Workmens' Compensation and Assistant Commissioner of Labour, Nizamabad (hereinafter referred to as the 'Commissioner'). C D E

2. In order to prove the nature of injuries sustained and the alleged loss of earning capacity, a doctor was examined as witness. The doctor who was examined, indicated the percentage of permanent and temporary disablement, functional disability and loss of earning capacity as follows: F

Civil Appeal No. 5623 of 2006

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| Permanent/partial disability | : | 65% |
| Functional disability | : | 65% |
| Loss of earning capacity | : | 80% |

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A Civil Appeal No. 5624 of 2006

Permanent/partial disability : 65%

Functional disability : 65%

B Loss of earning capacity : 65%

Civil Appeal No. 5625 of 2006

Permanent/partial disability : 65%

C Functional disability : 70%

Loss of earning capacity : 80%

D 3. The appellant-insurer of offending vehicle did not question correctness of the award made by the Commissioner. The claimant in each case preferred an appeal under Section 30 of the Act. By the impugned judgment in each case the High Court held that there was 100% loss of earning capacity and, therefore, awarded compensation. It also directed grant of interest @ 12% p.a. from date of accident till actual realization.

E 4. In support of the appeals, learned counsel for the appellant submitted that the judgment of the High Court without any discussion on the loss of earning capacity is clearly unsustainable, and in addition question of payment of 12% p.a. interest does not arise. The rate of interest is high.

F 5. Learned counsel for the respondents supported the impugned order of the High Court in each case.

6. In order to decide the basic issues Sections 4 and 4-A of the Act need to be noted. They read as follows:

“4. *Amount of compensation.*—(1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely :

G (a) where death results from the injury an amount equal to forty per cent of the monthly wages of the deceased workman multiplied by the relevant factor; or an amount of twenty thousand rupees, whichever is more;

H (b) where permanent total disablement results from injury an amount equal to fifty per cent of the monthly wages of the injured workman multiplied

by the relevant factor; or an amount of twenty-four thousand rupees, whichever is more; A

Explanation I - For the purposes of Cl. (a) and Cl. (b), "relevant factor", in relation to a workman means the factor specified in the second column of Sch. IV against the entry in the first column of the schedule specifying the number of years which are the same as the completed years of the age of the workman on his last birthday immediately preceding the date on which the compensation fell due; B

Explanation II - Where the monthly wages of a workman exceed one thousand rupees, his monthly wages for the purposes of Cl. (a) and Cl. (b) shall be deemed to be one thousand rupees only. C

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| (c) where permanent partial disablement results from the injury | (i) in the case of an injury specified in Pt. II of Sch. I, such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by the injury; and (ii) in the case of an injury not specified in Sch. I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury; |
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Explanation I Where more injuries than one are caused by the same accident, the amount of compensation payable under this head shall be aggregated but not so in any case as to exceed the amount which would have been payable if permanent total disablement had resulted from the injuries. D E F

Explanation II In assessing the loss of earning capacity for the purposes sub-clause (ii), of the qualified medical practitioner shall have due regard to the percentage of loss of earning capacity in relation to different injuries specified in Sch.I; G

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(d) Where temporary disablement, whether total or partial results from the injury

A half-monthly payment of the sum-equivalent to twenty-five per cent of monthly wages of the workman, to be paid in accordance with the provisions of sub-section (2).

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4-A. Compensation to be paid when due and penalty for default (1)
Compensation under Sec. 4 shall be paid as soon as it falls due.

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(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 event 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.

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(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 may direct that, in addition to the amount of the arrears, simple interest at the rate of six per cent per annum on the amount due together with, if in the opinion of the Commissioner there is no justification for the delay, a further sum not exceeding fifty per cent of such amount, shall be recovered from the employer by way of penalty.”

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7. These cases related to injuries which were not specified in Schedule I and as such cases are covered by Section 4(1)(c) (ii) Explanation. In terms of Explanation II the qualified medical practitioner has to assess loss of earning capacity having due regard to percentage of loss of earning capacity in relation to the different injuries in Schedule I. Explanation I also provides that where there are more than one injury, the aggregate has to be taken, so that the amount which would be payable for permanent total disablement is not exceeded.

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8. Loss of earning capacity is, therefore, not a substitute for percentage of the physical disablement. It is one of the factors taken into account. In

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the instant case the doctor who examined the claimant also noted about the functional disablement. In other words, the doctor had taken note of the relevant factors relating to loss of earning capacity. Without indicating any reason or basis the High Court held that there was 100% loss of earning capacity. Since no basis was indicated in support of the conclusion, same cannot be maintained. Therefore, we set aside that part of the High Court's order and restore that of the Commissioner, in view of the facts situation. Coming to the question of liability to pay interest, Section 4-A(3) deals with that question. The provision has been quoted above.

9. Interest is payable under Section 4-A(3) if there is default in paying the compensation due under this Act within one month from the date it fell due. The question of liability under Section 4-A was dealt with by this Court in *Maghar Singh v. Jashwant Singh*, [1998] 9 SCC 134. By Amending Act, 14 of 1995, Section 4-A of the Act was amended, *inter alia*, fixing the minimum rate of interest to be simple interest @ 12%. 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 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 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 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 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.

10. The appeals are allowed to the extent indicated, without any order as to costs.

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Appeals partly allowed.