HIGH COURT OF ANDHRA PRADESH

WEDNESDAY ,THE SIXTH DAY OF JULY

TWO THOUSAND AND TWENTY TWO

PRSENT

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI

CIVIL MISCELLANEOUS APPEAL NO: 588 OF 2008

Between:

1. M/S.UNITED INDIA INSURANCE COMPANY LTD Kurnool
   Divisional Manager
   The Divisional Manager,
   M/s.United India Insurance Company Ltd.,
   Near SBI., Main Branch,

...PETITIONER(S)

AND:

1. MR.HARIJANA P.ISRAIL & ANR /o.H.P.Eranna
   Lorry Cleaner
   R/o.Ambedkar Nagar,
   Stantanpuram (V),
   KURNOOL DISTRICT.
2. Mr.P.Mabu S/o.Rosanna
   Owner of Lorry No.ADQ 9697
   R/o.Plot No.14,
   Nirmal Nagar,
   SBI Colony,

...RESPONDENTS

Counsel for the Petitioner(s): SRINIVASA RAO KATAKAMSETTY

Counsel for the Respondents: KOPPULA GOPAL

The Court made the following: ORDER

HIGH COURT OF ANDHRA PRADESH

* * * *

CIVIL MISCELLANEOUS APPEAL No. 588 of 2008

Between:

The Divisional Manager,
M/s.United India Insurance Company Limited
Near SBI, Main Road, Kurnool

..... APPELLANT

AND

1. Harijana P. Israil
2. P. Mabu

.....RESPONDENTS

DATE OF JUDGMENT PRONOUNCED: **06.07.2022**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

1.	Whether Reporters of Local newspapers may be allowed to see the Judgments?	Yes/No
2.	Whether the copies of judgment may be marked to Law Reporters/Journals	Yes/No
3.	Whether Your Lordships wish to see the fair copy of the Judgment?	Yes/No

RAVI NATH TILHARI, J

* **THE HON'BLE SRI JUSTICE RAVI NATH TILHARI**

\+ CIVIL MISCELLANEOUS APPEAL No. 588 of 2008

% 06.07.2022

The Divisional Manager,
M/s.United India Insurance Company Limited
Near SBI, Main Road, Kurnool

....Appellant

Versus

$ 1. Harijana P. Israil
2. P. Mabu

.....Respondents

! Counsel for the Appellant: Sri SRININIVASA RAO KATAKAMSETTY

^ Counsel for the respondents: Sri KOPPULA GOPAL (did not appear)

< Gist :

> Head Note:

? Cases Referred:

1. (2011) 1 SCC 343
2. 2011 SCC Online AP 628
3. 2011 SCC Online AP 921
4. (2007) 2 SCC 349
5. (2017) 2 SLR 103
6. (2012) 2 SCC 267
7. (1976) 1 SCC 289
8. (2009) 6 SCC 280
9. (2012) 12 SCC 540
10. (1999) 8 SCC 254
11. (2014) 2 SCC 298
12. (2019) 11 SCC 514
13. 2022 (1) SCJ 766
14. (2019) 3 SCC 572

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

CIVIL MISCELLANEOUS APPEAL No. 588 of 2008

JUDGMENT:

Sri Srinivasa Rao Katakamsetty, learned counsel for the appellant had completed his arguments on 17.06.2022, but Sri Koppula Gopal, the respondent's counsel did not appear even in the revised call. The matter was posted for 20.06.2022 for the arguments of the respondent's counsel. On 20.06.2022 also the respondent's counsel did not appear to argue the matter. The judgment was reserved.

2. This appeal under Section 30 of the Workmen's Compensation Act, 1923 (in short 'WC Act 1923') has been filed by M/s. United India Insurance Company Limited through its Divisional Manager (in short the 'Insurance Company'), challenging the judgment and award dated 16.08.2004, passed in W.C.No.29 of 2002, on the file of the Commissioner for Workmen's Compensation & Assistant Commissioner of Labour, Kurnool (in short the 'Commissioner'), by which the application filed by the applicant/1st respondent herein under Section 22 of WC Act 1923 was allowed for payment of compensation of Rs. 2,36,688/- with interest @12% per annum on the amount of compensation for the period from 23.11.2000 i.e., the date of accident to the date of actual deposition, also awarding an amount of Rs.5,000/- as costs, and directing the opposite parties No.1 & 2 (the appellant and respondent No.2 herein) holding them jointly and severally liable to pay the amount.

3. The applicant before the Commissioner in W.C.No.29 of 2002 shall, hereinafter be referred to as 'respondent No.1' and the opposite party Nos.1 and 2 in the said case shall be referred as the 'respondent No.2' and the 'appellant' respectively.

4. The 1st respondent was employed as cleaner by the 2nd respondent on its Lorry bearing registration No.ADQ-9697 on monthly wage of Rs.2,500/- along with batta @Rs.1,000/- per month. On 23.11.2000 he was travelling in the said lorry loaded with coal as cleaner along with driver of the lorry and when they reached the temple of Sreerama near Kallur Estate, Kurnool on N.H.7 road at about 7.45 p.m. on 23.11.2000 the lorry stopped the middle of the road due to airlock. Under the instructions of the lorry driver Sri K. Mahewara Babu, the 1st respondent was checking the quantity of the diesel tank. Meanwhile the Tractor and Trailor bearing registration No.AP21U-5773 and 5774 proceeding towards Bellary Chowrastha from Krishna Nagar hit the single bullock cart which was also proceeding towards Bellary chowrastha and passing just by the side of the said standing lorry on the middle of the road. Due to this collision the 1st respondent's left leg was crushed in between the lorry and the bullock cart and that he was immediately shifted to Government General Hospital, Kurnool for treatment. He incurred an amount of Rs.60,000/- towards medical expenses. He also stated that even after the treatment, the injury received did not heal and that the Doctors advised amputation of the leg up to thigh level. The owner of the tractor denied the liability to pay compensation on the ground that the lorry was stopped in the middle of the road and that he had no insurance for the crime vehicle under any Insurance Company. Thus he did not pay any compensation to the 1st respondent. The 1st respondent also claimed that he was aged 23 years as on the date of accident and that he acquired permanent total disability due to the said accident which was in the course of and out of employment as cleaner

under the 2nd respondent and claimed Rs.2,00,000/- towards compensation along with interest @12% per annum, costs and penalty.

