

**IN THE HIGH COURT OF JHARKHAND AT RANCHI
M.A. No.227 of 2020**

Jugal Kishor Ray, S/o- Late Lakhan Ray, Resident of Village-Gawan,
Near Pani Tanki, Post and P.S.-Gawan, District-Giridih (Jharkhand)

.... Appellant(s)

Versus

1. Ashok Prasad Yadav, S/o-Late Badho Yadav, Resident of Village
Badhidih, Post-Malda, P.S. Gawan, District-Giridih, PIN-815313

2. United India Insurance Company Limited through Branch
Manager, Giridih Branch Post and P.S. Giridih(Jharkhand) PIN-
815301

....Respondent(s)

Coram: HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

For the Appellant : Mr. Arvind Kr. Lall, Advocate

For the Resp. No.1 : None

For the Resp. No.2 : Mr. Manish Kumar, Adv.

Order No.07 Dated- 05.09.2023

JUDGMENT

Heard learned counsel for the appellant and learned counsel
for the respondent No.2. In spite of valid service of notice none
appears on behalf of respondent No.1

2. The present miscellaneous appeal has been preferred under
Section 30 of the Employee's Compensation Act, 1923 assailing the
judgment/award dated 29.02.2020 passed in E.C. Case No.14 of
2016 by the court of Sri Rajendra Bahadur Pal, learned Presiding
Officer, Labour Court-cum-Commissioner, Deoghar under
Employee's Compensation Act, 1923, , whereby and whereunder
learned court below has awarded amount of compensation
without any interest which is mandatory under Section 4(A) of
Workmen's(Employee's) Compensation Act, 1923.

3. Factual background of the case in a narrow campus is that
one Lakhan Ray(deceased) was employed as driver of tractor
bearing Reg. No.JH-17D-9017 attached with Trolley No. JH-11D-
9018 owned by respondent No.1-Ashok Prasad Yadav. On

28.01.2009 while Lakhan Ray was employed as driver by the respondent No.1 for transportation of cement and iron rods loaded on trolley and in the course of employment, he met with an accident near Panchsalvey Forest area and died. In this connection, Tisri P.S. Case No.03 of 2009 was registered and after investigation charge-sheet was submitted, but no compensation amount was given to the legal heirs and dependents of the deceased by the employer within statutory time period. Hence, the case was instituted under the provision of Workmen's Compensation Act, 1923 before the presiding officer labour court-cum-commissioner under the said Act.

The case of the appellant is that the age of deceased was 35 years and he was earning Rs.6,000/- per month salary along with Rs.50/- per day towards diet expenses. It is further alleged that Rs.8 lakhs was claimed as compensation and Rs.25,000/- for cremation along with interest @ 12 % per annum from the date of accident.

4. Learned trial court after taking evidence of the parties and fixing monthly income of deceased as per minimum wages rate at Rs.3336/- only per month due to non-production of any sufficient materials proving income of deceased @ Rs.6,000/- per month, and computed the amount of compensation in accordance with provision of Section 4 of Employee's Compensation Act and arrived at net amount of compensation Rs.3,29,597/- (Three lakhs twenty nine thousand and five hundred ninety seven) which was awarded in favour of claimant without any direction for payment

of interest as mandated under Section 4A of the said act which has been assailed in this appeal.

5. The sole substantial question of law has been formulated in this appeal as under:-

“Whether the Commissioner, Employee’s Compensation has committed perversity by not awarding any interest to the claimant on the amount of compensation awarded under of Employee’s Compensation Act (Workmen Compensation Act)?”

6. Learned counsel for the appellant has confined himself to the question of non-award of interest @ 12 % per annum along with substantial award amount which is in violation of mandatory provision of Section 4(A) of Workmen’s Compensation Act. Hence, apart from awarded amount, the appellant is entitled for simple interest @ 12 % per annum from the date of accident.

