

NORTH EAST KARNATAKA ROAD TRANSPORT CORPORATION A

v.

SMT. SUJATHA

(Civil Appeal No. 7470 of 2009) B

NOVEMBER 02, 2018

**[ABHAY MANOHAR SAPRE AND INDU MALHOTRA, JJ.]**

*Workmen's Compensation Act, 1923: s.30 – Appeal against the order of Commissioner – Scope of interference – Held: The appeal under s.30 of the Act to the High Court against the order of the Commissioner lie only against the specific orders set out in clause (a) to (e) of s.30 of the Act with a further rider contained in first proviso to the Section that the appeal must involve substantial question of law – In the instant case, employee died while on duty due to heart attack – The Commissioner allowed the claim petition filed by widow awarding Rs.3,79,120/- – High Court upheld the decision of the Commissioner – On appeal, held: The Commissioner decided all the material questions arising in the case properly on the basis of evidence adduced by the parties and rightly determined the compensation payable to the respondent – It was, therefore, rightly affirmed by the High Court on facts – The concurrent findings of fact of the two courts below are binding – Even otherwise, there was no ground to call for any interference on any of the factual findings – None of the factual findings were found to be either perverse or arbitrary or based on no evidence or against any provision of law – These findings are upheld.* C  
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*Workmen's Compensation Act, 1923: s.4-A – Interest – Grant of – The Commissioner allowed the claim petition with direction to the appellant-employer to deposit the awarded sum within 45 days failing which the awarded amount would carry interest @ 12% p.a. – Held: The Commissioner awarded the interest to the respondents @ 12% per annum 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 – This direction of the Commissioner in awarding the interest on the awarded sum was contrary to law laid down in **Pratap Narain's** case and,* G  
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- A *therefore, not legally sustainable – In the light of this, even though the respondent did not challenge this direction yet the question being a pure question of law, with a view to do substantial justice to the respondent, the order of the Commissioner is modified in respondent's favour to the extent that the awarded sum shall carry interest @ 12% p.a. from the date of accident – Interest.*
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**Disposing of the appeal, the Court**

- HELD: 1.1** The questions as to whether the employee met with an accident, whether the accident occurred during the course of employment, whether it arose out of an employment, how and in what manner the accident occurred, who was negligent in causing the accident, whether there existed any relationship of employee and employer, what was the age and monthly salary of the employee, how many are the dependents of the deceased employee, the extent of disability caused to the employee due to injuries suffered in an accident, whether there was any insurance coverage obtained by the employer to cover the incident etc. are some of the material issues which arise for the just decision of the Commissioner in a claim petition when an employee suffers any bodily injury or dies during the course of his employment and he/his LRs sue/s his employer to claim compensation under the Act. These questions are essentially the questions of fact and, therefore, they are required to be proved with the aid of evidence. Once they are proved either way, the findings recorded thereon are regarded as the findings of fact. [Paras 9-10] [1047-G-H, 1048-A-C]
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- 1.2** The appeal provided under Section 30 of the Act to the High Court against the order of the Commissioner is not like a Regular First Appeal akin to Section 96 of the Code of Civil Procedure, 1908 which can be heard both on facts and law. The appellate jurisdiction of the High Court to decide the appeal is confined only to examine the substantial questions of law arising in the case. [Paras 11-12][1048-C-E]
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- 2.1** When an employer files the appeal, he is under a legal obligation to deposit the entire awarded sum in terms of second proviso to Section 30 of the Act as a pre-condition to file the appeal in the High Court except where the appeal is filed against the order falling in clause (b). It is only when the employer
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deposits the entire awarded money along with the memo of appeal duly certified by the Commissioner, his appeal is regarded as being properly filed in conformity with the requirement of Section 30 of the Act. Such appeal is then heard on the question of admission with a view to find out as to whether it involves any substantial question of law or not. Whether the appeal involves a substantial question of law or not depends upon the facts of each case and needs an examination by the High Court. If the substantial question of law arises, the High Court would admit the appeal for final hearing on merit else would dismiss *in limini* with reasons that it does not involve any substantial question/s of law. [Paras 13-15][1048-E-H; 1049-A]