5. The 2nd respondent filed counter affidavit in which he admitted that the 1st respondent was employed by him and that there was an accident on 23.11.2000 resulting in injuries to the 1st respondent, who was shifted to the Government General Hospital, Kurnool and was inpatient for 100 days therein where he spent an amount of Rs.5,000/- towards medical expenses on the day of the accident. He further stated that he did not pay anything towards compensation to the 1st respondent and that the lorry was insured with United India Insurance Company Limited, the appellant, and the policy was subsisting as on the date of the accident.

6. The appellant - Insurance Company also filed counter affidavit and denied all the allegations of the 1st respondent. The appellant also raised the plea that the driver and owner of the tractor and trailor were necessary parties to the application.

7. The Commissioner for Workmen's Compensation, Kurnool and the Assistant Commissioner of Labour, Kurnool framed the following issues for examination.

1) "Whether there was employee-employer relationship between the applicant and the Opposite Party No.1 as on the alleged date of accident?
2) Whether there was an accident out of and in the course of employment of the applicant with the Opposite Party No.1 resulting in his injuries.
3) The extent of loss of earning capacity suffered by the applicant due to the injuries he sustained in the alleged accident, if occurred.
4) The exact age and wage of the applicant.

5) Whether the Opposite parties No.1 and No.2 are liable to pay compensation, if payable."

8. The 1st respondent, in his evidence examined himself as PW.1 (AW.1) and Dr.G. Dhanunjaya, M.S., Ortho Surgeon in Government General Hospital, Kurnool as PW.2 (AW.2) and in documentary evidence, the 1st respondent filed certified copies of FIR, Charge Sheet, Wound Certificate, Attestation copy of Disability Certificate issued by the Medical Board, Kurnool, Photos of the injured 1st respondent with negatives, Xerox copy of Insurance Policy and copy of the legal notice which were marked as Exs.A1 to A7 respectively.

9. On examination of evidence on record, the Commissioner recorded the findings that the 1st respondent was appointed by the 2nd respondent as Cleaner on its Lorry and that on 23.11.2000 he met with an accident out of and in the course of his employment with the 2nd respondent and sustained serious injuries leading to physical disability. Finding was also recorded that the 1st respondent suffered loss of earning capacity to the extent of 100%. The monthly wages of the 1st respondent on the date of the accident were determined as Rs. 1793-50 ps payable towards minimum wages in respect of a cleaner in the employment in 'Public Motor Transport' vide G.O.Ms.No.30, dated 27.07.2000 with effect from 27.07.2000 and notification of the Commissioner of Labour as on dated 01.10.2000. The age of the 1st respondent was determined as 23 years as on the date of the accident. The 2nd respondent being owner of the lorry and employer of 1st respondent and the appellant herein, having not objected to the insurance policy, were held jointly and severally liable to pay the compensation amount, as determined with interest and costs, as already mentioned above.

10. The appellant filed CMA No.588 of 2008 challenging the award dated 16.08.2004 to the extent of grant of compensation with interest.

11. The 1st respondent herein filed CMA No.590 of 2008 challenging the award dated 16.08.2004 to the extent the Commissioner had not imposed penalty upon the appellant and the 2nd respondent.

12. The CMA No.590 of 2008 was dismissed for non-prosecution on 20.06.2022.

13. The present CMA No.588 of 2008 was admitted on 18.07.2008

14. The only substantial question of law as framed in the appeal is as follows:

> "The award passed by the Commissioner for Workmen's Compensation-cum-Assistant Commissioner of Labour, Kurnool, is not maintainable, as the injured was not involved in any accident much less with the vehicle bearing No.ADQ-9697 when the accident took place due to rash and negligent driving of Tractor bearing No.AP-21-U-5773 and 5774 and suffered injuries out of and in the course of employment. The Commissioner had erred in law in passing the award when there is no provision making the appellant liable to pay the compensation by taking the loss of earning capacity @ 100% as against the evidence of 40% by the Medical Board and interest from the date of accident when the claim was filed after two years of the accident."

15. Sri Srinivasa Rao Katakamsetti, learned counsel for the appellant, advanced the following arguments:

i). First submission is that as per the medical certificate of disability of the qualified medical practitioners, the physical disability of the 1st respondent was assessed as 40% and therefore, the Commissioner legally erred in determining the loss of earning capacity of the 1st respondent to the extent of 100%. According to his submission, loss of earning capacity

could not be determined more than 40%, as the injury sustained by the 1st respondent was a non-specified injury in Schedule-I, in view of Section 4 (1) (c) (ii) of the WC Act, 1923. Learned counsel for the appellant placed reliance on the judgments in the cases of ***Raj Kumar v. Ajay Kumar***[1]***, Oriental Insurance Company Lited v. Bolla Sarojini***[2] and ***New India Assurance Company Limited v. Md. Akbar Khan***[3] here.

ii). Second submission is that the Commissioner legally erred in awarding interest @12% on the compensation amount from the date of the accident. His submission is that on the compensation amount, no interest could be awarded as there is no provision for awarding of interest on the compensation amount. He submitted that the interest could be awarded only if the amount of compensation determined under the award was not paid within one month from the date it fell due. According to his submission, there should be first determination of compensation without awarding any interest and if the employer commits default in making payment of such compensation amount within a period of one month from the date of its determination, it is only in such circumstance, the interest could be awarded @12% p.a., under Section 4-A (3) (a) of the WC Act 1923. Learned counsel for the appellant has placed reliance on the judgments in the cases of ***National Insurance Co. Ltd v. Mubasir Ahmed***[4] and ***Bhagirathi Sahoo v. The Oriental Insurance Company Limited***[5].

