



**IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI**

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**C.M.A. No.995 of 2011**

Between:

1. Nidiganti Narasimhulu and another

**.... Appellant**

**And**

Sri K. Suryanarayana and another.

**....Respondents.**

**C.M.A. No.843 of 2013**

Between:

1. Kolatam Nagaiah and another.

**.... Appellant**

**And**

Sri K. Suryanarayana and another.

**....Respondents.**

**C.M.A. No.862 of 2013**

1. Chavula Jayanna and another.

**.... Appellant**

**And**

1. Sri K. Suryanarayana and another.

**....Respondents.**

**C.M.A. No.92 of 2014**

1. Nidiganti Nagaiah and another.

**.... Appellant**

**And**

1. Sri K. Suryanarayana and another.

**....Respondents.**



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Date of Order pronounced on : 10.05.2023

**HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA**

1. Whether Reporters of Local newspapers : Yes/No  
may be allowed to see the judgments?
2. Whether the copies of judgment may be marked: Yes/No  
to Law Reporters/Journals:
3. Whether the Lordship wishes to see the fair copy : Yes/No  
of the Judgment?

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**VENKATA JYOTHIRMAI PRATAPA, J**



**\*HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA**

**+ C.M.A No. 995 of 2011**

% 10.05.2023

# Nidiganti Narasimhulu and another

**.... Appellant**

**And**

Sri K. Suryanarayana and another.

**....Respondents.**

! Counsel for the Petitioner :

Sri N. Aswartha Narayana

Counsel for the Respondents:

Sri Katta Laxmi Prasad

**+ C.M.A No. 843 of 2013**

# 1. Kolatam Nagaiah and another

**.... Appellant**

**And**

Sri K. Suryanarayana and another.

**....Respondents.**

! Counsel for the Petitioner :

Sri N. Aswartha Narayana

Counsel for the Respondents:

Sri Katta Lakshmi Prasad.

**+ C.M.A No. 862 of 2013**

# 1. Chavula Jayanna and another

**.... Appellant**

**And**

1. Sri K. Suryanarayana and another.

**....Respondents.**

! Counsel for the Petitioner :

Sri N. Aswartha Narayana



Counsel for the Respondents: Sri Katta Lakshmi Prasad.

**+ C.M.A No. 92 of 2014**

# 1. Nidiganti Nagaiah and another

**.... Appellant**

**And**

1. Sri K. Suryanarayana and another.

**....Respondents.**

! Counsel for the Petitioner :

Sri N. Aswartha Narayana

Counsel for the Respondents:

Sri Katta Laxmi Prasad

<Gist :

>Head Note:

? Cases referred:

1. 1997 (8) SC 412
2. 2022 Live Law (SC) 102
3. 2000 SCC ( L & S) 1105



**HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA**

**C.M.A.No.995 of 2011 & 843, 862 of 2013 and 92  
of 2014**

**COMMON JUDGMENT:-**

1. These Civil Miscellaneous Appeals are directed under Section 30 of the Workmen Compensation Act against the Order dated 07.08.2009 in W.C.Nos.3, 6,5 and 4 of 2005 on the file of the Commissioner for Workmen's Compensation & Deputy Commissioner of Labour, Anantapur.

**Parties before the learned Commissioner:**

2. The appellants herein were the Applicants and the respondents herein were the Opposite Party Nos.1 and 2 i.e., the Owner of the Tipper and the Insurance Company respectively before the learned Commissioner.

**Reference of parties in the appeal:**

3. For the sake of convenience and understanding, the parties are referred to as they were arrayed before the learned Commissioner.



4. In order to explain the facts and determine the issue involved in all these CMAs, this Court has taken C.M.A.No.995 of 2011 as these appeals are filed by the claimants, who are the parents of the deceased, who died in the same accident.

**The case of the Applicants in CMA No.995 of 2011 in nutshell:**

5. The applicants are the parents of the deceased Nidiganti Balanarasimhulu, S/o Nidiganti Narasimhulu, who died in the accident on 17.02.2004 at about 10.00 am. The deceased was working as a workman under the Opposite Party No.1 in his Tipper bearing No. KA 34 3300. On the instructions of the Opposite Party No.1, the deceased and some other workers went to attend Tar Road work between Pathipadu and Yellanur Road. As there was shortage of stone metal, all the workers went to the stone crusher of one Kullaiah Reddy at Kondapuram in the Tipper bearing No. KA 34 3300 belonging to the Opposite Party No.1 and got loaded tipper with stone metal and while they were returning to the work spot, the driver of the Tipper drove the vehicle in a rash and negligent manner. As a result of which,



the tipper turned turtled. In the said accident, the deceased along with two others were died. A case in Cr.No.3 of 2004 was registered by the Kondapuram P.S., Kadapa District, against the driver of the tipper. The deceased was aged about 18 years and earning Rs.5,000/- per month as wages at the time of accident. Therefore, the applicants sought compensation of Rs.4,50,000/- for the untimely death of the deceased against the owner and insurance company.