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2.2 In the instant case, the appeal before the High Court did not involve any substantial question of law on the material questions. In other words, the Commissioner decided all the material questions arising in the case properly on the basis of evidence adduced by the parties and rightly determined the compensation payable to the respondent. It was, therefore, rightly affirmed by the High Court on facts. In this view of the matter, the findings being concurrent findings of fact of the two courts below are binding on this Court. Even otherwise, there is no ground to call for any interference on any of the factual findings. None of the factual findings are found to be either perverse or arbitrary or based on no evidence or against any provision of law. These findings are upheld. [Paras 16, 17][1049-B-C]

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3. The grant of interest on the awarded sum is governed by Section 4-A of the Act. The Commissioner awarded the interest to the respondents at the rate of 12% per annum 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. This direction of the Commissioner in awarding the interest on the awarded sum is contrary to law laid down in Pratap Narain's case and hence not legally sustainable. In the light of this, even though the respondent did not challenge this direction yet the question being a pure question of law, this Court with a view to do substantial justice to the respondent consider it just and proper to modify the order of the Commissioner in respondent's favour. The order of the

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A **Commissioner is modified in favour of the respondent to the extent that the awarded sum of Rs. 3,79,120/- shall carry interest at the rate of 12% per annum from the date of accident i.e. 06.04.1999. [Paras 18-20, 26-30][1049-D-E; 1051-B-G]**

B *Pratap Narain Singh Deo v. Srinivas Sabata & Anr.* (1976) 1 SCC 289 : AIR 1976 SC 222 : [1976] 2 SCR 872; *Kerala State Electricity Board & Anr. v. Valsala K. & Anr.* (1999) 8 SCC 254 : AIR 1999 SC 3502 : [1999] 2 Suppl. SCR 657 – followed.

C *National Insurance Company Ltd v. Mubasir Ahmed & Anr.* (2007) 2 SCC 349 : [2007] 2 SCR 117; *Oriental Insurance Company Ltd. v. Mohmad Nasir & Anr.* (2009) 6 SCC 280 : [2009] 8 SCR 829; *Oriental Insurance Company Ltd v. Siby George and others* (2012) 12 SCC 540 : [2012] 6 SCR 1079 – referred to.

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**Case Law Reference**

[1976] 2 SCR 872	followed	Para 21
[1999] 2 Suppl. SCR 657	followed	Para 22
E [2007] 2 SCR 117	referred to	Para 23
[2009] 8 SCR 829	referred to	Para 23
[2012] 6 SCR 1079	referred to	Para 24

F CIVIL APPELLATE JURISDICTION: Civil Appeal No. 7470 of 2009

From the Judgment and Order dated 29.11.2006 of the High Court of Karnataka at Bangalore in M.F.A. No. 4170/2002(WC).

Ms. Anitha Shenoy, Adv. for the Appellant.

The Judgment of the Court was delivered by

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**ABHAY MANOHAR SAPRE, J.**

1. This appeal is directed against the final judgment and order dated 29.11.2006 passed by the High Court of Karnataka at Bangalore in M.F.A. No.4170 of 2002 whereby the High Court dismissed the

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appellant's appeal and confirmed the order dated 23.04.2002 passed by the Commissioner for Workmen's Compensation (Labour Court), Bellary (hereinafter referred to as "the Commissioner"). A

2. The issue involved in this appeal lies in a narrow compass. It is clear from the facts mentioned hereinbelow.

3. One Mallikarjuna was an employee of the appellant-a State Road Transport Corporation for the State of Karnataka working as a driver. He died while he was on duty on 06.04.1999 when he felt pain in his chest and suffered heart attack. B