16. I have considered the submissions advanced by the learned counsel for the appellant and perused the material on record.

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[1] (2011) 1 SCC 343
[2] 2011 SCC Online AP 628
[3] 2011 SCC Online AP 921
[4] (2007) 2 SCC 349
[5] (2017) 2 SLR 103

17. The finding recorded by the Commissioner on the point of accident, employer and employee relationship between 1st respondent and 2nd respondent, the validity of the insurance policy, the monthly wages and the age of the 1st respondent as determined by the Commissioner, have not been challenged during the arguments.

18. Learned counsel for the appellant further submitted that there was no period of limitation for filing the application under Section 22 of the WC Act, 1923 at that point of time and consequently he did not advance any arguments with respect to the filing of the claim petition after two years of the accident.

19. The substantial question of law as framed in the memo of appeal is in two parts. In view of the arguments advanced on two points, as noted above, and not advanced on other points, the substantial question of law, on which the appeal is admitted, would be considered and decided only with respect to the arguments advanced, which would be as under:

> "The Commissioner had erred in law in passing the award when there is no provision making the appellant liable to pay the compensation by taking the loss of earning capacity @ 100% as against the evidence of 40% by the Medical Board and interest from the date of accident."

20. The first submission of the appellant's counsel is that the Commissioner has illegally determined the loss of earning capacity as 100%, which ought to have been restricted to 40% which is the percentage of physical disability assessed under medical certificate.

21. To determine the above aspect Sections 3 and 4 (1) (c) of the WC Act 1923 are being reproduced hereunder:

> "**3. Employer' s liability for compensation**.-

(1) If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter: Provided that the employer shall not be so liable--

(a) in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding [3] three] days;

(b) in respect of any [4] injury, not resulting in death, caused by] an accident which is directly attributable to--

(i) the workman having been at the time thereof under the influence of drink or drugs, or

(ii) the wilful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen, or

(iii) the wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workmen."

4. Amount of compensation.-

(1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely:-

(a) ……

(b) ……

(c): Where permanent partial disablement results from the injury	(i) In the case of an injury specified in Part-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 that 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;

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;

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

22. Section 3 (1) of the WC Act 1923 therefore provides that if personal injury is caused to a workman arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of 'this chapter', i.e., Chapter-II. Section-4 of the WC Act 1923, in the same chapter provides that subject to the provisions of the Act, the amount of compensation shall be as given there under and in the cases where there is permanent partial disablement which result from the injury, clause (c) (ii) of Section 4 (1) provides that in the case of an injury not specified in Schedule 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;

23. Learned counsel for the appellant submitted that the injury caused to the 1st respondent is an injury not specified in the Schedule-I, which attracts Section 4 (1) (c) (ii) of the WC Act.

24. The Commissioner has also assessed the compensation amount under Section 4 (1) (c) (ii) of the WC Act 1923.

25. In ***Raj Kumar*** (supra) the Hon'ble Apex Court held that the disability refers to any restriction or lack of ability to perform an activity in the manner considered normal for a human being. The percentage of permanent disability as expressed by the doctors with reference to the whole body, or more often than not, with reference to a particular limb. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of 'loss of future earnings' would depend upon the effect and impact of such permanent disability on his earning capacity. The percentage of the permanent disability cannot be mechanically applied as percentage of economic loss or loss of earning capacity. It has been held further that equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation and what requires to be assessed is the effect of the permanent disability on the earning capacity of the injured and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings by applying the standard multiplier method used to determine loss of dependency.

26. It is apt to refer paragraph No.19 of ***Raj Kumar*** (supra) in which, the Hon'ble Apex Court summarized the principles as under:

> **"19.** We may now summarise the principles discussed above:
>
> (*i*) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.
>
> (*ii*) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of

evidence, concludes that the percentage of loss of earning capacity is the same as the percentage of permanent disability).

(*iii*) The doctor who treated an injured claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard to the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(*iv*) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors."

27. The Commissioner has considered the above aspect in its judgment / award as follows:

"The District Medical Board in Government General Hospital, Kurnool issued a certificate wherein the nature of disability was noted as post traumatic case of crushing of left leg stiffed knee walking 'O' and physical disability assessed at 40%. The applicant also examined Dr.B.Dhanunjaya, Asst. Professor in Orthopedic Surgeon in Government General Hospital, Kurnool as P.W.2 who deposed that he examined the applicant on 16.09.2003 to assess the physical disability and for further management and concluded that the patient is unfit for the post of lorry cleaner which required hard labour and estimated the physical disability on his findings at 40% to 45%. In his cross examination by the learned counsel of the Opposite Party No.2 he denied that the disability was high, the left leg was healed and that the left knee movements are normal and that he has not treated the patient and deposing false to help the applicant. He also denied that he was not competent to certify the disability.

