



2023/KER/63851

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE BASANT BALAJI

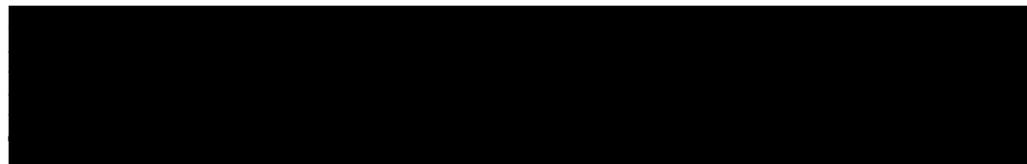
WEDNESDAY, THE 11TH DAY OF OCTOBER 2023 / 19TH ASWINA, 1945

MFA (ECC) NO. 72 OF 2021

AGAINST THE ORDER DATED 27.10.2020 IN ECC 1198/2016 (WCC NO.55/12) OF
THE COURT OF THE COMMISSIONER FOR EMPLOYEES COMPENSATION
(INDUSTRIAL TRIBUNAL), THRISSUR

APPELLANT/APPLICANT:

VENUGOPALAN
AGED 52 YEARS



BY ADVS.
PRABHU K.N.
MANUMON A.

RESPONDENTS/OPPOSITE PARTIES:

- 1 THE MANAGING PARTNER,
CHEENI PACKAGING, PADUVAPURAM, EDAKKUNNU,
ERNAKULAM PIN 683 582
- 2 THE UNITED INDIA INSURANCE CO.LTD.
REPRESENTED BY ITS MANAGER, K G TOWERS,
NEAR K G HOSPITAL, ANGAMALY, ERNAKULAM DISTRICT,
PIN 683 572
BY ADVS.
P.K.MANOJKUMAR FOR R2

THIS MFA (ECC) HAVING COME UP FOR ADMISSION ON 11.10.2023, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



MFA (ECC) NO. 72 OF 2021

-2-

‘C.R’

J U D G M E N T

(Dated this the 11th day of October 2023)

The appellant was the applicant in ECC No.1198/2016 before the Court of Employees Compensation Commissioner (Industrial Tribunal), Thrissur. The application was filed claiming a lumpsum compensation towards the functional disability sustained by him in an accident arising and in the course of his employment under the first opposite party.

2. The applicant was employed as a driver by the first opposite party in his vehicle bearing registration No. KL 41/6270. On 18.09.2011, at about 1 p.m., when the vehicle was towed with the help of another vehicle for repair and when the vehicle reached Elavoor Kavala near Karukutty, Angamaly,



MFA (ECC) NO. 72 OF 2021

-3-

he got down from the vehicle and went to the rear side of the pulling vehicle in order to unloose the rope. While doing so, the hand brake of the vehicle got slipped, and the vehicle hit the applicant from behind. He got jammed in between the two vehicles and sustained serious injuries. He was taken immediately to the Mar Augustine Golden Jubilee Hospital, Mookkannur, and thereafter to the Medical Trust Hospital, where he was admitted as an inpatient and treated. He claimed a compensation of Rs. 3,00,000/- from the opposite parties.

3. The Commissioner, after evaluation of the oral evidence of AW1 to AW3, Exts.A1 to A10, Ext.R1 on the side of the second opposite party and also XI Medical Board Report, awarded a compensation of Rs.50,084/- towards medical reimbursement. The second opposite party was directed to produce an account payee cheque drawn in favour of the



MFA (ECC) NO. 72 OF 2021

-4-

applicant within a period of 60 days.

4. The appeal is filed by the applicant aggrieved by the non-disbursement of the interest under the Employees' Compensation Act, 1923 (for short, 'the Act').

5. Section 4 of the Act deals with 'Amount of Compensation'. Sub-section 2A of Section 4 reads as follows:

“(2A) The employee shall be reimbursed the actual medical expenditure incurred by him for treatment of injuries caused during the course of employment.”

6. The Commissioner, on evaluation of the evidence adduced, more particularly on XI-Medical Board Report, found that the applicant has not sustained any occupational disability, and therefore, compensation cannot be awarded for the injuries sustained by him. But taking into consideration Ext.A2 series of medical bills, the applicant was awarded Rs.50,084/- towards medical reimbursement.



