

A AJAYA KUMAR DAS & ANR
v.
DIVISIONAL MANAGER & ANR
(Civil Appeal No. 447 of 2022)

B JANUARY 24, 2022

**[DR. DHANANJAYA Y CHANDRACHUD AND
DINESH MAHESHWARI, JJ.]**

C *Workmen's Compensation Act, 1923: s. 4A – Award of interest on compensation to labourer who suffered permanent disability upto 85% – Appeal thereagainst by insurer – High Court having dismissed the appeal on the ground of limitation directed that the claimant are not entitled to any interest on the compensation awarded except the accrued interest – On appeal, held: Judgment of the High Court is inexplicable – Having dismissed the appeal of the*
D *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 – Error on the part of the High Court has led a labourer and his spouse to travel all the way to this Court – Thus, in addition to the compensation and interest which have been*
E *awarded, the appellants entitled to costs quantified at Rs 50,000/- – Costs.*

Allowing the appeal, the Court

HELD: 1.1 The judgment of the High Court is inexplicable. Having dismissed the appeal of the insurer on the ground of
F **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. 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.**
G **The High Court has erred on merits as well. Section 4A of the 1923 Act 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**

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does not pay the compensation within one month from the date it fell due. Interest shall be paid on the compensation awarded from the date of the accident. Thus, there was no legal basis for the High Court to delete the order of payment of interest, and the said direction is set aside. The order for the payment of interest by the Commissioner together with the award of compensation is restored. [Paras 5, 6][470-G-H; 471-A-B, D-F]

1.2 Though the first respondent has not appeared in these proceedings, despite service of notice, 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 would be entitled to costs quantified at Rs 50,000. [Para 7][471-F-G; 472-A]

Saberabibi Yakubhai Shaikh v. National Insurance Co. Ltd. (2014) 2 SCC 298 : [2014] (1) SCR 303; Oriental Insurance Co. Ltd. v. Siby George (2012) 12 SCC 540 : [2012] (6) SCR 1079; P. Meenaraj v. P. Adigurusamy & Anr. Civil Appeal No 209 of 2022, decided on 6 January 2022 – referred to.

Case Law Reference

[2014] (1) SCR 303	referred to	Para 5	F
[2012] (6) SCR 1079	referred to	Para 5	

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 447 of 2022.

From the Judgment and Order dated 08.02.2019 of the High Court of Orissa at Cuttack in Review Petition No.84 of 2018.

Chitta Ranjan Mishra, Neeraj Srivastava, Ronak Baid, Ms. Neetu Rathore, Ms. Shalu Sharma, Advs. for the Appellants.

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A The Judgment of the Court was delivered by
DR. DHANANJAYA Y CHANDRACHUD, J.

1. Leave granted.

B 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.

C 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-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.

F 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.

H 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

¹ (2014) 2 SCC 298

² (2012) 12 SCC 540

³ Civil Appeal No 209 of 2022, decided on 6 January 2022

A shall be entitled to costs quantified at Rs 50,000 which shall be paid 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.

Nidhi Jain

Appeal allowed.