The accident occurred on 23.11.2000 and the P.W.2 deposed his evidence on examination of the applicant before me on 07.02.2004. I have personally examined the applicant with the help of the P.W.2 who was an Orthopedic Surgeon. The condition of the applicant was very pitiable. Puss was oozing from the injuries on the wounded leg and that the applicant was moving with difficulty with the help of stick. It appears that the applicant requires continuous help and attendance of another person even to attend his nature calls. This is the physical condition of the applicant. Even after 3 years from the date of accident and I am of the

view that the condition of the applicant has been aggregating due to the injuries and disability."

28. Thereafter, the Commissioner recorded that "on the above evidence, I am convinced that the applicant would not be able to manage any kind of work due to the disability following the injuries and therefore, I hold that the applicant suffered loss of earning capacity to the extent of 100% in accordance with Section 4 (1) (c) (ii) of the Act".

29. The Commissioner has clearly recorded that the extent of disability and the extent of loss of earning capacity are different and may go in different directions and also may coincide at times depending on the facts in each case. He examined the 1st respondent with the help of P.W.2 the Orthopedic Surgeon and has recorded the physical condition of the 1st respondent that even after 3 years of the accident it was pitiable, puss was oozing from the injuries on the wounded leg, the 1st respondent was moving with difficulty with the help of stick and required continuous help and attendance of another person even to attend his nature calls.

30. Learned counsel for the appellant submitted that in view of the physical disability having been assessed at 40%, the 1st respondent did not lose the earning capacity up to 100%, but he could still do some other work while sitting and earn some amount for livelihood. However, he could not point out from the record nor he could argue as to what work the 1st respondent could do in such a physical condition as has been described by the Commissioner in the order based on evidence as also personally examining the 1st respondent. A person who even after expiry of three years of the accident would require the help of an attendant to attend the nature calls, what work he can be expected to take for his earnings. The submission of the appellant's counsel appears to be only imaginary and hypothetic, which cannot be accepted.

31. In the case of ***Mohan Soni v. Ram Avtar Tomar***[6] the Hon'ble Apex Court held that any scaling down of the compensation should require something more tangible than a hypothetical conjecture that notwithstanding the disability, the victim could make up for the loss of income by changing his vocation or by adopting another means of livelihood. The party advocating for a lower amount of compensation for that reason must plead and show before the Tribunal that the victim enjoyed some legal protection as in the case of persons covered by the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 or in the case of the vast multitude who earn their livelihood in the unorganized sector by leading cogent evidence that the victim had in fact changed his vocation or the means of his livelihood and by virtue of such change he was deriving a certain income.

32. In ***Mohan Soni*** (supra) the Hon'ble Apex Court observed that it is all very well to theoretically talk about a cart-puller changing his work and becoming a vegetable vendor. But the computation of compensation payable to a victim of motor accident who suffered some serious permanent disability resulting from the loss of a limb, etc., should not take into account such indeterminate factors.

33. In the present case also nothing has been brought on record to submit that the 1st respondent may take some other job for his livelihood. What type of job to earn his livelihood may be taken has not been pleaded nor pointed out from the records. Further, the 1st respondent was a lorry cleaner and in view of the finding with respect to the physical condition of the 1st respondent, which finding has not been assailed before this Court to suffer from any legal infirmity being contrary to the

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[6] (2012) 2 SCC 267

evidence on record or otherwise, it is only a theoretical argument that the 1st respondent could do some other work. Such indeterminate factor cannot be taken into account. It has also not been pleaded nor could be argued that the 1st respondent enjoyed some legal protection or that he changed his vocation or means of his livelihood and by virtue of changing his vocation he was deriving certain income.

34. Considering the aforesaid legal propositions and the findings of the Commissioner on the point of physical condition of the 1st respondent, based on evidence on record and personal examination of the 1st respondent, which have not been disputed or challenged, this Court is not inclined to accept the submission of the appellant's counsel that in the present case also the loss of earning capacity of the 1st respondent should be taken the same as the percentage of physical disability. Further, the Commissioner had the advantage of seeing and examining the physical condition of the 1st respondent which advantage is not available to this appellate Court. Consequently, the finding of the Commissioner that the 1st respondent suffers from 100% loss of earning capacity is not liable to be interfered with. The Commissioner did not commit any illegality in determining loss of earning capacity of the 1st respondent at 100% and in awarding the awarded amount of compensation.

35. In ***Bolla Sarojini*** (supra) 60% of disability was assessed by the doctor. The injury was a non-schedule injury. Taking the medical certificate of the disability, loss of earning capacity was fixed at 60%. In ***Md. Akbar Khan*** (supra) also the loss of earning capacity was determined at 35% based on the physical disability of 35% assessed by the doctor. On the strength of these judgments, learned counsel for the

appellant submitted that the loss of earning capacity is to be taken as the same percentage of disability.

36. This Court is not convinced with the submission of the appellant's counsel based on the aforesaid two judgments. Those cases were decided, after the judgment of the Hon'ble Apex Court in ***Raj Kumar*** (supra), which appears not to have been brought to the notice of this Court. The percentage of physical disability, necessarily, may not be the percentage of loss of earning capacity which may differ from percentage of physical disability and may be higher or less or may even be the same, but depending upon the facts of each case, on consideration of the factors, and the principles of law as laid down in ***Raj Kumar*** (supra) case. So, in the facts of ***Bolla Sarojini*** (supra) and ***Md. Akbar Khan*** (supra), this Court is taken to have determined the loss of earning capacity as the same percentage of physical disability, but as principle, those judgments cannot be applied to the facts of every case universally.

37. On the point of interest, it is relevant to refer Section 4-A of the WC Act 1923, as under:

> **"4A. Compensation to be paid when due and penalty for default.—**
> (1) Compensation under section 4 shall be paid as soon as it falls due.
> (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 extent of liability which he accepts, and, such payment shall be deposited with the Commissioner or made to the[1][employee], as the case may be, without prejudice to the right of the [1][employee] to make any further claim.
> [(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 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; 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.

