

Ajaya Kumar Das vs Divisional Manager on 24 January, 2022

Bench: D.Y. Chandrachud, Dinesh Maheshwari

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No 447 of 2022
(Arising out of SLP(C) No 12228 of 2019)

Ajaya Kumar Das & Anr

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Versus

Divisional Manager & Anr

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JUDGMENT

Dr Dhananjaya Y Chandrachud, J 1 Leave granted.

2 This appeal arises from a judgment of a Single Judge of the High Court of Orissa dated 11 April 2018 in FAO No 358 of 2018.

3 The first appellant was working as a labourer in a truck bearing registration No OAX 2764 and was engaged by the second respondent for the loading and unloading of sand. On 5 June 2000, the truck met with an accident as a result of which the first appellant suffered multiple injuries in his abdomen and kidney. He underwent a surgery and was discharged from the hospital on 22 June 2000. A claim for compensation was lodged before the Workmen compensation-cum- Reason: Assistant Labour Commissioner, Odisha. The claim was allowed by an order dated 24 May 2016. It was held that the first appellant in spite of all the possible treatment became permanently disabled upto 85% which would reduce his earning capacity upto 100%. Since he was receiving Rs 2100 as a monthly income, the total compensation payable was arrived at Rs 2,78,926 (60% of 2100 (monthly income) x 221.37 (age factor as he was 22 years old) x 100 (loss of earning)). The Labour Commissioner directed that the compensation must be paid together with interest at the rate of 12 per cent per annum on the principal sum awarded from the date of accident till the deposit. 4 The first respondent, who is the insurer, filed an appeal before the High Court, being FAO No 358 of 2018, with a delay of 619 days. The High Court, by its order dated 11 April 2018, dismissed the

application for condonation on the ground that there was an unexplained delay of 619 days. Nonetheless, the High Court directed that the appellants are not entitled to any interest on the compensation awarded except the accrued interest. The order of the High Court was sought to be reviewed, but the petition for review was also dismissed on 8 February 2019 on the ground that the first appellant has already withdrawn the entire awarded amount along with the accrued interest. 5 The judgment of the High Court is inexplicable. Having dismissed the appeal of the insurer on the ground of limitation, there was no occasion for the High Court to interfere on merits with the award of interest on compensation under the Workmen's Compensation Act 1923. When the appeal was dismissed on the ground of limitation, the High Court could not have entertained it on merits. The error on the part of the High Court has led a labourer and his spouse to travel all the way to this Court. Though the accident took place in 2000, the course of litigation would now end only with the present judgment. To set the record straight, the High Court has erred on merits as well. Section 4A 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 it fell due. In *Saberabibi Yakubhai Shaikh v. National Insurance Co. Ltd.*¹, 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 Co. Ltd. v. Siby George*² where it was held that compensation would fall due from the date of the accident. Further, in the recent decision in *P. Meenaraj v. P. Adigurusamy & Anr.*³, 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. 6 For the above reasons, we set aside the direction contained in the order of the High Court dated 11 April 2018 by which the order for the payment of interest was deleted. The order for the payment of interest which was issued by the Additional Labour Commissioner-cum-Commissioner, Workmen Compensation shall together with the award of compensation stand restored. 7 Though the first respondent has not appeared in these proceedings, despite service of notice, we are of the view that an award of costs is necessary since the appellants have been compelled to move this Court against a palpably erroneous order of the High Court passed in an appeal filed beyond limitation by the respondent. The insurer took the contest to the High Court in an appeal barred by limitation. A well-resourced insurance company has used its position of dominance to evade the cause of justice. Such strategies must be eschewed. In addition to the compensation and interest which have been awarded, the appellants shall be entitled to costs quantified at Rs 50,000 which shall be paid 1 (2014) 2 SCC 298 2 (2012) 12 SCC 540 3 Civil Appeal No 209 of 2022, decided on 6 January 2022 over within a period of four weeks, together with the component of the award inclusive of interest that remains to be paid.

8 The appeal is allowed in the above terms.

9 Pending application, if any, stands disposed of.

.....J. [Dr Dhananjaya Y Chandrachud]
J. [Dinesh Maheshwari] New Delhi;

January 24, 2022

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ITEM NO.19

Court 4 (Video Conferencing)

SECTION XI-A

S U P R E M E C O U R T O F
RECORD OF PROCEEDINGS

I N D I A

Petition(s) for Special Leave to Appeal (C)

No(s).12228/2019

(Arising out of impugned final judgment and order dated 11-04-2018 in FAO No. 358/2018 passed by the High Court of Orissa at Cuttack) AJAYA KUMAR DAS & ANR. Petitioner(s) VERSUS DIVISIONAL MANAGER & ANR. Respondent(s) Date : 24-01-2022 This petition was called on for hearing today. CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD HON'BLE MR. JUSTICE DINESH MAHESHWARI For Petitioner(s) Mr. Chitta Ranjan Mishra, Adv.

Mr. Neeraj Srivastava, Adv. Mr. Ronak Baid, Adv.

Ms. Neetu Rathore, Adv.

Ms. Shalu Sharma, AOR For Respondent(s) UPON hearing the counsel the Court made the following O R D E R 1 Leave granted.

2 The appeal is allowed in terms of the signed reportable judgment.

3 Pending application, if any, stands disposed of.

(SANJAY KUMAR-I)

AR-CUM-PS

(Signed reportable is placed on the file)

(SAROJ KUMARI GAUR)

COURT MASTER