MFA (ECC) NO. 72 OF 2021

-5-

7. As mentioned earlier, Section 4 of the Act includes medical reimbursement also. Section 4A of the Act deals with **‘Compensation to be paid when due and penalty for the default’**. Sub-section (3) of Section 4A states that 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 shall-

(a) direct that the employer shall, in addition to the amount of arrears, pay simple interest thereon at the rate of twelve per cent per annum or at such higher rate 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.

8. According to the counsel for the appellant, when the Commissioner quantified the amount as Rs.50,084/- towards medical reimbursement, and the accident happened on 18.09.2011, the amount ought to have been awarded simple



MFA (ECC) NO. 72 OF 2021

-6-

interest at the rate of 12% from the date of accident as there was default on the part of the opposite parties in not reimbursing the amount spent by him.

9. He relies on the judgment of this Court in ***Gineesh M.G and Anr. v. K.C Ninan and Ors.*** reported in (2020 KHC 139) and contends that the amount quantified by the Commissioner as reimbursement should include interest under Section 4A at 12%. Reliance is also placed on the judgment in ***Oriental Insurance Co. Ltd v. Siby George and Ors.*** reported in (2012 KHC 4408) for the proposition that compensation becomes due from the date personal injury is caused to workman and not from the date of Commissioner's order determining compensation or from the date claim is made. Interest on compensation in case of default in payment would, therefore be payable from the date of accident.



10. The Standing Counsel for the 2nd respondent submits that what is contemplated under sub-section 2A of Section 4 is the actual medical expenditure incurred by him for treatment of injuries caused during the course of employment, and no interest is payable on such reimbursed amount.

11. He relies on the judgment of this Court in *Gineesh M.G* (supra) for the proposition that the reimbursement of actual medical expenses cannot obtain interest from the date of the accident but only from the date on which it became actually paid by the claimant. The employer will become liable to pay interest only on the date on which the bills of such expenses were brought to the notice of the employer. He contends that though the accident happened on 18.09.2011, the application claiming compensation was filed only in the year 2016, and therefore, even if this Court finds that interest is payable under



MFA (ECC) NO. 72 OF 2021

-8-

Section 4A of the Act on the compensation amount, the same should be due only from the date of the claim petition.

12. Any compensation to which a claimant is entitled is to be paid on the day on which the applicant incurs the said expenses. In this case, though, the Commissioner has found that the applicant has not sustained any occupational disability and has not obtained any loss of earnings; only reimbursement of the medical expenditure was awarded. The reimbursement of the medical expenditure would definitely come within the scope of Section 4A. Therefore, if there is a default on the part of respondents in not paying the amount as and when it became due, definitely Section 4A of the Act comes into play. The appellant is entitled to interest at the rate of 12% per annum or such other higher rate not exceeding the maximum of the lending rates of any scheduled bank, as specified in the Official



MFA (ECC) NO. 72 OF 2021

-9-

Gazette.

13. The Commissioner, though quantified the reimbursement amount, has not taken into consideration the scope of Section 4A of the Act for payment of interest for the defaulted amount as the accident occurred on 18.09.2011 and the claim was made in 2016. However, the order was passed only on 27.10.2020.

14. Therefore, I am of the considered opinion that the Commissioner has failed to award interest as stipulated in Section 4A of the Act. Since the accident happened on 18.09.2011, and the claim was made only in 2016, the appellant is entitled to claim interest from the respondents only from the date he made the claim before the Employees Compensation Commissioner. The delay in not filing the claim from 2011 to 2016 is on the applicant himself. Therefore, the payment of



MFA (ECC) NO. 72 OF 2021

-10-

interest for the said period cannot be mulcted on the respondent.

In the result, the appeal is allowed in part, and the order of the Commissioner dated 27.10.2020 in ECC No.1198 of 2016 is modified and declared that the amount of Rs.50,084/- awarded towards medical reimbursement shall carry interest at the rate of 12% from the date of petition till realization.

Sd/-

BASANT BALAJI

JUDGE

JS