Explanation.--For the purposes of this sub-section, "scheduled bank" means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934.

[(3A) The interest and the penalty payable under sub-section *(3)* shall be paid to the [1][employee] or his dependant, as the case may be.]"

38. Section 4-A (3) of the WC Act 1923 provides that where any employer is in default in paying compensation due under WC Act 1923 within one month from the date it fell due, the Commissioner shall 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 if in the opinion of the Commissioner there is no justification for delay he shall direct the employer to pay a further sum not exceeding 50% of the arrears of compensation and interest, as penalty.

39. Evidently, Section 4-A WC Act 1923 provides for payment of interest on the compensation amount, as determined under the award, as also the penalty if there is no justification for delay.

40. The Commissioner has awarded simple interest @12% per annum on the compensation amount i.e., 2,36,688/- with effect from 23.11.2000 i.e., the date of the accident to the date of actual deposition of the compensation amount.

41. The submission of the appellant's counsel is that the interest @12% could be awarded only in default of the employer in making payment within one month from the date it fell due i.e., date of the award. It was only, thereafter, that the interest could be imposed. The compensation determined under the award must be without any interest. No interest could be imposed with effect from the date of the accident but if default is committed on payment of compensation, from the date of default, the interest would be payable @12% per annum up to the date of actual payment, and if the amount is paid within that period, no interest could not be levied on the compensation amount.

42. The Court is not convinced with the submission of the counsel for the appellant.

43. In ***Pratap Narain Singh Deo v. Srinivas Sabata***[7] the Hon'ble Apex Court held that the employer became liable to pay the compensation as soon as the personal injury was caused to the workman by the accident which arose out of and in the course of the employment. In paras-7 and 8 of the judgment, the Hon'ble Apex Court held as under:

> "**7.** Section 3 of the Act deals with the employer's liability for compensation. Sub-section (1) of that section provides that the employer shall be liable to pay compensation if "personal injury is caused to a workman by accident arising out of and in the course of his employment". It was not the case of the employer that the right to compensation was taken away under sub-section (5) of Section 3 because of the institution of a suit in a civil court for damages, in respect of the injury, against the employer or any other person. The employer therefore became liable to pay the compensation as soon as the aforesaid personal injury was caused to the workman by the accident which admittedly arose out of and in the course of the employment. It is therefore futile to contend that the compensation did not fall due until after the Commissioner's order dated May 6, 1969 under Section 19. What the section provides is that if any

[7] (1976) 1 SCC 289

question arises in any proceeding under the Act as to the ability of any person to pay compensation or as to the amount or duration of the compensation it shall, in default of agreement, be settled by the Commissioner. There is therefore nothing to justify the argument that the employer's liability to pay compensation under Section 3, in respect of the injury, was suspended until after the settlement contemplated by Section 19. The appellant was thus liable to pay compensation as soon as the aforesaid personal injury was caused to the appellant, and there is no justification for the argument to the contrary.

8. It was the duty of the appellant, under Section 4-A(1) of the Act, to pay the compensation at the rate provided by Section 4 as soon as the personal injury was caused to the respondent. He failed to do so. What is worse, he did not even make a provisional payment under sub-section (2) of Section 4 for, as has been stated, he went to the extent of taking the false pleas that the respondent was a casual contractor and that the accident occurred solely because of his negligence. Then there is the further fact that he paid no heed to the respondent's personal approach for obtaining the compensation. It will be recalled that the respondent was driven to the necessity of making an application to the Commissioner for settling the claim, and even there the appellant raised a frivolous objection as to the jurisdiction of the Commissioner and prevailed on the respondent to file a memorandum of agreement settling the claim for a sum which was so grossly inadequate that it was rejected by the Commissioner. In these facts and circumstances, we have no doubt that the Commissioner was fully justified in making an order for the payment of interest and the penalty."

44. Learned counsel for the appellant placed reliance in ***National Insurance Co. Ltd. v. Mubasir Ahmed*** (supra), para-9, to submit that starting point of payment of interest is on completion of one month from the date on which the compensation fell due. It cannot be the date of the accident and it has to be taken to be the date of the adjudication of the claim. Para-9 of ***Mubasir Ahmed*** (supra) reads as under:

"**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 30 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 to 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."

45. ***Mubasir Ahmed*** (supra) and one more judgment in ***Oriental Insurance Company Limited v. Mohd. Nasir***[8] were considered by the Hon'ble Apex Court in ***Oriental Insurance Co.Ltd. vs. Siby George***[9] in which it was held that the earlier decisions in ***Pratap Narain Singh Deo*** (supra) (by a Four-Judge Bench) and ***Kerala State Electricity Board v. Valsala K***[10] (by a Three-Judge Bench) were not brought to the notice of the Apex Court in the later decisions in ***Mubasis Ahmed*** (supra) and ***Mohd. Nasir*** (supra). The contrary view taken in the decisions of ***Mubasis Ahmed*** (supra) and ***Mohd. Nasir*** (supra) do not express the correct view and do not make binding precedents.

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[8] (2009) 6 SCC 280
[9] (2012) 12 SCC 540
[10] (1999) 8 SCC 254

46. In ***Siby George*** (supra) the question that arose for consideration was *"When does the payment of compensation under the Workmen's Compensation Act, 1923 becomes due and consequently what is the point in time from which interest would be payable on the amount of compensation as provided under Section 4-A(3) of the Act*?" It was held that the payment of compensation fell due on the date of the accident as was laid down in ***Pratap Narain Singh Deo*** (supra).