4. The respondent is the wife of deceased Mallikarjuna. The respondent filed a claim petition before the Commissioner under the Workmen's Compensation Act, 1923 (for short "the Act") claiming compensation for the death of her husband Mallikarjuna. The appellant (employer) contested the claim petition. C

5. By order dated 23.04.2002, the Commissioner allowed the claim petition and awarded a sum of Rs.3,79,120/- with a direction to the appellant to deposit the awarded sum within 45 days, failing which, the awarded amount would carry interest at the rate of 12% per annum. D

6. The employer (appellant herein) felt aggrieved and filed appeal in the High Court of Karnataka at Bangalore. By impugned order, the High Court dismissed the appeal, which has given rise to filing of this special leave to appeal by the employer in this Court. E

7. So the question, which arises for consideration in this appeal is whether the High Court was justified in dismissing the employer's appeal and thereby was justified in upholding the order of the Commissioner. F

8. None appeared for both the parties. We, therefore, perused the record of the case. On perusal of the record, we are inclined to modify the order of the Commissioner dated 23.04.2002 in favour of the respondent to the extent indicated *infra*. F

9. At the outset, we may take note of the fact, being a settled principle, that the question as to whether the employee met with an accident, whether the accident occurred during the course of employment, whether it arose out of an employment, how and in what manner the accident occurred, who was negligent in causing the accident, whether there existed any relationship of employee and employer, what G

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A was the age and monthly salary of the employee, how many are the dependents of the deceased employee, the extent of disability caused to the employee due to injuries suffered in an accident, whether there was any insurance coverage obtained by the employer to cover the incident etc. are some of the material issues which arise for the just decision of the Commissioner in a claim petition when an employee suffers any  
B bodily injury or dies during the course of his employment and he/his LRs sue/s his employer to claim compensation under the Act.

10. The afore-mentioned questions are essentially the questions of fact and, therefore, they are required to be proved with the aid of  
C evidence. Once they are proved either way, the findings recorded thereon are regarded as the findings of fact.

11. The appeal provided under Section 30 of the Act to the High Court against the order of the Commissioner lie only against the specific orders set out in clause (a) to (e) of Section 30 of the Act with a further rider contained in first proviso to the Section that the appeal must involve  
D substantial question of law.

12. In other words, the appeal provided under Section 30 of the Act to the High Court against the order of the Commissioner is not like a Regular First Appeal akin to Section 96 of the Code of Civil Procedure, 1908 which can be heard both on facts and law. The appellate jurisdiction  
E of the High Court to decide the appeal is confined only to examine the substantial questions of law arising in the case.

13. When an employer files the appeal, he is under a legal obligation to deposit the entire awarded sum in terms of second proviso to Section 30 of the Act as a pre-condition to file the appeal in the High Court  
F except where the appeal is filed against the order falling in clause (b).

14. It is only when the employer deposits the entire awarded money along with the memo of appeal duly certified by the Commissioner, his appeal is regarded as being properly filed in conformity with the requirement of Section 30 of the Act.

G 15. Such appeal is then heard on the question of admission with a view to find out as to whether it involves any substantial question of law or not. Whether the appeal involves a substantial question of law or not depends upon the facts of each case and needs an examination by the High Court. If the substantial question of law arises, the High Court  
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would admit the appeal for final hearing on merit else would dismiss *in limini* with reasons that it does not involve any substantial question/s of law. A

16. Now coming to the facts of this case, we find that the appeal before the High Court did not involve any substantial question of law on the material questions set out above. In other words, in our view, the Commissioner decided all the material questions arising in the case properly on the basis of evidence adduced by the parties and rightly determined the compensation payable to the respondent. It was, therefore, rightly affirmed by the High Court on facts. B

17. In this view of the matter, the findings being concurrent findings of fact of the two courts below are binding on this Court. Even otherwise, we find no good ground to call for any interference on any of the factual findings. None of the factual findings are found to be either perverse or arbitrary or based on no evidence or against any provision of law. We accordingly uphold these findings. C