**The case of the Applicants in CMA No.843 of 2013 in nutshell:**

The applicants are the parents of the deceased-Kolatam Suresh, who died in the accident on 17.02.2004 at about 10.00 am. The deceased Suresh was working as a workman under the Opposite Party No.1 in his tipper bearing No. KA 34 3300. After loading the tipper with stone metal at the stone crusher and while they were returned to the work spot, the accident occurred. In the said accident, the deceased along with three others were died. A case in Cr.No.3 of 2004 was registered by the Kondapuram P.S, Kadapa District, against the driver of the tipper. The deceased was aged about 19 years and earning



Rs.5,000/- per month as wages at the time of the accident. Therefore, the applicants sought compensation of Rs.4,50,000/- for the untimely death of the deceased against the owner and insurance company.

**The case of the Applicants in CMA No.862 of 2013 in nutshell:**

The applicants are the parents of the deceased-Chavula Narayana Swamy, who died in the accident on 17.02.2004 at about 10.00 am. The deceased Narayana Swamy was working as a workman under the Opposite Party No.1 in his tipper bearing No. KA 34 3300. After loading the tipper with stone metal at the stone crusher and while they were returned to the work spot, the accident occurred. In the said accident, the deceased along with three others were died. A case in Cr.No.3 of 2004 was registered by the Kondapuram P.S, Kadapa District, against the driver of the tipper. The deceased was aged 20 years and earning Rs.5,000/- per month as wages at the time of the accident. Therefore, the applicants sought compensation of Rs.4,50,000/- for the untimely death of the deceased against the owner and insurance company.





**The case of the Applicants in CMA No.92 of 2014 in nutshell:**

The applicants are the parents of the deceased-Nidiganti Narasimhulu, who died in the accident on 17.02.2004 at about 10.00 am. The deceased Narasimhulu was working as a workman under the Opposite Party No.1 in his tipper bearing No. KA 34 3300. After loading the tipper with stone metal at the stone crusher and while they were returned to the work spot, the accident occurred. In the said accident, the deceased along with three others were died. A case in Cr.No.3 of 2004 was registered by the Kondapuram P.S, Kadapa District, against the driver of the tipper. The deceased was aged about 17 years and earning Rs.5,000/- per month as wages at the time of the accident. Therefore, the applicants sought compensation of Rs.4,50,000/- for the untimely death of the deceased against the owner and insurance company.

**Version of Opposite Party No.1 and 2/Employer and the Insurance Company:**

6. Opposite Party No.1/employer filed Counter stating that



Opposite Party No.1 engaged the deceased as a coolie and paying Rs.5000/- per month. The tipper was insured with Opposite Party No.2 and the policy was in force by the date of accident and therefore, the Opposite Party No.2 is only liable to pay the compensation and prays to dismiss the application against Opposite Party No.1.

(b) Opposite Party No.2 filed Counter denying all the averments made in the claim application i.e., the nature of the employment, age and the manner of accident, the death of the deceased in the course of employment. It further submits that as per the terms and conditions of the policy, the coverage of risk for coolies will be only at the time of loading and unloading, but not during the transit. As the deceased and others died during the transit, the Opposite Party No.2 is not liable to pay the compensation and prays to dismiss the application.

**In Enquiry:**

7. (i) During the course of enquiry, on behalf of the applicants, AWs. 1 to 3 were examined and Exs. A.1 to A.8 were marked.



(ii) After hearing both the counsel and on appreciation of the evidence, the learned Commissioner awarded compensation of Rs.2,55,639/- to the claimants against the Opposite Party Nos. 1 and 2. Insofar as the interest is concerned, the learned commissioner awarded interest at 12% per annum from the date of petition till the date of realization against the employer, exonerating the Insurance Company.

**Grounds of Appeal:**

8. Having been aggrieved by the impugned Order, the claimants preferred the present appeal on the ground that the learned Commissioner ought to have fastened the liability against the insurance company for payment of the interest.

9. Heard the learned counsel for the Appellants and the learned counsel for the Respondents. Perused the material available on record.

10. In the light of the rival submissions made, the sole substantial question of law arise in the present appeals is:



(i) Whether the liability of interest can be fastened against the insurance company and if so what is the rate of interest need to be awarded and from which date, the claimants are entitled?

11. **Point:** As seen from the record, these appeals are filed by the claimants, who are the parents of the deceased, who died in the same accident. Learned Commissioner while awarding the compensation, though awarded interest at 12% p.a., from the date of petition, fastened the liability against the employer i.e, Opposite Party No.1, exonerating the insurance company from the payment of interest. Feeling aggrieved by the Order impugned, the present appeals are filed by the claimants.

12. The substantial questions of law referred supra are intertwined and the sole question revolving around all the questions is whether the liability to pay interest can be fastened against the insurance company under the act.

(ii) The question under challenge is no more *res integra* in the light of the judgments of the Hon'ble Apex Court.