47. It is apt to refer paras-8, 12 & 13 of ***Siby George*** (supra) as under:

> "**8.** It is, thus, to be seen that sub-section (3) of Section 4-A is in two parts, separately dealing with interest and penalty in clauses (*a*) and (*b*) respectively. Clause (*a*) makes the levy of interest, with no option, in case of default in payment of compensation, without going into the question regarding the reasons for the default. Clause (*b*) provides for imposition of penalty in case, in the opinion of the Commissioner, there was no justification for the delay. Before imposing penalty, however, the Commissioner is required to give the employer a reasonable opportunity to show cause. On a plain reading of the provisions of sub-section (3) it becomes clear that payment of interest is a consequence of default in payment without going into the reasons for the delay and it is only in case where the delay is without justification, the employer might also be held liable to penalty after giving him a show cause. Therefore, a finding to the effect that the delay in payment of the amount due was unjustified is required to be recorded only in case of imposition of penalty and no such finding is required in case of interest which is to be levied on default per se.
>
> **12.** The decision in *Pratap Narain Singh Deo* [(1976) 1 SCC 289 : 1976 SCC (L&S) 52 : AIR 1976 SC 222 : 1976 Lab IC 222] was by a four-Judge Bench and in *Valsala K.* [(1999) 8 SCC 254 : 2000 SCC (L&S) 50 : AIR 1999 SC 3502] by a three-Judge Bench of this Court. Both the decisions were, thus, fully binding on the Court in *Mubasir Ahmed* [(2007) 2 SCC 349 : (2007) 1 SCC (L&S) 643] and *Mohd. Nasir* [(2009) 6 SCC 280 : (2009) 2 SCC (Civ) 877 : (2009) 2 SCC (Cri) 987] , each of which was heard by two Judges. But the earlier decisions

in *Pratap Narain Singh Deo* [(1976) 1 SCC 289 : 1976 SCC (L&S) 52 : AIR 1976 SC 222 : 1976 Lab IC 222] and *Valsala K.* [(1999) 8 SCC 254 : 2000 SCC (L&S) 50 : AIR 1999 SC 3502] were not brought to the notice of the Court in the two later decisions in *Mubasir Ahmed* [(2007) 2 SCC 349 : (2007) 1 SCC (L&S) 643] and *Mohd. Nasir* [(2009) 6 SCC 280 : (2009) 2 SCC (Civ) 877 : (2009) 2 SCC (Cri) 987] .

13. In the light of the decisions in *Pratap Narain Singh Deo* [(1976) 1 SCC 289 : 1976 SCC (L&S) 52 : AIR 1976 SC 222 : 1976 Lab IC 222] and *Valsala K.* [(1999) 8 SCC 254 : 2000 SCC (L&S) 50 : AIR 1999 SC 3502] , it is not open to contend that the 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. The decisions in *Mubasir Ahmed* [(2007) 2 SCC 349 : (2007) 1 SCC (L&S) 643] and *Mohd. Nasir* [(2009) 6 SCC 280 : (2009) 2 SCC (Civ) 877 : (2009) 2 SCC (Cri) 987] insofar as they took a contrary view to the earlier decisions in *Pratap Narain Singh Deo* [(1976) 1 SCC 289 : 1976 SCC (L&S) 52 : AIR 1976 SC 222 : 1976 Lab IC 222] and *Valsala K.* [(1999) 8 SCC 254 : 2000 SCC (L&S) 50 : AIR 1999 SC 3502] do not express the correct view and do not make binding precedents."

48. In ***Siby George*** (supra), the Commissioner for Workmen's Compensation had directed payment of simple interest @12% per annum from the date of the accident, against which the High Court of Kerala dismissed the appeal as time barred. The appeal of the *Oriental Insurance Company* was dismissed by the Apex Court.

49. In ***Sabera Bibi Yakubbhai Shaikh v. National Insurance Co.Ltd.***[11] the Hon'ble Apex Court after referring to ***Siby George*** (supra) held that the appellants therein shall be entitled to interest @12% per annum from the date of the accident. Paragraph Nos.9 and 10 are being reproduced as under:

"**9.** Following the aforesaid judgments, this Court in *Oriental Insurance Co. Ltd.* v. *Siby George* [(2012) 12 SCC 540 : (2012) 4 SCC (Cri) 136 : (2013) 2 SCC (Civ) 392] reiterated the legal position and held as follows : (SCC pp. 545-46, paras 11-13)

[11] (2014) 2 SCC 298

"*11*. The Court then referred to a Full Bench decision of the Kerala High Court in *United India Insurance Co. Ltd.* v. *Alavi* [(1998) 1 KLT 951] , and approved it insofar as it followed the decision in *Pratap Narain Singh Deo* [(1976) 1 SCC 289 : 1976 SCC (L&S) 52] .

12. The decision in *Pratap Narain Singh Deo* [(1976) 1 SCC 289 : 1976 SCC (L&S) 52] was by a four-Judge Bench and in *Valsala K.* [*Kerala SEB* v. *Valsala K.*, (1999) 8 SCC 254 : 2000 SCC (L&S) 50] by a three-Judge Bench of this Court. Both the decisions were, thus, fully binding on the Court in *Mubasir Ahmed* [(2007) 2 SCC 349 : (2007) 1 SCC (L&S) 643] and *Mohd. Nasir* [(2009) 6 SCC 280 : (2009) 2 SCC (Civ) 877 : (2009) 2 SCC (Cri) 987] , each of which was heard by two Judges. But the earlier decisions in *Pratap Narain Singh Deo* [(1976) 1 SCC 289 : 1976 SCC (L&S) 52] and *Valsala K.* [*Kerala SEB* v. *Valsala K.*, (1999) 8 SCC 254 : 2000 SCC (L&S) 50] were not brought to the notice of the Court in the two later decisions in *Mubasir Ahmed* [(2007) 2 SCC 349 : (2007) 1 SCC (L&S) 643] and *Mohd. Nasir* [(2009) 6 SCC 280 : (2009) 2 SCC (Civ) 877 : (2009) 2 SCC (Cri) 987] .