18. This takes us to examine the next question which was wrongly decided by the Commissioner and the High Court also did not notice the error committed by the Commissioner. D

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

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. F

21. As early as in 1975, a four Judge Bench of this Court in **Pratap Narain Singh Deo Vs. Srinivas Sabata & Anr.** (1976) 1 SCC 289: AIR 1976SC 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. G

22. Another question analogues to the main question arose before H

- A the Three Judge Bench of this Court in the case of **Kerala State Electricity Board & Anr. Vs. Valsala K. & Anr.** (1999) 8SCC 254: AIR 1999SC 3502 as to whether increased amount of compensation and enhanced rate of interest brought on statute by amending Act 30/1995 with effect from 15.09.1995 would also apply to cases in which the accident took place before 15.09.1995. Their lordships, placing reliance
- B on the law laid down in **Pratap Narain's** case (supra) 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 15.09.1995, the rate applicable on the date of accident would govern the
- C subject.

23. After these two decisions, this Court in two cases (both by the Two Judge Bench) viz. **National Insurance Company Ltd vs. Mubasir Ahmed & Anr.** (2007) 2 SCC 349 and **Oriental Insurance Company Ltd. vs. Mohmad Nasir & Anr.** (2009) 6 SCC 280 without noticing
- D the law laid down in **Pratap Narain** and **Valsala** cases (supra) 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 Company Ltd vs. Siby George and others** (2012) 12 SCC 540. Justice Aftab Alam speaking for the Bench referred to afore-mentioned decisions and explaining the ratio of each decision held that since the two later decisions rendered in the cases of **Mubasir** and **Mohmad Nasir** (supra) which took contrary view without noticing the earlier two decisions of
- E this Court rendered in **Pratap Narain** and **Valsala** cases (supra) by the larger Benches (combination of four and three Judges respectively) and hence later decisions rendered in **Mubasir** and **Mohmad Nasir** cases (supra) 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
- F the question.
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25. In other words, the law laid down in **Pratap Narain** and **Valsala** cases (supra) was held to hold the field through out as laying down the correct principle of law on the subject. The Two Judge Bench in **Oriental Insurance Company Ltd vs. Siby George and others**

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(supra) accordingly followed the principle of law laid down in **Pratap Narain** and **Valsala** cases (supra) and decided the case instead of following the law laid down in **Mubasir** and **Mohmad Nasir** cases (supra) which was held *per incuriam*. A

26. Now coming to the facts of this case, we find that the Commissioner awarded the interest to the respondents at the rate of 12% per annum 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. B

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 at the rate of 12% per annum from the date of the order. C

28. In our opinion, the afore-mentioned direction of the Commissioner in awarding the interest on the awarded sum is contrary to law laid down by this Court in **Pratap Narain's** case (supra) and hence not legally sustainable. D

29. In the light of the forgoing 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 consider it just and proper to modify the order of the Commissioner in respondent's favour so as to make the same in conformity with the law laid down by this Court in the above referred two decisions (supra). E F

30. Accordingly and in view of the foregoing discussion, the order of the Commissioner dated 23.04.2002 is modified in favour of the respondent to the extent that the awarded sum of Rs. 3,79,120/- shall carry interest at the rate of 12% per annum from the date of accident i.e. 06.04.1999. G

31. The Commissioner is accordingly directed to work out the total amount payable by the appellant to the respondent in terms of the order passed by this Court.

32. Since no one appeared for the appellant as well as respondent H

A in this case, the Registry shall send a copy of this order to the Commissioner, the appellant and the respondent respectively within one week.

33. The Commissioner, on receipt of the order, will issue notice to the parties and calculate the total amount to enable the appellant to deposit the same within one month for being paid to the respondent after due verification.

34. The appeal stands accordingly disposed of with aforementioned directions and modifications in the order of the Commissioner dated 23.04.2002 passed in case No. KAB/KNP/7/985/99.

Devika Gujral

Appeal disposed of.