7. Per Contra- Learned counsel for the respondent No.2- United Insurance Company Limited has vehemently refuted the above arguments raised on behalf of the appellant but conceded that the respondent No.2-insurer is bound to indemnify the insured only to the extent of payment of principal award and can’t be saddled with liability to pay interest and penalty imposed due to fault of the insured.

Analysis and Decision

8. Now coming to the substantial question of law raised in this case as mentioned above, the interest part under the Employee’s Compensation Act 1923 is awarded under Section 4A(3) which runs as under:-

“ 4A(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 shall:-

(a) direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve percent 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; and

(b) if, in his opinion, there is no justification for the delay, direct that **the employer shall, in addition to the amount of the arrears and interest thereon**, pay a further sum not exceeding fifty per cent of such amount by way of penalty:

Provided that an order for the payment of penalty shall not be passed under clause (b) without giving a reasonable opportunity to the employer to show cause why it should not be passed.

9. In the case of *Shobha Vs. The Chairman, Vitthal Rao Shinde* in *Civil Appeal No.1860 of 2022* decided by Hon'ble Apex Court on 11.03.2022, it has been held that:-

“the amount of compensation can be said to be “falling due” on the death of the employee/deceased and the liability to pay the compensation would arise immediately from the date of death of deceased. Even as per Section 4A(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 to extent of liability which he accepts, and, such payment shall be deposited with the Commissioner or made to the employee, as the case may be, without prejudice to the right of the employee to make any further claim. Therefore, the liability to pay the compensation and interest on the amount of arrears/compensation shall be from the date of accident and not from the date of the order passed by the Commissioner.”

10. In the case of *Kamla Chaturvedi Vs. National Insurance Co. Ltd.* reported in 2009 (1) SCC 487, reiterating earlier principles in para 7 & 8 the Hon'ble Apex Court has held as under:-

"7. In Ved Prakash Garg Vs. Premi Devi & Ors. reported in 1997 (8) SCC (1)- this court observed that the insurance company is liable to pay not only the principal amount of compensation payable by the insured/employer but also interest thereon if ordered by the Commissioner to be paid by the insured/employee. It was however held that it was the liability of insured/employer alone in respect of payment of penalty imposed under Section 4A(3)(b) of the Act."

"8. In New India Assurance Co.'s Case (supra) and Ved Prakash Garg's case(supra was distinguished on fact). It was observed that in the said case, the court was not concerned with a case where an accident had occurred by the use of motor vehicle in respect whereof the Contract of insurance will be governed by the provisions of the Motor Vehicles Act, 1988."

Conclusion

11. Award of compensation falls due on the date of occurrence/ accident and computation of compensation and interest begins from the date, it fell due i.e. the date of accident and not the date of award till its realization. In case of accident out of use motor vehicle causing death or injuries to employee, the insurer of vehicle can't escape liability to pay the interest on principal award.

12. After analyzing the law, I must revert back to the findings recorded by Ld. Presiding Officer-cum-Commissioner under Employee's Compensation Act, which categorically show that no

amount of interest component has been awarded inspite of statutory mandate of Section 4A(3)(a) and no reason has been attributed for not granting the interest component in the award which is quite illegal and suffers from perversity

13. In view of aforesaid discussion and reasons, I find merits in this appeal which, is hereby, allowed and the impugned order is modified to the extent of payment of simple interest @ 12 % per annum from the date of death of deceased i.e. on 28.01.2009 till the date of actual payment on original award amount of Rs.3,29,597/-.

14. The respondent No.2-Insurance Company Ltd. is directed to deposit the aforesaid amount of interest within 2 months from the date of this order before the Ld. court below, failing which, the said amount shall be realized through process of court. After deposit of said amount, it shall be disbursed in favour of appellant.

15. The present order is beneficial to all Presiding Officers of Labour Court in the State, hence, **Registry is directed to circulate the order to all Presiding Officers of Labour Court in the State of Jharkhand.**

(Pradeep Kumar Srivastava, J.)