13. In the light of the decisions in *Pratap Narain Singh Deo* [(1976) 1 SCC 289 : 1976 SCC (L&S) 52] and *Valsala K.* [*Kerala SEB* v. *Valsala K.*, (1999) 8 SCC 254 : 2000 SCC (L&S) 50] , it is not open to contend that the 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. The decisions in *Mubasir Ahmed* [(2007) 2 SCC 349 : (2007) 1 SCC (L&S) 643] and *Mohd. Nasir* [(2009) 6 SCC 280 : (2009) 2 SCC (Civ) 877 : (2009) 2 SCC (Cri) 987] insofar as they took a contrary view to the earlier decisions in *Pratap Narain Singh Deo* [(1976) 1 SCC 289 : 1976 SCC (L&S) 52] and *Valsala K.* [*Kerala SEB* v. *Valsala K.*, (1999) 8 SCC 254 : 2000 SCC (L&S) 50] do not express the correct view and do not make binding precedents."

10. In view of the aforesaid settled proposition of law, the appeal is allowed and the judgment and order [*National Insurance Co. Ltd.* v. *Yusuf Ibrahim Shaikh*, First Appeal No. 197 of 2012, decided on 24-1-2012 (Guj)] of the High Court are set aside. The appellants shall be entitled to interest at the rate of 12% from the date of the accident. No costs."

50. In ***North East Karnataka Road Transport Corpn. v. Sujatha***[12] also the Hon'ble Apex Court again laid down as under in paras 19 to 25 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*

[12] (2019) 11 SCC 514

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."

51. Recently, in ***Ajaya Kumar Das v. Divisional Manager***[13] also the Hon'ble Apex Court held that the applicant therein was entitled to interest from the date of the accident under the Workmen's Compensation Act, 1923.

52. From the aforesaid judgment, it is settled that the interest is awarded from the date of the accident under Section 4-A of the WC Act, 1923 as the compensation falls due on the date of accident.

53. The appellant's counsel should have taken due care before placing reliance on the judgment in ***Mubasis Ahmed*** (supra), which was held by the Hon'ble Apex Court in ***Siby George*** (supra) as per incuriam and as not laying down the correct principles of law on the subject.

54. In ***Union of India v. Rina Devi***[14] the Hon'ble Apex Court decided the issues whether the quantum of compensation should be as per the prescribed rate of compensation as on the date of application, incident or on the date of order awarding compensation, holding that the liability will accrue on the date of the accident and the amount applicable as on that date will be the amount recoverable but the claimant will get

[13] 2022 (1) SCJ 766
[14] (2019) 3 SCC 572

interest from the date of accident till the payment at such rate as may be considered just and fair from time to time.

55. It is apt to refer paragraph Nos.15, 18, 19 and 30 of ***Rina Devi*** (supra) as under:

> "**15.** We now proceed to deal with the following issues seriatim:
>
> **15.1.**(*i*) Whether the quantum of compensation should be as per the prescribed rate of compensation as on the date of application/incident or on the date of order awarding compensation;
>
> **15.2.**(*ii*) Whether principle of strict liability applies;
>
> **15.3.**(*iii*) Whether presence of a body near the railway track is enough to maintain a claim;
>
> **15.4.**(*iv*) Rate of interest.
>
> **18.** The learned Amicus has referred to judgments of this Court in *Raman Iron Foundry* [*Union of India* v. *Raman Iron Foundry*, (1974) 2 SCC 231, para 11] and *Kesoram Industries* [*Kesoram Industries and Cotton Mills Ltd.* v. *CWT*, (1966) 2 SCR 688, para 33 : AIR 1966 SC 1370] to submit that quantum of compensation applicable is to be as on the award of the Tribunal as the amount due is only on that day and not earlier. In *Kesoram Industries* [*Kesoram Industries and Cotton Mills Ltd.* v. *CWT*, (1966) 2 SCR 688, para 33 : AIR 1966 SC 1370] , the question was when for purposes of calculating "net wealth" under the Wealth Tax Act, 1957 provision for payment of tax could be treated as "debt owed" within the meaning of Section 2(*m*) of the said Act. This Court held that "debt" was obligation to pay. The sum payable on a contingency, however, does not become "debt" until the said contingency happens. The liability to pay tax arises on such tax being quantified. But when the rate of tax is ascertainable, the amount can be treated as debt for the year for which the tax is due for purposes of valuation during the accounting year in question. There is no conflict in the ratio of this judgment with the principle propounded in *Thazhathe Purayil Sarabi* [*Thazhathe Purayil Sarabi* v. *Union of India*, (2009) 7 SCC 372 : (2009) 3 SCC (Civ) 133 : (2009) 3 SCC (Cri) 408 : 2010 TAC 420] that in the present context right to compensation arises on the date of the accident. In *Raman Iron Foundry* [*Union of India* v. *Raman Iron Foundry*, (1974) 2 SCC 231, para 11] , the question was whether a claim for unliquidated damages does not give rise to "a debt" till the liability is

