

National Insurance Co. Ltd. & ... vs Mubasir Ahmed & Anr. & ... Respondents on 1 February, 2007

Equivalent citations: AIR 2007 SUPREME COURT 1208, 2007 AIR SCW 1265, 2007 LAB. I. C. 1452, 2007 (2) AIR JHAR R 707, (2007) 53 ALLINDCAS 141 (SC), 2007 (53) ALLINDCAS 141, 2007 (2) SCC 349, 2007 (3) SERVLJ 62 SC, 2007 (2) SCALE 455, (2008) 1 LAB LN 422, (2007) 3 SERVLJ 62, 2007 (2) UPLBEC 1138, (2007) ILR (KANT) 4423, (2007) 2 ACC 374, (2007) 2 ACJ 845, (2007) 112 FACLR 1033, (2007) 3 KER LT 26, (2007) 3 MAD LJ 49, (2007) 2 PUN LR 188, (2007) 2 TAC 3, (2007) 2 UPLBEC 1138, (2007) 3 SUPREME 316, (2007) 2 SCALE 455, (2007) 1 CURLR 943, (2007) 2 MAD LW 700, (2007) 2 SCT 224

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Bench: Arijit Pasayat, S.H. Kapadia

CASE NO.:

Appeal (civil) 5623 of 2006

PETITIONER:

National Insurance Co. Ltd.

..Appellant

RESPONDENT:

Mubasir Ahmed & Anr.

.Respondents

DATE OF JUDGMENT: 01/02/2007

BENCH:

Dr. ARIJIT PASAYAT & S.H. KAPADIA

JUDGMENT:

J U D G M E N T [With Civil Appeal Nos. 5625 of 2006 and Civil Appeal No.5624 of 2006] Dr. ARIJIT PASAYAT, J.

Challenge in these appeals is to the judgment rendered in each case by learned Single Judge of the Andhra Pradesh High Court. Respondent no.1 in each case was working as employee of respondent no.2. Each of them filed a claim petition under Section 22 of the Workmen's Compensation Act, 1923 (in short the 'Act') claiming compensation for alleged personal injuries sustained in course of employment. In each case the claimant claimed to be either a labour or cleaner or driver of the vehicle which was involved in the accident. While respondent no.1 in Civil Appeal No.5625 of 2006 claimed to be driver of the vehicle No.APJ-1907, the respondent no.1 in Civil Appeal No.5623 of 2006 claimed to be the cleaner of the vehicle. Respondent no.1 in Civil Appeal No. 5624 claimed to

be employed in a different vehicle. The claim petitions were adjudicated by the Commissioner for Workmens' Compensation and Assistant Commissioner of Labour, Nizamabad (hereinafter referred to as the 'Commissioner').

In order to prove the nature of injuries sustained and the alleged loss of earning capacity, a doctor was examined as witness. The doctor who was examined, indicated the percentage of permanent and temporary disablement, functional disability and loss of earning capacity as follows:

Permanent/partial disability : 65% Functional disability : 65% Loss of earning capacity : 80% Permanent/partial disability : 65% Functional disability : 65% Loss of earning capacity : 65% Permanent/partial disability : 65% Functional disability : 70% Loss of earning capacity : 80% The appellant-insurer of offending vehicle did not question correctness of the award made by the Commissioner. The claimant in each case preferred an appeal under Section 30 of the Act. By the impugned judgment in each case the High Court held that there was 100% loss of earning capacity and, therefore, awarded compensation. It also directed grant of interest @ 12% p.a. from date of accident till actual realization.

In support of the appeals, learned counsel for the appellant submitted that the judgment of the High Court without any discussion on the loss of earning capacity is clearly unsustainable, and in addition question of payment of 12% p.a. interest does not arise. The rate of interest is high.

Learned counsel for the respondents supported the impugned order of the High Court in each case.

In order to decide the basic issues Sections 4 and 4-A of the Act need to be noted. They read as follows:

"4. Amount of compensation. (1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely :

(a) where death results from the injury an amount equal to forty per cent of the monthly wages of the deceased workman multiplied by the relevant factor;

or an amount of twenty thousand rupees, whichever is more;

(b) where permanent total disablement results from injury an amount equal to fifty per cent of the monthly wages of the injured workman multiplied by the relevant factor;

or an amount of twenty-

four thousand rupees, whichever is more;

Explanation I For the purposes of Cl. (a) and Cl. (b), "relevant factor", in relation to a workman means the factor specified in the second column of Sch. IV against the entry in the first column of

the schedule specifying the number of years which are the same as the completed years of the age of the workman on his last birthday immediately preceding the date on which the compensation fell due;

Explanation II Where the monthly wages of a workman exceed one thousand rupees, his monthly wages for the purposes of Cl. (a) and Cl. (b) shall be deemed to be one thousand rupees only.

(c) where permanent partial disablement results from the injury

(i) in the case of an injury specified in Pt. 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 the 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 sub-clause (ii), of the qualified medical practitioner shall have due regard to the percentage of loss of earning capacity in relation to different injuries specified in Sch. I;

(d) Where temporary disablement, whether total or partial results from the injury A half-monthly payment or the sum-

equivalent to twenty-five per cent of monthly wages of the workman, to be paid in accordance with the provisions of sub-section (2).

Xx xx xx 4-A. Compensation to be paid when due and penalty for default (1) Compensation under Sec. 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 event of liability which he accepts, and, such payment shall be deposited with the Commissioner or made to the workman, as the case may be without prejudice to the right of the workman 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 may direct that, in addition to the amount of the arrears, simple interest at the rate of six per cent per annum on the amount due together with, if in the opinion of the Commissioner there is no justification for the delay, a further sum not exceeding

fifty per cent of such amount, shall be recovered from the employer by way of penalty."

These cases related to injuries which were not specified in Schedule I and as such cases are covered by Section 4(1)(c)

(ii) Explanation. In terms of Explanation II the qualified medical practitioner has to assess loss of earning capacity having due regard to percentage of loss of earning capacity in relation to the different injuries in Schedule I. Explanation I also provides that where there are more than one injury, the aggregate has to be taken, so that the amount which would be payable for permanent total disablement is not exceeded.

Loss of earning capacity is, therefore, not a substitute for percentage of the physical disablement. It is one of the factors taken into account. In the instant case the doctor who examined the claimant also noted about the functional disablement. In other words, the doctor had taken note of the relevant factors relating to loss of earning capacity. Without indicating any reason or basis the High Court held that there was 100% loss of earning capacity. Since no basis was indicated in support of the conclusion, same cannot be maintained. Therefore, we set aside that part of the High Court's order and restore that of the Commissioner, in view of the facts situation. Coming to the question of liability to pay interest, Section 4-A(3) deals with that question. The provision has been quoted above.

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, 14 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 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.

The appeals are allowed to the extent indicated, without any order as to costs.