13. In ***Ved Prakash Garg etc., v Premi Devi and others***<sup>1</sup>,

the Hon'ble Apex Court held as follows:

In view of the aforesaid conclusion of ours the present appeals will have to be partly allowed, The impugned judgments of the High Court will stand confirmed to the extent they exonerate the respondent-insurance companies of the liability to pay the penalty imposed on the insured employers by the Workmen's Commissioner under Section 4A(3) of the Compensation Act. But the impugned judgments will be set aside to the extent to which they seek to exonerate insurance companies for meeting the claims of interest awarded on the principal compensation amounts by the Workmen's Commissioner on account of default of the insured in paying up the compensation amount within the period contemplated by Section 4A(3) of the Compensation Act.

(ii) In ***Ajaya Kumar Das and another v Divisional Manager and Another***<sup>2</sup>, the Hon'ble Apex Court observed that Section 4-A of the Workmen's Compensation Act, 1923 stipulates that the Commissioner shall direct the employer to pay interest of 12% or at a higher rate, not exceeding the lending rates of any scheduled banks specified, if the employer does not pay the compensation within one month from the date of it fell due. In ***Saberabibi Yakubhai Shaikh v National Insurance company Limited*** (2014) 2 SCC 298, this Court held that interest shall be paid on the compensation awarded from the date of the accident and not the date of adjudication of the claim in view of the decision of this Court in ***Oriental Insurance Company Limited v Siby George*** (2012) 12 SCC 540, where it was held that compensation would fall due from the date of accident. Further in the recent decision in ***P. Meenaraj v P. Adigurusamy and another***, Civil Appeal No.209 of 2022, decided on 6<sup>th</sup> January, 2022, this Court reiterated that the applicant is entitled to interest from the date of accident while rejecting the submission that the award of interest should be after the expiry of 30 days from the date of accident. Thus, there was no legal basis for the High Court to delete the order of payment of interest.

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<sup>1</sup> 1997 (8) SC 412

<sup>2</sup> 2022 Live Law (SC) 102



(iii) In ***Shobha v the Chairman, Vitthalrao Shinde*** (Civil Appeal No.1860 of 2022, dated 11.03.2022), the Hon'ble Apex Court as follows:

"As per Section 4A(3)(a), the employer shall pay, in addition to the amount of the arrears, simple interest thereon @ 12% p.a. or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified on the amount due. As per Section 4A(1) compensation under section 4 shall be paid as soon as it falls due. Therefore, on the death of the employee/deceased immediately, the amount of compensation can be said to be falling due. Therefore, the liability to pay the compensation would arise immediately on the death of the 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 based on the 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 would arise from the date on which the deceased died for which he is entitled to the compensation and therefore, the liability to pay the 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. As per Section 4A(3)(b), if the Commissioner is satisfied that there is no justification for the delay, it can direct the employer, in addition to the amount of the arrears and interest thereon, to pay a further sum not exceeding 50% of such amount by way of penalty. Thus, provision for interest and provision for penalty are different. As observed hereinabove, the provision for levy of interest would be under Section 4A(3)(a) and the provision for levy of penalty would be under Section 4A(3)(b). While directing the employer to pay the interest from the date of the order passed by the Commissioner, the High Court has not at all considered Section 4A(3)(a) and has considered Section 4A(3)(b) only, which is the penalty provision.

5. Under the circumstances, the impugned judgment and order passed by the High Court directing the employee to pay the interest on the amount of compensation as leviable under Section 4A(3)(a) from the date of the order passed by the Commissioner, i.e., 25.01.2017 is unsustainable.

6. In view of the above and for the reasons stated above, the present appeal succeeds. The impugned judgment and order passed by the



High Court insofar as awarding the interest @ 12% p.a. after the period of expiry of one month from 25.01.2017, is hereby quashed and set aside and it is observed and held that the appellants herein – original claimants shall be entitled to the interest @ 12% p.a. on the amount of compensation as awarded by the Commissioner from the date of the incident i.e., 29.11.2009.

(iv) In ***Kashibhai Rambhai Patel v Shanabhai Somabhai Parmar and others***<sup>3</sup>, the Hon'ble Apex Court observed that the Insurance Company, who is respondent No. 4 therein, would not be liable for the amount of penalty, but insofar as the interest is concerned, all the appellants as also respondent No. 4 would be liable. The amount of penalty would be recoverable from the appellants together with the amount of compensation if not already paid by the insurance Company (respondent No. 4).

14. In the backdrop of the legal position referred above, the employer and the insurance company are jointly and severally liable to pay the interest at 12% from the date of accident till the date of realization.

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<sup>3</sup> 2000 SCC (L & S) 1105



15. In the result, these Civil Miscellaneous Appeals are Allowed. In the circumstances of the case, each party bear their own costs.

Miscellaneous petitions pending, if any, in this case shall stand closed.

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***VENKATA JYOTHIRMAI PRATAPA, J***

Date :10.05.2023  
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**HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA**

**C.M.A.No.995 of 2011 & 843, 862 of 2013 and 92  
of 2014**

**Date : 10.05.2023**

**eha**