determined. It was held that no debt arises from a claim for unliquidated damages until the liability is adjudicated. Even from this judgment it is not possible to hold that the liability for compensation, in the present context, arises only on determination thereof and not on the date of accident. Since it has been held that interest is required to be paid, the premise on which *Rathi Menon* [*Rathi Menon* v. *Union of India*, (2001) 3 SCC 714, para 30 : 2001 SCC (Cri) 1311] is based has changed. We are of the view that law in the present context should be taken to be that the liability will accrue on the date of the accident and the amount applicable as on that date will be the amount recoverable but the claimant will get interest from the date of accident till the payment at such rate as may be considered just and fair from time to time. In this context, rate of interest applicable in motor accident claim cases can be held to be reasonable and fair. Once concept of interest has been introduced, principles of the Workmen Compensation Act can certainly be applied and judgment of the four-Judge Bench in *Pratap Narain Singh Deo* [*Pratap Narain Singh Deo* v. *Srinivas Sabata*, (1976) 1 SCC 289 : 1976 SCC (L&S) 52] will fully apply. Wherever it is found that the revised amount of applicable compensation as on the date of award of the Tribunal is less than the prescribed amount of compensation as on the date of accident with interest, higher of the two amounts ought to be awarded on the principle of beneficial legislation. Present legislation is certainly a piece of beneficent legislation. [*Union of India* v. *Prabhakaran Vijaya Kumar*, (2008) 9 SCC 527, para 12].

19. Accordingly, we conclude that compensation will be payable as applicable on the date of the accident with interest as may be considered reasonable from time to time on the same pattern as in accident claim cases. If the amount so calculated is less than the amount prescribed as on the date of the award of the Tribunal, the claimant will be entitled to higher of the two amounts. This order will not affect the awards which have already become final and where limitation for challenging such awards has expired, this order will not by itself be a ground for condonation of delay. Seeming conflict in *Rathi Menon* [*Rathi Menon* v. *Union of India*, (2001) 3 SCC 714, para 30 : 2001 SCC (Cri) 1311] and *Kalandi Charan Sahoo* [*Kalandi Charan Sahoo* v. *South-East Central Railways*, (2019) 12 SCC 387 : 2017 SCC OnLine SC 1638] stands explained accordingly. The four-Judge Bench judgment in *Pratap Narain Singh Deo* [*Pratap Narain Singh Deo* v. *Srinivas Sabata*, (1976) 1

SCC 289 : 1976 SCC (L&S) 52] holds the field on the subject and squarely applies to the present situation. Compensation as applicable on the date of the accident has to be given with reasonable interest and to give effect to the mandate of beneficial legislation, if compensation as provided on the date of award of the Tribunal is higher than unrevised amount with interest, the higher of the two amounts has to be given.

Re : (iv) Rate of interest

30. As already observed, though this Court in *Thazhathe Purayil Sarabi* [*Thazhathe Purayil Sarabi* v. *Union of India*, (2009) 7 SCC 372 : (2009) 3 SCC (Civ) 133 : (2009) 3 SCC (Cri) 408 : 2010 TAC 420] held that rate of interest has to be @ 6% from the date of application till the date of the award and 9% thereafter and 9% rate of interest was awarded from the date of application in *Mohamadi* [*Mohamadi* v. *Union of India*, (2019) 12 SCC 389 : 2010 SCC OnLine SC 19] , rate of interest has to be reasonable rate on a par with accident claim cases. We are of the view that in absence of any specific statutory provision, interest can be awarded from the date of accident itself when the liability of the Railways arises up to the date of payment, without any difference in the stages. Legal position in this regard is on a par with the cases of accident claims under the Motor Vehicles Act, 1988. Conflicting views stand resolved in this manner."

56. ***Bhagirathi Sahoo*** (supra) case relied upon by the learned counsel for the appellant does not support his case, but on the strength thereof this Court finds that in the present case, the 1st respondent has rightly been awarded interest @12% from the date of the accident. In the said case, the accident took place on 08.09.2005 and the amount of compensation was disbursed to the claimants on 27.06.2014. No interest was paid to the claimants on the amount of compensation. The Hon'ble Apex Court after referring to the provision of Section 4 –A(3) of the WC Act 1923 allowed the appeal of the claimants with a direction to the respondent-Oriental Insurance Company Limited therein to pay interest to the claimants @12% on the amount of compensation with effect from

08.09.2005 till 27.06.2014 i.e., from the date of the accident up to the date of actual payment.

57. In view of the aforesaid, this Court is of the considered view that the liability for payment of compensation arises on the date of the accident. The compensation so determined is an amount which the claimant is legally entitled to receive on the date of the accident. The determination of compensation is made after the date of the accident on the date of the award. The claimant is entitled for interest on compensation from the date of the accident, till its payment. If such amount i.e., compensation with interest from the date of accident as determined under the award of the Commissioner is not paid, within one month from the date of award, the employer would also be further liable for imposition of penalty as provided under Section 4-A (1) (b) of the WC Act, in cases where the delay in payment of compensation, after one month from the date of the award is without justification. In such case, a finding to the effect that the delay in payment of the amount due was unjustified is required to be recorded by the Commissioner of the Workmen's Compensation.

58. The Court, therefore, does not find any illegality in the judgment and award of the Commissioner on the point of awarding interest on the compensation amount from the date of the accident.

59. I do not find any illegality in the award of the Commissioner on the grounds of challenge.

60. The appeal does not involve the substantial question of law as raised for allowing the appeal.

61. The Appeal is dismissed. No order as to costs.

62. There is no representation for the 1st respondent as his counsel has not appeared. Let the copy of this judgment be sent by the Registry of this Court to the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Kurnool, who shall ensure that the compensation as awarded to the 1st respondent is paid to the 1st respondent without any further delay. The Commissioner shall also submit its report of compliance to this judgment through the Registrar General of this Court.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

RAVI NATH TILHARI, J

Date: 06.07.2022
Dsr

Note:
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